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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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, February 13, 2007
9:00 a.m.–Noon

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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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 72, No. 11
Thursday, January 18, 2007

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket No. AMS–TM–06–0223; TM–06–12]

National Organic Program—Submission of Petitions of Substances for Inclusion on or Removal From the National List of Substances Allowed and Prohibited in Organic Production and Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Guidelines on Procedures for Submitting National List Petitions.

SUMMARY: This notice supersedes prior Department of Agriculture's (USDA) National Organic Program's (NOP) published guidelines used to submit petitions to amend the National List of Allowed and Prohibited Substances (National List). The National List identifies the synthetic substances that may be used and the non-synthetic substances that may not be used in organic production. The National List also identifies synthetic and non-synthetic substances that may be used in organic handling. This notice provides guidance on who may submit petitions, what substances may be petitioned and the information that is required to be included within a submitted petition. Additionally, this notice establishes new commercial availability evaluation criteria that will be applied during the petition review of non-organic agricultural substances for inclusion onto or removal from § 205.606 of the National List.

DATES: *Effective Date:* These guidelines will be in effect on January 19, 2007.

ADDRESSES: Petitions should be submitted in duplicate to: Program Manager, USDA/AMS/TM/NOP, Room 4008-So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250. Phone: (202) 720–3252. Fax: (202) 205–7808. To submit petitions electronically, contact the USDA NOP for additional instructions.

FOR FURTHER INFORMATION CONTACT: National List Coordinator, National Organic Program, USDA/AMS/TM/NOP, Room 4008–So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250. Phone: (202) 720–3252. Fax: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

Background

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), authorizes the establishment of the NOP regulations including the National List of Allowed and Prohibited Substances (National List). This National List identifies the synthetic substances that may be used and the non-synthetic substances that may not be used in organic production, and also identifies synthetic and non-synthetic substances that may be used in organic handling. The OFPA and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance for organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any non-organic, non-synthetic substance used in organic handling must also be on the National List. Since the NOP regulations became effective on October 21, 2002, the National List can only be amended through rulemaking by either the National List Petition Process or the National List Sunset Process. The guidelines contained in this notice apply only to the National List Petition Process.

The ability for any person to petition to amend the National List is authorized by the OFPA (7 U.S.C. 6518(n)) and the NOP regulations, in § 205.607. This authorization provides that any person may petition the National Organic Standards Board (NOSB) for the purpose of having a substance evaluated by the NOSB for recommendation to the Secretary for inclusion on or removal from the National List. The NOSB is authorized to review petitions under specified evaluation criteria in OFPA (7 U.S.C 6518(m)), and forward recommendations for amending the National List to the Secretary. Since the NOP regulations became effective in October 2002, several petitions to include synthetic or non-synthetic substances in their respective sections of the National List have been reviewed by the NOSB. However, only a few of these petitions were for inclusion of non-organic agricultural substances onto the National List in § 205.606.

Until recently, some producers, handlers and certifiers may have misinterpreted § 205.606 to mean that any non-organic agricultural product which was determined by an accredited certifying agent to be not commercially available in organic form could be used in organic products, without being individually listed pursuant to the National List procedures. In January 2005, the First Circuit decision in *Harvey* v. *Johanns* held that such an interpretation is contrary to the plain meaning of the OFPA and ordered that 7 CFR 205.606 shall not be interpreted to create a blanket exemption to the National List requirements specified in §§ 6517 and 6518 of the OFPA (7 U.S.C. 6517–6518). Consistent with the district court's final judgment and order, dated June 9, 2005, on July 1, 2005, the NOP published a notice regarding § 205.606 (70 FR 38090), and on June 7, 2006, published a final rule revising § 205.606 to clarify that the section shall be interpreted to permit the use of a non-organically produced agricultural product only when the product has been listed in § 205.606 pursuant to National List procedures, and when an accredited certifying agent has determined that the organic form of the agricultural product is not commercially available (71 FR 32803). As a result, industry information provided to the NOP indicates that there may be many non-organic agricultural substances that are being used in organic products which will render currently certified products in non-compliance when the court final order and judgment on *Harvey* v. *Johanns* becomes fully effective on June 9, 2007.

This **Federal Register** Notice, developed in collaboration with the NOSB and based on its October 2006 recommendation, modifies the information to be included in a petition to provide for the review of non-organic agricultural substances to be included onto § 205.606. This notice also clarifies the information to be submitted for all types of petitions submitted to amend the National List.

Procedures for Submitting National List Petitions

Any person may submit a petition requesting a substance to be reviewed by the NOP and NOSB at any time. Each substance to be evaluated for the National List must be submitted in a separate petition. Only single substances may be petitioned for evaluation; formulated products cannot appear on the National List. When submitting petitions, an official petition contact should be designated for all correspondence and the petition should provide specific contact information including name, address, phone number, fax number and e-mail address.

To facilitate timely NOP review and NOSB consideration of petitions, petitioners must provide concise yet comprehensive responses to the required petition information items described under the guideline heading ''Information to be included in a Petition.'' Upon receipt, the NOP will review the petition for completeness of the required petition information. If the required petition information is incomplete, the petition will be returned to the petitioner with a request for additional information.

Petitions for substance evaluations to add a substance onto, remove a substance from, or amend a substance presently on the National List involves a public and open process. Petition information not categorized and accepted by USDA, pursuant to 7 CFR 1.27(d), as Confidential Business Information (CBI) will be considered available to the public for inspection. Published information usually cannot be claimed as confidential. When a petition is considered complete and forwarded for NOSB evaluation, except for CBI, the petition will be made available for public inspection. Substance petitions that are complete and under evaluation by the NOSB will be posted on the NOP Web site at: *http://www.ams.usda.gov/nop*. Public comments may be submitted to either the NOSB or the NOP for any petitioned substance being evaluated by the NOSB. Comments also will be posted on the NOP Web site.

Overview of Petition Review by the NOSB

For each completed petition, the responsible NOSB committee reviews petition information, technical reports and public comments, then develops the recommendation for full NOSB consideration at a scheduled public meeting. The NOSB determines when petitions will be reviewed at their public meetings and when recommendations are forwarded to the Secretary.

As provided for in OFPA (7 U.S.C 6518(m)), when evaluating petitioned substances for amendment of the National List, the NOSB shall consider:

(1) The potential of such substances for detrimental chemical interactions with other materials used in organic farming systems;

(2) The toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment;

(3) The probability of environmental contamination during manufacture, use, misuse or disposal of such substance;

(4) The effect of the substance on human health;

(5) The effects of the substance on biological and chemical interactions in the agroecosystem, including the physiological effects of the substance on soil organisms (including the salt index and solubility of the soil), crops and livestock;

(6) The alternatives to using the substance in terms of practices or other available materials; and

(7) Its compatibility with a system of sustainable agriculture.

If an agricultural substance is petitioned for amendment onto § 205.606 of the National List, the NOSB shall verify that the material is agricultural. Once the substance is verified to be agricultural, the NOSB will determine if the substance is potentially commercially unavailable. The NOSB will consider:

(A) Why the substance should be permitted in the production or handling of an organic product;

(B) The current industry information regarding availability of and history of unavailability of an organic form in the appropriate form, quality, or quantity of the substance. Industry information includes, but is not limited to the following: (1) Regions of production, including factors such as climate and number of regions; (2) Number of suppliers and amount produced; (3) Current and historical supplies related to weather events such as hurricanes, floods, and droughts that may temporarily halt production or destroy crops or supplies; (4) Trade related issues such as evidence of hoarding, war, trade barriers, or civil unrest that may temporarily restrict supplies, and (5) Other issues which may present a challenge to a consistent supply.

After considering the petition at a scheduled public meeting, the NOSB will forward its recommendation to the Secretary. Upon receipt, the Secretary will evaluate the recommendation for inclusion onto or removal from the National List. Proposed amendments to the National List are published in the **Federal Register** as a Proposed Rule. After considering and responding to public comments on the proposed rule, amendments to the National List are effective only after publication in the **Federal Register** as a Final Rule. A substance that has been petitioned and recommended to be allowed for use by the NOSB is not allowed for use in organic production or handling until the final rule for amending the National List, if any, is effective.

When a substance is added onto the National List, it will remain on the List for 5 years after final rule becomes effective. As required by the Sunset provision in OFPA (7 U.S.C 6517(e)), the NOSB must review substances added to the National List at least once every 5 years per the National List Sunset Process, to reaffirm or not reaffirm, the status of each substance on the National List. Petitions to reevaluate prior NOSB recommendations to include a substance onto or remove a substance from the National List will be considered by the NOSB when substantial new petition substance information is provided.

Submitting Petitions for § 205.606

When submitting petitions to include a non-organic agricultural substance onto § 205.606, the petitioner must state in the petition justification statement, why the substance should be permitted in the production or handling of an organic product. Specifically, the petition must include current industry information on availability of, and history of unavailability of an organic form of the substance. When providing information on commercial availability of the organic form of an agricultural product, petitioners must be aware that the global market is the universe of supply; commercial availability is not dependent upon geographic location or local market conditions.

For petitions to remove a non-organic agricultural substance from § 205.606, the petitioner must state why the substance should be prohibited from use in a non-organic form. Any information acquired since the original petition to add the substance to the National List should be provided.

Information To Be Included in a Petition

The guidelines for required information to be included in a petition are as follows:

Item A—Please indicate which section or sections the petitioned

substance will be included on and/or removed from the National List.

- Synthetic substances allowed for use in organic crop production, § 205.601.
- Non-synthetic substances prohibited for use in organic crop production, § 205.602.
- Synthetic substances allowed for use in organic livestock production, § 205.603.
- Non-synthetic substances prohibited for use in organic livestock production, § 205.604.
- Non-agricultural (non-organic) substances allowed in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients),'' § 205.605.
- Non-organic agricultural substances allowed in or on processed products labeled as ''organic,'' § 205.606.

Item B—Please provide concise and comprehensive responses in providing all of the following information items on the substance being petitioned:

1. The substance's chemical or material common name.

2. The manufacturer's or producer's name, address and telephone number and other contact information of the manufacturer/producer of the substance listed in the petition.

3. The intended or current use of the substance such as use as a pesticide, animal feed additive, processing aid, nonagricultural ingredient, sanitizer or disinfectant. If the substance is an agricultural ingredient, the petition must provide a list of the types of product(s) (*e.g.*, cereals, salad dressings) for which the substance will be used and a description of the substance's function in the product(s) (*e.g.,* ingredient, flavoring agent, emulsifier, processing aid).

4. A list of the crop, livestock or handling activities for which the substance will be used. If used for crops or livestock, the substance's rate and method of application must be described. If used for handling (including processing), the substance's mode of action must be described.

5. The source of the substance and a detailed description of its manufacturing or processing procedures from the basic component(s) to the final product. Petitioners with concerns for confidential business information may follow the guidelines in the Instructions for Submitting CBI listed in #13.

6. A summary of any available previous reviews by State or private certification programs or other organizations of the petitioned substance. If this information is not available, the petitioner should state so in the petition.

7. Information regarding EPA, FDA, and State regulatory authority registrations, including registration numbers. If this information does not exist, the petitioner should state so in the petition.

8. The Chemical Abstract Service (CAS) number or other product numbers of the substance and labels of products that contains the petitioned substance. If the substance does not have an assigned product number, the petitioner should state so in the petition.

9. The substance's physical properties and chemical mode of action including (a) Chemical interactions with other substances, especially substances used in organic production; (b) toxicity and environmental persistence; (c) environmental impacts from its use and/or manufacture; (d) effects on human health; and, (e) effects on soil organisms, crops, or livestock.

10. Safety information about the substance including a Material Safety Data Sheet (MSDS) and a substance report from the National Institute of Environmental Health Studies. If this information does not exist, the petitioner should state so in the petition.

11. Research information about the substance which includes comprehensive substance research reviews and research bibliographies, including reviews and bibliographies which present contrasting positions to those presented by the petitioner in supporting the substance's inclusion on or removal from the National List. For petitions to include non-organic agricultural substances onto the National List, this information item should include research concerning why the substance should be permitted in the production or handling of an organic product, including the availability of organic alternatives. Commercial availability does not depend upon geographic location or local market conditions. If research information does not exist for the petitioned substance, the petitioner should state so in the petition.

12. A ''Petition Justification Statement'' which provides justification for any of the following actions requested in the petition:

A. Inclusion of a Synthetic on the National List, §§ 205.601, 205.603, 205.605(b)

- Explain why the synthetic substance is necessary for the production or handling of an organic product.
- Describe any non-synthetic substances, synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned synthetic substance.
- Describe the beneficial effects to the environment, human health, or farm ecosystem from use of the synthetic substance that support its use instead of the use of a non-synthetic substance or alternative cultural methods.

B. Removal of a Synthetic From the National List, §§ 205.601, 205.603, 205.605(b)

- Explain why the synthetic substance is no longer necessary or appropriate for the production or handling of an organic product.
- Describe any non-synthetic substances, synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned synthetic substance.

C. Inclusion of a Prohibition of a Non-Synthetic, §§ 205.602 and 205.604

- Explain why the non-synthetic substance should not be permitted in the production of an organic product.
- Describe other non-synthetic substances or synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned substance.

D. Removal of a Prohibited Non-Synthetic From the National List, §§ 205.602 and 205.604

- Explain why the non-synthetic substance should be permitted in the production of an organic product.
- Describe the beneficial effects to the environment, human health, or farm ecosystem from use of the non-synthetic substance that supports its use instead of the use of other non-synthetic or synthetic substances on the National List or alternative cultural methods.

E. Inclusion of a Non-Synthetic, Non-Agricultural Substance Onto the National List, § 205.605(a)

- Explain why the substance is necessary for use in organic handling.
- Describe non-synthetic or synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned synthetic substance.
- Describe any beneficial effects on the environment, or human health from the use of the substance that support its use instead of the use of non-synthetic or synthetic substances on the National List or alternative cultural methods.

F. Removal of a Non-Synthetic, Non-Agricultural Substance From the National List, § 205.605(a)

- Explain why the substance is no longer necessary for use in organic handling.

• Describe any non-synthetic or synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned substance.

G. Inclusion of a Non-Organically Produced Agricultural Substance Onto the National List, § 205.606

• Provide a comparative description on why the non-organic form of the substance is necessary for use in organic handling.

• Provide current and historical industry information/research/evidence that explains how or why the substance cannot be obtained organically in the *appropriate form, appropriate quality, and appropriate quantity* to fulfill an essential function in a system of organic handling.

• Describe industry information on substance non-availability of organic sources including but not limited to the following guidance regarding commercial availability evaluation criteria: (1) Regions of production, including factors such as climate and number of regions; (2) Number of suppliers and amount produced; (3) Current and historical supplies related to weather events such as hurricanes, floods, and droughts that may temporarily halt production or destroy crops or supplies; (4) Trade related issues such as evidence of hoarding, war, trade barriers, or civil unrest that may temporarily restrict supplies, and (5) Other issues which may present a challenge to a consistent supply.

H. Removal of a Non-Organically Produced Agricultural Substance From the National List, § 205.606

• Provide a comparative description as to why the non-organic form of the substance is not necessary for use in organic handling.

• Provide current and historical industry information/research/evidence that explains how or why the substance can be obtained organically in the *appropriate form, appropriate quality, and appropriate quantity* to fulfill an essential function in a system of organic handling.

• Provide new industry information on substance availability of organic sources including but not limited to the following guidance commercial availability evaluation criteria: (1) Region of production, including factors such as climate and number of regions; (2) Number of suppliers and amount produced; (3) Current and historical supplies related to weather events such as hurricanes, floods, or droughts that temporarily halt production or destroy crops or supplies; (4) Trade related issues such as evidence of hoarding, war, trade barriers, and civil unrest that may temporarily restrict supplies and; (5) Any other issues which may present a challenge to a consistent supply.

13. A Confidential Business Information Statement which describes the specific required information contained in the petition that is considered to be Confidential Business Information (CBI) or confidential commercial information and the basis for that determination. Petitioners should limit their submission of confidential information to that needed to address the areas for which this notice requests information. Final determination regarding whether to afford CBI treatment to submitted petitions will be made by USDA pursuant to 7 CFR 1.27(d). Instructions for submitting CBI to the National List Petition process are presented in the instructions below:

(a) Financial or commercial information the petitioner does not want disclosed for competitive reasons may be claimed as CBI. Applicants must submit a written justification to support each claim.

(b) ''Trade secrets'' (information relating to the production process, such as formulas, processes, quality control tests and data, and research methodology) may be claimed as CBI. This information must be (1) commercially valuable, (2) used in the applicant's business, and (3) maintained in secrecy.

(c) Each page containing CBI material must have ''CBI Copy'' marked in the upper right corner of the page. In the right margin, mark the CBI information with a bracket and ''CBI.''

(d) The CBI-deleted copy should be a facsimile of the CBI copy, except for spaces occurring in the text where CBI has been deleted. Be sure that the CBI-deleted copy is paginated the same as the CBI copy (The CBI-deleted copy of the application should be made from the same copy of the application which originally contained CBI). Additional material (transitions, paraphrasing, or generic substitutions, etc.) should not be included in the CBI-deleted copy.

(e) Each page with CBI-deletions should be marked ''CBI-deleted'' at the upper right corner of the page. In the right margin, mark the place where the CBI material has been deleted with a bracket and ''CBI-deleted.''

(f) If several pages are CBI-deleted, a single page designating the numbers of deleted pages may be substituted for blank pages. (For example, ''pages 7 through 10 have been CBI-deleted.'')

(g) All published references that appear in the CBI copy should be included in the reference list of the CBI-deleted copy. Published information cannot be claimed as confidential.

(h) Final determination regarding whether to afford CBI treatment to submitted petitions will be made by USDA pursuant to 7 CFR 1.27(d). If a determination is made to deny CBI treatment, the petitioner will be afforded an opportunity to withdraw the submission.

No additional collection or recordkeeping requirements are imposed on the public by this rule.

Accordingly, OMB clearance is not required by § 305(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementation regulation at 5 CFR, part 1320.

Authority: 7 U.S.C. 6501–6522.

Dated: January 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–596 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 980

[Docket No. FV06–980–1 FR]

Vegetables, Import Regulations; Partial Exemption to the Minimum Grade Requirements for Fresh Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule provides a partial exemption to the minimum grade requirements under the tomato import regulation. The import regulation is authorized under section 8e of the Agricultural Marketing Agreement Act of 1937 (Act). Section 8e requires imported tomatoes to meet the same or comparable grade and size requirements as those in effect under Federal Marketing Order No. 966 (order). The order regulates the handling of tomatoes grown in Florida. A separate rule to amend the rules and regulations under the order to exempt UglyRipe™ (UglyRipe) tomatoes from the shape requirements associated with the U.S. No. 2 grade is being issued by Department of Agriculture (USDA). This rule provides the same partial exemption under the import regulation so it will conform to the regulations for Florida tomatoes under the order.

DATES: *Effective Date:* This final rule becomes effective January 19, 2007.

FOR FURTHER INFORMATION CONTACT: William Pimental or Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793; or e-mail: *william.pimental@usda.gov* or *christian.nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' which provides that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule provides a partial exemption to the minimum grade requirements for UglyRipe tomatoes imported into the United States. The import requirements for tomatoes specify that tomatoes must meet at least a U.S. No. 2 grade. A final rule to amend the rules and regulations under the order to exempt UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade is being issued separately by USDA. This rule provides the same partial exemption under the import regulation so it conforms to the regulations for Florida tomatoes under the order.

The order provides the authority for the establishment of grade requirements for Florida tomatoes. Section 966.323 of the order specifies, in part, the minimum grade requirements for tomatoes grown in Florida. The current minimum grade requirement for Florida tomatoes is a U.S. No. 2. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 51.1855–51.1877).

The U.S. Standards for Grades of Fresh Tomatoes (Standards) specify the criteria tomatoes must meet to grade as a U.S. No. 2, including that they must be reasonably well formed, and not more than slightly rough. These two factors relate specifically to the shape of the tomato. The definitions section of the Standards defines reasonably well formed as not decidedly kidney shaped, lopsided, elongated, angular, or otherwise decidedly deformed. The term slightly rough means that the tomato is not decidedly ridged or grooved.

UglyRipe tomatoes are a trademarked tomato variety bred to look and taste like an heirloom-type tomato. One of the characteristics of this variety is its appearance. UglyRipe tomatoes are often shaped differently from other round tomatoes. Depending on the time of year and the weather, UglyRipe tomatoes are concave on the stem end with deep, ridged shoulders. They can also appear kidney shaped and lopsided. Because of this variance in shape and appearance, UglyRipe tomatoes can have difficulty meeting the shape requirements of the U.S. No. 2 grade.

This rule provides UglyRipe tomatoes with a partial exemption from the grade requirements under the import regulation. UglyRipe tomatoes are only exempt from the shape requirements of the grade and are still required to meet all other aspects of the U.S. No. 2 grade. The UglyRipe tomato also continues to be required to meet all other requirements under the import regulation, such as size and inspection.

Prior to the 1998–99 season, the Florida Tomato Committee (Committee), which locally administers the order, recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. A conforming change was also made to the import regulation. Some Committee members have stated that a large part of the volume of the standard commercial varieties of tomatoes which fail to make the grade are rejected because of their shape and appearance. Consequently, there was some industry concern that providing an exemption for the UglyRipe tomato could result in the shipment of U.S. No. 3 grade tomatoes of other varieties, contrary to the objectives of the exemption and the order.

To address this concern, the producers of UglyRipe tomatoes pursued entry into USDA's Identity Preservation (IP) program. This program was developed by the Agricultural Marketing Service to assist companies in marketing products having unique traits. The program provides independent, third-party verification of the segregation of a company's unique product at every stage, from seed, production and processing, to distribution. The UglyRipe tomato was granted positive program status in early 2006.

This partial exemption only extends to UglyRipe tomatoes covered under the IP program. As such, this should help ensure that only UglyRipe tomatoes are shipped under the exemption. In addition, this exemption is contingent upon imported UglyRipe tomatoes continuing to meet the specific requirements related to imports established under the IP program.

This final rule exempts imported UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of UglyRipe tomatoes that will meet order requirements, and will help increase shipments and availability of these tomatoes.

This rule brings the tomato import regulation into conformity with the changes to the domestic order making the import requirements correspond to the domestic requirements under the order by amending 7 CFR 980.212 of the import requirements.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 225 importers of tomatoes subject to the regulation. Small agricultural service firms, which include tomato importers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $6,500,000 (13 CFR 121.201). Based on information from the Foreign Agricultural Service, USDA, the dollar value of imported tomatoes ranged from around $1.05 billion in 2003 to $1.08 billion in 2005. Using these numbers, the majority of tomato importers may be classified as small entities.

Mexico, Canada, and the Netherlands are the major tomato producing countries exporting tomatoes to the United States. In 2005, shipments of tomatoes imported into the United States totaled 951,787 metric tons. Mexico accounted for 801,408 metric tons, 141,642 metric tons were imported from Canada, and 6,249 metric tons arrived from the Netherlands.

This final rule provides a partial exemption to the minimum grade requirements for UglyRipe tomatoes imported into the United States. The import requirements for tomatoes specify that tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold into the fresh market. A rule which amends the rules and regulations under the order to exempt UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade is being issued by USDA. Accordingly, under section 8e of the Act, imports of tomatoes have to meet the same or comparable grade, size, quality, and maturity requirements as the domestic product. This rule provides the same partial exemption for UglyRipe tomatoes under the import regulation so it conforms to the domestic regulation.

This change would represent a small increase in costs for importers of UglyRipe tomatoes, primarily from costs associated with developing and maintaining an IP program. It is anticipated that these costs will be minimal.

In addition, this rule makes additional volumes of UglyRipe tomatoes available for shipment. This should result in increased sales of UglyRipe tomatoes. Consequently, the benefits of this action should more than offset the associated costs.

Section 8e of the Act provides that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since a final rule is being initiated that provides a partial exemption to the minimum grade requirements under the domestic handling regulations, a corresponding change to the import regulations also needs to be accomplished.

This final rule imposes no additional reporting or recordkeeping requirements beyond the IP program on either small or large tomato importers. Reports and forms required under the import regulations for tomatoes are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Additionally, except for applicable domestic regulations, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. Further, the public comment received concerning the proposal did not address the initial regulatory flexibility analysis.

A proposed rule concerning this action was published in the **Federal Register** on June 29, 2006 (71 FR 37016). Copies of the rule were mailed or sent via facsimile to all Committee members and tomato importers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending August 28, 2006, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter, in opposition of the proposed exemption, stated that this action presents too many opportunities for domestic and import growers to cheat and sell tomatoes of inferior quality.

USDA does not believe this partial exemption will create such an opportunity. There are safeguards in place to help address this issue. In addition to the existing inspection requirements, and compliance efforts, this partial exemption only extends to UglyRipe tomatoes covered under the IP program. This program was developed by AMS and provides independent, third-party verification of the segregation of a company's product at every stage, from seed, production and processing, to distribution. This will help ensure that only UglyRipe tomatoes are shipped using this partial exemption, as only handlers covered under the IP program will be allowed to pack under the exemption. Further, USDA plans to closely monitor compliance with this exemption.

Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the regulatory period will begin October 10, 2006. Also, a 60-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 980 is amended as follows:

PART 980—VEGETABLES; IMPORT REGULATIONS

■ 1. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 980.212, by adding a sentence at the end of paragraph (b)(1) to read as follows:

§ 980.212 Import regulation; tomatoes.

* * * * *

(b) * * *

(1) * * * *Provided,* That UglyRipe™ tomatoes shall be graded and at least meet the requirements specified for U.S. No. 2 under the U.S. Standards for Grades of Fresh Tomatoes, except they are exempt from the requirements that they be reasonably well formed and not more than slightly rough, and *Provided,* Further that the UglyRipe™ tomatoes meet the requirements of the Identity Preservation program, Fresh Products

Branch, Fruit and Vegetable Programs, AMS, USDA.

* * * * *

Dated: January 11, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–593 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS–FV–06–0183; FV06–989–2 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2005–06 Crop Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2005–06 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 82.50 percent free and 17.50 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: *Effective Date:* February 20, 2007. The volume regulation percentages apply to acquisitions of NS raisins from the 2005–06 crop until the reserve raisins from that crop are disposed of under the marketing order.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (559) 487–5901; *Fax:* (559) 487–5906; or *E-mail: Rose.Aguayo@usda.gov* or *Kurt.Kimmel@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington DC 20250–0237; *Telephone:* (202) 720–2491; *Fax:* (202) 720–8938; or *E-mail: Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect the action that established final free and reserve percentages for NS raisins for the 2005–06 crop year, which began August 1, 2005, and ended July 31, 2006. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that established final volume regulation percentages for 2005–06 crop NS raisins covered under the order. The volume regulation percentages are 82.50 percent free and 17.50 percent reserve and were established through an interim final rule published on May 23, 2006 (71 FR 29567). Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended final percentages on January 26, 2006, and further justified its recommendation on March 16, 2006.

Computation of Trade Demand

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2005, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, the desirable carryout shall equal the total shipments of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three. In accordance with these provisions, the Committee computed and announced the 2005–06 trade demand for NS raisins at 232,985 tons as shown below.

COMPUTED TRADE DEMAND

[Natural condition tons]

	NS raisins
Prior year's shipments	319,752
Multiplied by 90 percent	0.90
Equals adjusted base	287,777
Minus carryin inventory	114,792
Plus desirable caryout	60,000
Equals computed NS trade Demand	232,985

Computation of Preliminary Volume Regulation Percentages

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop.

The Committee met on October 4, 2005, and announced a preliminary crop estimate for NS raisins of 266,227 tons, which is about 19 percent lower than the 10-year average of 328,088 tons. NS raisins are the major varietal type of California raisin. Adding the carry in inventory of 114,792 tons, plus the 266,227-ton crop estimate resulted in a total available supply of 381,019 tons, which was significantly higher (164 percent) than the 232,985-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for NS raisins, which released 85 percent of the computed trade demand since a minimum field price (price paid by handlers to producers for their free tonnage raisins) had been established. The preliminary percentages were 74 percent free and 26 percent reserve.

In addition, preliminary percentages were announced for Dipped Seedless, Golden Seedless, Zante Currant, and Other Seedless raisins. It was ultimately determined that volume regulation was only warranted for NS raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), at its January 26, 2006, meeting, the Committee announced interim percentages for NS raisins to release slightly less than the full trade demand. Based on a revised NS crop estimate of 283,000 tons (up from the October estimate of 266,227 tons), interim percentages for NS raisins were announced at 82.25 percent free and 17.75 percent reserve.

Pursuant to § 989.54(d), the Committee also recommended final percentages at its January 26, 2006, meeting to release the full trade demand for NS raisins. Final percentages were recommended at 82.50 percent free and 17.50 percent reserve. The Committee's calculations and determinations to arrive at final percentages for NS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS raisins
Trade demand	232,985
Divided by crop estimate	283,000
Equals the free percentage	82.30
100 minus free percentage equals the reserve percentage	17.70

* * * The Committee recommended rounding the free percentage to 82.50 percent and reducing the reserve percentage to 17.50 percent to compensate for the higher than normal processing shrinkage being experienced by handlers with the 2005 NS crop.

By the week ending February 11, 2006, data showed that deliveries of NS raisins exceeded the Committee's crop estimate of 283,000 tons. By that date, deliveries of NS raisins totaled 285,052 tons. Thus, at USDA's request, the Committee met again on March 16, 2006, and reviewed the current available data and the computations used in arriving at the recommended final percentages.

At the March meeting, the Committee continued to support a crop estimate of 283,000 tons, because of the higher than normal processing shrinkage being experienced with the 2005 NS raisin crop. With a lower crop estimate, more free tonnage raisins would be made available to handlers for free tonnage use, but due to the above normal processing shrinkage the Committee expected supplies to be in balance with market needs.

By the end of the crop year, July 31, 2006, final deliveries of NS raisins totaled 319,126 tons. Thus, the Committee's recommendation provided handlers with an additional 30,294 tons over the computed trade demand, but the additional tonnage did not appear to impact marketing conditions.

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for NS raisins by the establishment of final percentages, which released 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the ''10 plus 10 offers.'' As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For NS raisins, the first 10 plus 10 offer was made in February 2006, and the second offer was made in July 2006. A total of 63,950 tons was made available to raisin handlers through these offers, and 31,975 tons were purchased by and released to handlers during the 2005–06 crop year. Adding the 31,975 tons of 10 plus 10 raisins to the 232,985 ton trade demand, plus the 30,294 tons of additional raisins released to handlers through use of the 283,000 ton crop estimate to compute final percentages, plus 114,792 tons of carry-in inventory equates to 410,046 tons of natural condition raisins, or 385,275 tons of packed raisins, that were available to handlers for shipment to free or primary markets. This is about 128 percent of the quantity of NS raisins shipped during the 2004–05 crop year (319,752 natural condition tons or 300,435 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets, which is consistent with USDA's Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less that $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Eleven of the 20 handlers subject to regulation have annual sales estimated to be at least $6,500,000, and the remaining 9 handlers have sales less than $6,500,000. No more than 9 handlers and a majority of producers of California raisins may be classified as small entities.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions. If the primary market (the normal domestic market) is over-supplied with raisins, grower prices decline substantially.

Pursuant to § 989.54(d) of the order, this rule continues in effect the action that established final volume regulation percentages for 2005–06 crop NS raisins. The volume regulation percentages are 82.50 percent free and 17.50 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation was warranted for the 2005–06 season because acquisitions of 319,126 tons through July 31, 2006, combined with the carryin inventory of 114,792 tons resulted in a total available supply of 433,918 tons, which was about 86 percent higher than the 232,985 ton trade demand.

The current volume regulation procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, about 65 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1993–94 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94.

According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, varied from a low of $904.60 in 1993–94 to a high of $1,049 in 1996–97. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Producer prices dropped dramatically for the 2000–01, 2001–02, and 2002–03 crop years due to record-size production, large carry-in inventories, and stagnant demand. However, producer prices increased slightly with a shorter crop in 2003–04 and rebounded to pre-1998–99 prices during the 2004–05 and 2005–06 crop years as noted below:

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Deliveries (natural condition tons)	Producer Prices (per ton)
2005–06	319,126	[1]$1210.00
2004–05	265,262	[2]1210.00
2003–04	296,864	[1]567.00
2002–03	388,010	[1]491.20
2001–02	377,328	650.94
2000–01	432,616	603.36
1999–2000	299,910	1,211.25
1998–99	240,469	[2]1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60

[1] Return-to-date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. Excluding the 2005–06 crop year, both domestic and export shipments have been increasing in recent years. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. Since that time domestic shipments steadily increased from 174,117 packed tons during the 2000–01 crop year to 193,680 packed tons during the 2004–05 crop year, but fell to 186,358 packed tons in 2005–06. In addition, exports decreased from 114,576 packed tons in 1991–92 to a low of 91,600 packed tons in the 1999–2000 crop year. Export shipments increased from 101,537 tons during the 2002–03 crop year to 106,755 tons of raisins during the 2004–05 crop year, but fell to 97,672 packed tons in 2005–06.

Moreover, the U.S. per capita consumption of raisins has declined from 2.09 pounds in 1988 to 1.46 pounds in 2004. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has increased in two out of the last three years (as reflected in increased commercial shipments), production has

been decreasing. Deliveries of NS dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Deliveries for the 2001–02 crop year were at 377,328 tons, 388,010 tons for the 2002–03 crop year, 296,864 for the 2003–04 crop year and 265,262 tons for the 2004–05 crop year. After three crop years of high production and a large 2001–02 carryin inventory, the industry diverted raisins or removed 41,000 acres in 2001; 27,000 acres in 2002; and 15,000 acres of vines in 2003 to reduce the industry's burdensome supply of raisins. These actions resulted in declining deliveries of 296,865 tons for the 2003–04 crop year and 265,262 tons for the 2004–05 crop year. Deliveries increased in 2005–06 to 319,126 tons.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, producer prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances producer returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

The reserve percentage limits what handlers can market as free tonnage. Data available as of July 31, 2006, showed that deliveries of NS raisins were at 319,126 tons. The 17.50 percent reserve limited the total free tonnage to 263,279 natural condition tons (.8250 x the 319,126 ton crop). Adding 263,279 ton figure with the carryin of 114,792 tons, plus the 31,975 tons of reserve raisins that were purchased by and released to handlers during the 2005–06 crop year under the 10 plus 10 offers, made the total free supply equal to 410,046 natural condition tons.

To assess the impact that volume control has on the prices growers receive for their product, a price dependent econometric model was estimated. This model is used to estimate grower prices both with and without the use of volume control. The volume control used by the raisin industry will result in decreased shipments to primary markets. Without volume control the primary market (domestic) could be over-supplied resulting in lower grower prices and the build-up of unwanted inventories.

The econometric model is used to estimate the difference between grower prices with and without restrictions. With volume controls, grower prices are estimated to be approximately $40 per ton higher than without volume controls. This price increase is beneficial to all producers regardless of size and enhances producers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, it was determined that volume regulation was warranted for the 2005–06 season for only one of the nine raisin varietal types defined under the order.

The free and reserve percentages continued in effect the release of the full trade demand and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 and 2004–05 crop years, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

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

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the raisin industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the August 15, 2005, October 4, 2005, January 26, 2006, and March 16, 2006, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Reserve Sales and Marketing Subcommittee met on August 15, 2005, October 4, 2005, January 26, 2006, and March 16, 2006, and discussed these issues in detail. Those meetings were also public meetings and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on May 23, 2006 (71 FR 29567). Copies of the rule were mailed to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on July 24, 2006. No comments were received. However, the interim final rule identified the effective date as August 1, 2005, through July 3, 2006. This final rule clarifies that the effective date of the volume percentages for the 2005–06 NS raisins is simply August 1, 2005, and the percentages apply to all raisins

acquired during the 2005–06 crop year and continue in effect until all 2005–06 reserve raisins are disposed of under the order. Accordingly, § 989.258 will appear in the Code of Federal Regulations.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 29567, May 23, 2006) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 71 FR 29567 on May 23, 2006, is adopted as a final rule without change.

Dated: January 12, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–623 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25584; Directorate Identifier 2000–NE–62–AD; Amendment 39–14733; AD 2006–17–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines; Correction.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2006–17–12. That AD applies to Rolls-Royce plc RB211 series turbofan engines. We published AD 2006–17–12 in the **Federal Register** on August 23, 2006 (71 FR 49339). An incorrect engine model number exists in the applicability paragraph and in the title of Table 5. Also, an incorrect serial number appears in Table 1. This document corrects these numbers. In all other respects, the original document remains the same.

DATES: *Effective Date:* Effective January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA, 01803; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. E6–13910, that applies to Rolls-Royce plc RB211 series turbofan engines was published in the **Federal Register** on August 23, 2006 (71 FR 49339). The following corrections are needed:

§ 39.13 [Corrected]

■ On page 49340, in the third column, in applicability paragraph (c), in the fourth line, ''RB211–535E4–C'' is corrected to read ''RB211–535E4–C–37''. Also, on page 49341, in Table 1, in the fourth column, in the last line, ''WGQDY90005'' is corrected to read ''WGQDY0005''. Also, on page 49342, in the first column, in the Table 5 title, ''RB211–02'' is corrected to read ''RB211–22B–02''.

Issued in Burlington, MA, on January 10, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–497 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–26855; Directorate Identifier 2006–NM–264–AD; Amendment 39–14888; AD 2007–02–01]

RIN 2120–AA64

Airworthiness Directives; Dassault Model F2000EX Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrect monitoring of the fire detection system; therefore, its integrity is not guaranteed at all times. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective February 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of February 2, 2007.

We must receive comments on this AD by March 19, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the member states of the European Community, has issued Emergency Airworthiness Directive 2006–0356–E, dated November 30, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that troubleshooting of a ''ENG 1 FIRE DETECT FAIL'' CAS (crew alerting system) message that occurred on an in-service aircraft revealed that the detector threshold tolerances could not identify a single failure of one engine fire detector loop out of the two present on each engine. The fire detection system is therefore not correctly monitored, and its integrity is not guaranteed at all times. The goal of the MCAI is to verify the fire detection system integrity by mandating a one-time inspection and, in case of findings, to replace the faulty detector pending further modification of the monitoring system. The MCAI will be revised/superseded once the terminating corrective action for the monitoring function has been approved. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Service Bulletin F2000EX–137, Revision 1, dated December 7, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because incorrect fire detector threshold tolerance could lead to undetected failure of the fire detectors. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–26855; Directorate Identifier 2006–NM–264–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–02–01 Dassault Aviation: Amendment 39–14888. Docket No. FAA–2007–26855; Directorate Identifier 2006–NM–264–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000EX airplanes; s/n (serial number) 06, s/n 28 through 90, s/n 93, and s/n 95; certificated in any category.

Reason

(d) The MCAI states that troubleshooting of a ''ENG 1 FIRE DETECT FAIL'' CAS (crew alerting system) message that occurred on an in-service aircraft revealed that the detector threshold tolerances could not identify a single failure of one engine fire detector loop out of the two present on each engine. The fire detection system is therefore not correctly monitored, and its integrity is not guaranteed at all times. The goal of the MCAI is to verify the fire detection system integrity by mandating a one-time inspection and, in case of findings, to replace the faulty detector pending further modification of the monitoring system. The MCAI will be revised/superseded once the terminating corrective action for the monitoring function has been approved.

Actions and Compliance

(e) Unless already done, do the following actions. Within 35 days after the effective date of this AD, perform an engine fire detection integrity check as required by paragraphs (e)(1), (e)(2), and (e)(3) of this AD in accordance with Dassault Service Bulletin F2000EX–137, Revision 1, dated December 7, 2006.

(1) First, in the baggage compartment, on each mobile connector of the monitoring units (L320WG) and (R320WG), the equivalent resistance of the two engine detectors at the LH (left-hand) and the RH (right-hand) sides must be verified. According to findings, the corresponding system is either considered correct or incorrect.

(2) As a second step, if either one or both the LH and the RH system is (are) found to be incorrect, it is required to check the actual resistance of both detectors of the incorrect system(s) on the affected engine(s).

(3) Any faulty detector must be replaced prior to further flight.

(4) Actions done before the effective date of this AD in accordance with Dassault Service Bulletin F2000EX–137, dated November 23, 2006, are acceptable for compliance with the requirements of paragraph (e) of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, ATTN: Tom Rodriguez, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

Related Information

(g) Refer to MCAI European Aviation Safety Agency (EASA) Emergency Airworthiness Directive 2006–0356–E, dated November 30, 2006; and Dassault Service Bulletin F2000EX–137, dated November 23, 2006; or Revision 1, dated December 7, 2006; for related information.

Material Incorporated by Reference

(h) You must use Dassault Service Bulletin F2000EX–137, Revision 1, dated December 7, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–490 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25947; Airspace Docket No. 06–AAL–31]

Revision of Class D/E Airspace; Big Delta, Allen Army Airfield, Fort Greely, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class D and E airspace at Allen Army Airfield (AAF), AK. The United States Army has decided to staff the Allen AAF air traffic control tower (ATCT) part time. The Class D and E airspace is being revised in order to align Class D airspace effective times to match ATCT hours of operation. The current title of the airspace described in FAA Order 7400.9P is also changing to reflect current guidance in FAA Order 7400.2E. This rule results in the revision of Class D and E airspace at Allen AAF, Delta Junction, AK.

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 31, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class D and E airspace at Allen AAF, AK (71 FR 63725). The action was proposed in order to align the Class D and E airspace with Allen AAF tower's operating hours. The Army does not need to operate the control tower 24 hours per day. Class D airspace is only in effect when a tower is open. When the tower is not open, the airspace reverts to Class E. Additionally, the title of each airspace description in FAA Order 7400.9P associated with Allen AAF is being updated. In this case, the town of Delta Junction (which is closer to Allen AAF) is now

referenced instead of Big Delta. The airspace changes meet the instrument procedure and tower operational hour needs at Allen AAF, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The airspace area designated as Class D is published in paragraph 5000 of FAA order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006 and effective September 15, 2006 which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as surface areas are published in paragraph 6002 and 6004 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and reporting points,* dated September 1, 2006 and effective September 15, 2006 which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be revised subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class D and E airspace at Allen AAF, Alaska. This Class D and E airspace is revised to accommodate new tower operating hours, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Allen AAF, Delta Junction, Alaska.

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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 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 1, 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 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class D and E airspace sufficient in size to contain aircraft executing instrument procedures for Allen AAF and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 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.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, is amended as follows:

* * * * *

Paragraph 5000 General.

* * * * *

AAL AK D Delta Junction, AK [Revised]

Allen AAF, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC
(Lat. 64°00′16″ N., long. 145°43′02″ W.)
Delta Junction Airport (D66), AK
(Lat. 64°03′02″ N., long. 145°43′02″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 6.3-mile radius from Allen AAF; excluding the portion within the boundary of restricted areas R2202A and R2202C, and excluding that airspace below 700 feet above the surface contained within an area from an East/West line ½-mile south of the Delta Junction Airport (D66), extending from 1 mile east of the Richardson Highway to 1 mile west of the Delta River, thence northwest and parallel to the Richardson Highway and the Delta River, to the 6.3-mile radius from Allen AAF. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6000 General.

* * * * *

AAL AK E2 Delta Junction, AK [Revised]

Allen AAF, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)

Within an area from an East/West line ½-mile south of the Delta Junction Airport (D66), extending from 1 mile east of the Richardson Highway to 1 mile west of the Delta River, thence northwest and parallel to the Richardson Highway and the Delta River, to the 6.3-mile radius from Allen AAF. This Class E2 airspace area is effective only when Class D airspace is activated.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AAL AK E4 Delta Junction, AK [Revised]

Allen AAF, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC
(Lat. 64°00′16″ N., long. 145°43′02″ W.)

The airspace extending upward from the surface within 3 miles north and 2.6 miles south of the 039° radial of the Big Delta VORTAC extending from the 6.3-mile radius from Allen AAF to 10.3 miles northeast of Allen AAF.

Paragraph 6005 Class D Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Delta Junction, AK [Revised]

Allen AAF, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC
(Lat. 64°00′16″ N., long. 145°43′02″ W.)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of Allen AAF, and within 3 miles north and 2.6 miles south of the 039° radial of the Big Delta VORTAC extending from the 8.6-mile radius from Allen AAF, to 10.3 miles northeast of Allen AAF; excluding the portion within restricted areas 2202A and R2202C.

* * * * *

Issued in Anchorage, AK, on January 10, 2006.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Area Group.

[FR Doc. E7–597 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25943; Airspace Docket No. 06–ACE–13]

Modification of Class E Airspace; Phillipsburg, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying the Class E airspace area at Phillipsburg Municipal Airport, KS. An examination of controlled airspace for Phillipsburg, KS revealed discrepancies in the legal description for the Class E airspace area. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft executing Standard Instrument Approach Procedures (SIAP) to Phillipsburg Municipal Airport, KS.

DATES: This direct final rule is effective on 0901 UTC, May 10, 2007. Comments for inclusion in the Rules Docket must be received on or before February 1, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, NW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25943/ Airspace Docket No. 06–ACE–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet AGL (ES) at Phillipsburg Municipal Airport, KS. The radius of the Class E Airspace area extending upward from 700 feet above the surface of the earth is expanded from within a 6.5-mile radius to within a 7.6-mile radius of the airport. This modification brings the legal description of the Phillipsburg Municipal Airport, KS Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–25943/Airspace Docket No. 06–ACE–13''. The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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 since it contains aircraft executing instrument approach procedures to Phillipsburg Municipal Airport, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the amendment.

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 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.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Phillipsburg, KS

Phillipsburg Municipal Airport, KS
(Lat. 39°44′09″ N., long. 99°19′02″ W.)
Phillipsburg NDB
(Lat. 39°42′22″ N., long. 99°17′17″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Phillipsburg Municipal Airport and within 2.6 miles each side of the 143° bearing from the Phillipsburg NDB extending from the 7.6-mile radius to 7 miles southeast of the NDB.

* * * * *

Issued in Fort Worth, TX, on December 26, 2006.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–150 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24926; Airspace Docket No. 06–ASW–1]

RIN 2120–AA66

Establishment, Modification and Revocation of VOR Federal Airways; East Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes 14 VOR Federal Airways (V–176, V–383, V–396, V–406, V–410, V–418, V–426, V–486, V–416, V–467, V–542, V–584, V–586, and V–609); modifies 12 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–297, V–435, and V–526); and revokes one VOR Federal Airway (V–42) over the East Central United States in support of the Midwest Airspace Enhancement Plan (MASE). It should be noted that the FAA is withdrawing the proposal to establish VOR Federal Airway V–414 and delaying action to establish V–65 and modify V–133. Additionally, editorial changes are made to route numbers and the order of route elements for V–176, V–383, V–410, V–426, V–467, and V–486. The FAA is taking this action to enhance safety and to improve the efficient use of the navigable airspace assigned to the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers (ARTCC).

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 16, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish 16 VOR Federal Airways (V–65, V–176, V–383, V–396, V–406, V–410, V–414, V–416, V–418, V–426, V–467, V–486, V–542, V–584, V–586, and V–609); modify 13 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–133, V–297, V–435, and V–526); and revoke one VOR Federal Airway (V–42) (71 FR 34854).

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received objecting to the proposal.

Subsequent to the issuance of the notice, the FAA decided to withdraw the proposal to establish V–414 because further evaluation revealed that the route did not intersect United States airspace. Additionally, the FAA elected not to include the establishment V–65 and modification of V–133 in this action; these proposed airways will be addressed in a future final rule.

It should be noted that, due to format requirements, editorial changes were made to some of the route numbers and route descriptions listed in the notice of proposed rulemaking. Specifically, V–176 was renumbered as V–383 and V–383 was renumbered as V–176. Also, the order of route elements was reversed in the descriptions for V–383 (proposed as V–176), V–410, V–426, V–467, and V–486.

VOR Federal Airways are published in paragraph 6010 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airways listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to establish 14 VOR Federal Airways (V–176, V–383, V–396, V–406, V–410, V–418, V–426, V–486, V–416, V–467, V–542, V–584, V–586, and V–609); modify 12 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–297, V–435, and V–526); and revoke one VOR Federal Airway (V–42) over the East Central United States within the airspace assigned to the Chicago, Cleveland, and Indianapolis ARTCCs. This action enhances safety and facilitates the more flexible and efficient use of the navigable airspace. Further, this action enhances the management of aircraft operations within the Chicago, Cleveland, and Indianapolis ARTCCs' areas of responsibility.

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.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environment Policy Act in accordance with 311a and 311b., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures''. This airspace action is not expected to cause

any potentially significant environment impacts, and no extraordinary circumstances exist that warrant preparation of environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 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.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6010 VOR Federal Airways.

* * * * *

V–14 [Revised]

From Chisum, NM, via Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK 246° radials; Tulsa; Neosho, MO; Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; Vandalia, IL; Terre Haute, IN; Brickyard, IN; Muncie, IN; Findlay, OH; INT Findlay 079° and DRYER, OH, 240° radials; DRYER; Jefferson, OH; Erie, PA; Dunkirk, NY; Buffalo, NY; Geneseo, NY; Georgetown, NY; INT Georgetown 093° and Albany, NY, 270° radials; Albany, NY; INT Albany 084° and Gardner, MA, 284° radials; Gardner; to Norwich, CT.

V–26 [Revised]

From Blue Mesa, CO, via Montrose, CO; 13 miles, 112 MSL, 131 MSL; Grand Junction, CO; Meeker, CO; Cherokee, WY; Muddy Mountain, WY; 14 miles 12 AGL, 37 miles 75 MSL, 84 miles 90 MSL, 17 miles 12 AGL; Rapid City, SD; Philip, SD; Pierre, SD; Huron, SD; Redwood Falls, MN; Farmington, MN; Eau Claire, WI; Waussau, WI; Green Bay, WI; INT Green Bay 116° and White Cloud, MI 302° radials; White Cloud; Lansing, MI; Salem, MI; Detroit, MI; INT Detroit 138° and DRYER, OH, 309° radials; DRYER. The airspace within Canada is excluded.

V–40 [Revised]

From DRYER, OH; Briggs, OH; INT Briggs 077° and Youngstown, OH, 177° radials.

V–72 [Revised]

From Razorback, AR, Dogwood, MO; INT Dogwood 058° and Maples, MO 236° radials; Maples; Farmington, MO; Centralia, IL; Bible Grove, IL; Mattoon, IL; to Bloomington, IL.

V–75 [Revised]

From Morgantown, WV; Bellaire, OH; Briggs, OH; DRYER, OH; INT DRYER 325° and Waterville, OH, 062° radials.

V–90 [Revised]

From Salem, MI; INT Salem 092° and Dunkirk, NY 260° radials; Dunkirk. The airspace within Canada is excluded.

V–96 [Revised]

From Brickyard, IN; Kokomo, IN; Fort Wayne, IN; INT Fort Wayne 071° and Detroit, MI, 211° radials; to Detroit.

V–116 [Revised]

From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Kalamazoo, MI; INT Kalamazoo 089° and Jackson, MI, 265° radials; Jackson; INT Jackson 089° and Salem, MI, 252° radials; Salem; Windsor, ON, Canada; INT Windsor 095° and Erie, PA, 281° radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

V–103 [Revised]

From Chesterfield, SC; Greensboro, NC; Roanoke, VA; Elkins, WV; Clarksburg, WV; Bellaire, OH; INT Bellaire 327° and Akron, OH, 181° radials; Akron; INT Akron 325° and Detroit, MI, 100° radials; Detroit; Pontiac, MI, to Lansing, MI. The airspace within Canada is excluded.

V–297 [Revised]

From Johnstown, PA; INT Johnstown 320° and Clarion, PA, 176° radials; INT Johnstown 315° and Clarion, PA, 222° radials; INT Clarion 269° and Youngstown, OH 116° radials; Akron, OH; INT Akron 305° and Waterville, OH 062° radials. The airspace within Canada is excluded.

V–435 [Revised]

From Rosewood, OH; INT Rosewood 050° and DRYER, OH, 240° radials; to DRYER.

V–526 [Revised]

From Northbrook, IL; INT Northbrook 095° and Gipper, MI, 310° radials; to Gipper.

V–42 [Revoked]

V–176 [New]

From Carleton, MI; INT Carleton 097° and Chardon, OH, 294° radials; INT Chardon 294° and Dryer, OH 357° radials. The airspace within Canada is excluded.

V–383 [New]

From Rosewood, OH; INT Rosewood 023° and Detroit, MI 178° radials; to Detroit.

V–396 [New]

From Windsor, ON, Canada; INT Windsor 095° and Chardon, OH, 320° radials; to Chardon. The airspace within Canada is excluded.

V–406 [New]

From Salem, MI; INT Salem 092° and London, ON, Canada, 205° radials; London. The airspace within Canada is excluded.

V–410 [New]

From Pontiac, MI; INT Pontiac 085° and London, ON, Canada 252° radials; to London. The airspace within Canada is excluded.

V–416 [New]

From Rosewood, OH, INT Rosewood 041° and Mansfield, OH, 262° radials; Mansfield; INT Mansfield 045° and Sandusky, OH, 107° radials.

V–418 [New]

From Salem, MI; INT Salem 092° and Jamestown, NY, 275° radials; to Jamestown. The airspace within Canada is excluded.

V–426 [New]

From Carleton, MI; INT Carleton 156° and Dryer, OH 260° radials; to Dryer.

V–467 [New]

From Richmond, IN; Waterville, OH; Detroit, MI.

V–486 [New]

From INT Akron, OH, 316° and Chardon, OH, 260° radials; Chardon; INT Chardon, 074° and Jamestown, NY, 238° radials; Jamestown.

V–542 [New]

From Rosewood, OH, INT Rosewood 041° and Mansfield, OH, 262° radials; Mansfield; INT Mansfield 098° and Akron, OH, 233° radials; Akron; Youngstown, OH; Tidioute, PA; Bradford, PA; INT Bradford 078° and Elmira, NY, 252° radials; Elmira; Binghampton, NY; Rockdale, NY; Albany, NY; Cambridge, NY; INT Cambridge 063° and Lebanon, NH, 214° radials; to Lebanon.

V–584 [New]

From Waterville, OH; INT Waterville 113° and DRYER, OH 260° radials; to DRYER.

V–586 [New]

From INT Kansas City, MO 077° and Napoleon, MO, 005° radials, via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL.

V–609 [New]

From Saginaw, MI; INT Saginaw 353° and Pellston, MI, 164° radials; to Pellston.

* * * * *

Issued in Washington, DC, on January 9, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–600 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1407

Portable Generators; Final Rule; Labeling Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects Figures 1 and 3 of the final rule requiring manufacturers to label portable generators with performance and technical data related to performance and safety.

DATES: This correction is effective May 14, 2007 and applies to any portable generator manufactured or imported on or after that date.

FOR FURTHER INFORMATION CONTACT: Timothy P. Smith, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–7691; or e-mail *tsmith@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

The Correction

On January 12, 2007, the Commission issued a final rule requiring manufacturers to label portable generators with performance and technical data related to performance and safety. 72 FR 1443. Figures 1 and 3 of the final rule were incorrect. This notice corrects Figures 1 and 3 so that each reflects the requirements in the text of the final rule. For clarity, while Figure 2 remains unchanged, all three Figures are provided in this correction. Because this correction is a technical correction, notice and comment is unnecessary.[1]

List of Subjects in 16 CFR Part 1407

Consumer protection, Labeling.

■ Accordingly, in rule FR Doc. 07–80 published January 12, 2007 (72 FR 1443), correct Figures 1 through 3 to part 1407 as published in 72 FR 1443 to read as follows:

Figure 1 On-product carbon monoxide poisoning hazard label

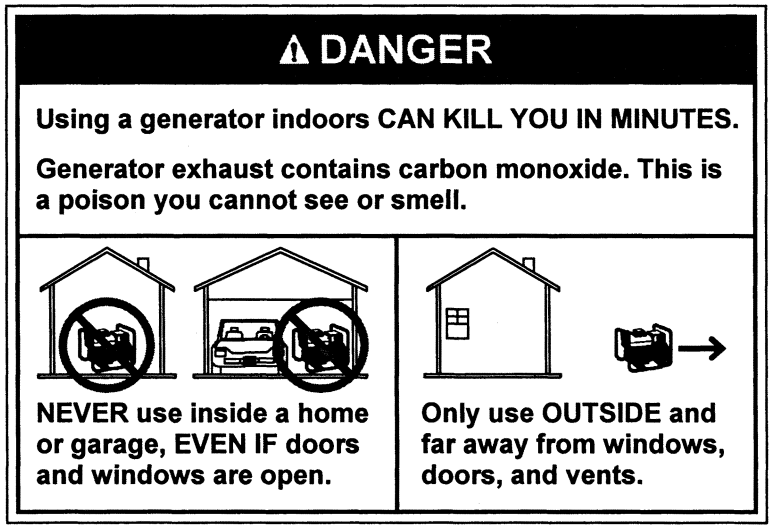
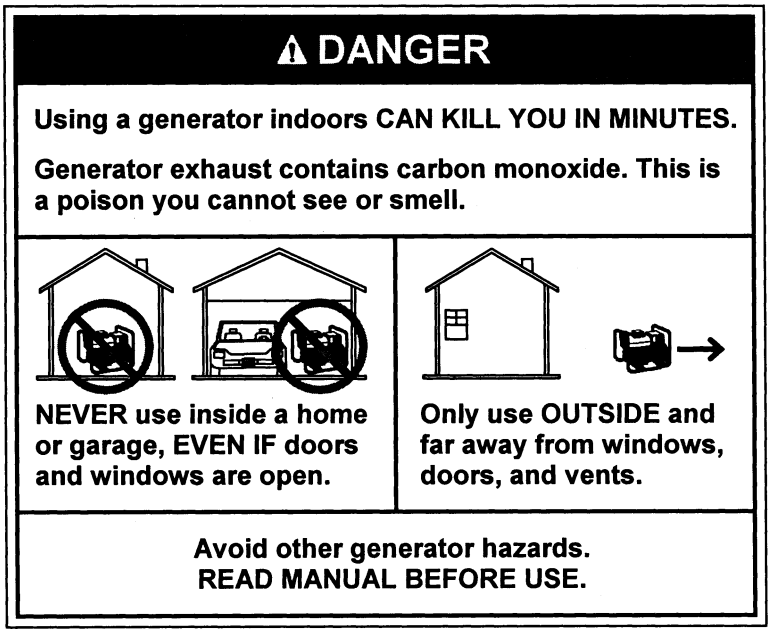


Figure 2 Safety Alert Symbol

[1] Section 553(b)(3)(B) of the Administrative Procedure Act.

Figure 3 Carbon monoxide poisoning hazard label for package



Dated: January 12, 2007.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 07–193 Filed 1–17–07; 8:45 am]

BILLING CODE 6355–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2006–0087]

RIN 0960–AG42

Title II Cost of Living Increases in Primary Insurance Amounts

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our rules that deal with automatic cost-of-living increases to primary insurance amounts under title II of the Social Security Act (the Act). The revision is necessary because, beginning with the Consumer Price Index (CPI) for January 2007, the Bureau of Labor Statistics will publish the CPI to three decimal places. The CPI is currently published to one decimal place as is now reflected in our regulations. With this revision, our rules will conform to the change in the reporting of the CPI.

DATES: These regulations are effective January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Jerry Strauss, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7930 or TTY (410) 966–5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: *Electronic Version:* The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

The Social Security Act requires annual increases in Social Security benefits to keep up with increases in the cost-of-living as measured by the CPI. In order to provide more accurate information regarding increases in the CPI, the Bureau of Labor Statistics will begin publishing the CPI to the third, rather than the first, decimal place for January 2007. The effect of this change on benefit amounts is negligible. For additional information on cost-of-living increases and the types of benefits affected, see §§ 404.270 and 404.271.

Explanation of Changes

We have revised § 404.275(a) by replacing the current language stating that we will round the calculations of the CPI average to the nearest 0.1 with language stating that we will round the CPI average ''to the same number of decimal places as the published CPI figures.'' In addition, we added language stating that when a different number of decimal places is used for the beginning and ending quarters, we will use the number for the ending quarter. Therefore, since the CPI is now published by the Bureau of Labor Statistics to the third decimal place, rather than the first, our computation of quarterly average CPI's will be consistent with such publication.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these final rules, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case because these regulations merely conform our rules to reflect the way the Bureau of Labor Statistics now publishes the CPI. Also, these

regulations contain no substantive changes of interpretation. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d), since we are making no substantive changes in the cost-of-living increase provisions. Without this change, however, our rules will conflict with the computation of the CPI as reported by the Bureau of Labor Statistics.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: January 10, 2007.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending subpart C of part 404 of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart C—[Amended]

■ 1. The authority citation for subpart C of part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(a), 405(a), 415, and 902(a)(5)).

■ 2. Section 404.275 (a) is revised to read as follows:

§ 404.275 How is an automatic cost-of-living increase calculated?

(a) *Increase based on the CPI.* We compute the average of the CPI for the quarters that begin and end the measuring period by adding the three monthly CPI figures, dividing the total by three, and rounding the result to the same number of decimal places as the published CPI figures. If the number of decimal places in the published CPI values differs between those used for the beginning and ending quarters, we use the number for the ending quarter. If the average for the ending quarter is higher than the average for the beginning quarter, we divide the average for the ending quarter by the average of the beginning quarter to determine the percentage increase in the CPI over the measuring period.

* * * * *

[FR Doc. E7–620 Filed 1–17–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 91

[OJP (OJP)—Docket No. 1382]

RIN 1121–AA41

Grants for Correctional Facilities

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The Office of Justice Programs (OJP), Department of Justice, is adopting as a final rule, without change, an interim final rule with request for comments that OJP published on January 15, 2004, at 69 FR 2298. That interim rule updated and clarified what the Bureau of Justice Assistance (BJA), a component of OJP, considered to be an eligible ''Indian tribe,'' and what the BJA considered to be ''construction,'' under the Grants for Correctional Facilities on Tribal Lands Program. OJP did not receive any comments.

DATES: Effective February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Maria Pressley, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, NW., Washington, DC 20531; *Telephone:* (202) 353–8643. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) administers several major grant programs and provides technical assistance to state, local, and tribal governments to help them with the implementation of corrections-related programs under the Violent Crime Control and Law Enforcement Act of 1994. One such program is the Grants for Correctional Facilities on Tribal Lands Program. This program provides funding for the construction of correctional facilities on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

Grants for Correctional Facilities on Tribal Lands Program funds may not be used for the purchase of land or for the costs associated with the operation of the correctional facility.

Background

On September 24, 1996, the Office of Justice Programs (OJP) published an interim rule (at 61 FR 49969), amending 28 CFR part 91, subpart C, Grants for Correctional Facilities, to implement the Violent Offender Incarceration and Truth-in-Sentencing Grants Program for Indian Tribes, as required by section 114 of the Fiscal Year 1996 Omnibus Consolidated Rescissions and Appropriations Act (Pub. L. 104–134). Section 114 amended the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 13701 et seq., to authorize a reservation of funds for the specific purpose of allowing the Attorney General to make discretionary grants to Indian tribes.

After the publication of the 1996 interim rule, OJP received comments requesting further clarification of certain terms. Accordingly, on January 15, 2004, OJP published a second interim rule seeking comments (at 69 FR 2298) and further clarifying what the BJA considers to be an eligible ''Indian tribe'' and what it considered to be ''construction.''

Comments on the second interim rule were required to be received on or by March 15, 2004. OJP did not receive any comments. Therefore, for the reasons given in the interim rule, OJP is adopting the interim rule as a final rule. No changes were made between the second interim rule and this final rule.

Regulatory Certifications

Executive Order 12866

This final rule has been written and reviewed in accordance with Executive Order 12866, Sec. 1(b), Principles of Regulation. OJP has determined that this final rule is not a ''significant regulatory action'' under Executive Order 12866, Sec. 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act of 1980

OJP, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because the economic impact is limited to OJP's appropriated funds.

Unfunded Mandates Act of 1995

This final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

No new collection of information requirements as defined under the Paperwork Reduction Act (44 U.S.C. 3504(h)) are being added by this final rule.

Environmental Impact

OJP has evaluated this final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of OJP's actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives. OJP has concluded that the issuance of this final rule does not have a significant impact on the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement.

Energy Impact Statement

OJP has evaluated this final rule and has determined that it creates no new impact on the energy supply or distribution.

List of Subjects in 28 CFR Part 91

Grant programs law.

PART 91—GRANTS FOR CORRECTIONAL FACILITIES

■ Accordingly, OJP is adopting as a final rule, without change, the second interim rule that amended 28 CFR part 91 and that was published at 69 FR 2298 on January 15, 2004.

Regina B. Schofield,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. E7–619 Filed 1–17–07; 8:45 am]

BILLING CODE 4410–18–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Emergency Response Plan Dispute Proceedings and Related Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (the ''Mine Act''). Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. On July 18, 2006, the Commission published an interim rule to implement the Mine Improvement and New Emergency Response Act of 2006 (the ''MINER Act''), which amended the Mine Act to improve the safety of miners, particularly in underground coal mines. The MINER Act provides for Commission review of disputes arising over emergency response plans for underground coal mines. The interim rule established procedures for the submission and consideration of such disputes. The Commission invited public comment on the interim rule. The Commission has reviewed the comments on the interim rule and has decided to make certain changes in the rule. This publication makes final changes to Rule 24, the rule designed to implement the MINER Act. In connection with revising Rule 24, the Commission is also amending four of its other procedural rules to make them consistent with Rule 24.

DATES: This final rule will take effect on January 18, 2007.

ADDRESSES: Comments and questions may be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944.

FOR FURTHER INFORMATION CONTACT: Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

SUPPLEMENTARY INFORMATION: The final rules will apply to cases initiated after the rules take effect. The final rules also apply to proceedings pending on the effective date, except to the extent that such application would not be feasible, or would work injustice, in which event the former rules of procedure would continue to apply.

I. Background

On June 15, 2006, President George W. Bush signed into law the MINER Act, Pub. L. 109–236, 120 Stat. 493 (2006). Section 2 of the MINER Act amends section 316 of the Mine Act (30 U.S.C. 876) by adding a new section (b), entitled ''Accident Preparedness and Response.'' Section 316(b)(2)(A) provides that, within 60 days of enactment, each underground coal mine operator is required to develop and adopt a ''written accident response plan.'' Section 316(b)(2)(B) requires the plan to provide for the evacuation of all individuals endangered by an emergency and the maintenance of individuals trapped underground in the event that miners are not able to evacuate the mine. Under section 316(b)(2)(C), all plans shall be subject to review and approval by the Secretary of Labor (the ''Secretary''), and must: (i) Afford miners a level of safety protection at least consistent with the existing standards; (ii) reflect the most recent credible scientific research; (iii) be technologically feasible, make use of current commercially available technology, and account for the specific

physical characteristics of the mine; and (iv) reflect the improvements in mine safety gained from experience under this Act and other worker safety and health laws. Section 316(b)(2)(D) specifies that the Secretary shall review plans periodically, but at least every 6 months. Sections 316(b)(2)(E) and (F) set forth plan content requirements, including a provision allowing the Secretary to make additional plan requirements with respect to any of the content matters.

Section 316(b)(2)(G), entitled ''Plan Dispute Resolution,'' provides for Commission resolution and administrative appellate review of emergency response plan disputes. Section 316(b)(2)(G)(i) states that any dispute between the Secretary and an operator with respect to the content of the operator's plan or any refusal by the Secretary to approve such a plan shall be resolved on an ''expedited basis.'' Section 316(b)(2)(G)(ii) further provides that, in the event of a dispute or refusal described in clause (i), the Secretary shall issue a citation which shall be immediately referred to a Commission Administrative Law Judge, and the Secretary and the operator shall submit all relevant material regarding the dispute to the Administrative Law Judge within 15 days of the date of the referral. The section concludes by providing that the Administrative Law Judge shall render his or her decision with respect to the plan content dispute within 15 days of the receipt of the submission. Section 316(b)(2)(G)(iii) states that a party adversely affected by a decision under clause (ii) may pursue all further available appeal rights with respect to the citation involved, except that inclusion of the disputed provision in the plan will not be limited by such appeal unless such relief is requested by the operator and permitted by the Administrative Law Judge.

On July 18, 2006, the Commission published Interim Rule 24 to implement section 316(b)(2)(G), providing for Commission hearings and administrative appellate review of emergency response plan disputes. The Commission chose to establish an interim rule and then request public comments on the rule in order to implement the MINER Act as soon as possible after the Act became effective. Although the interim rule was procedural in nature and did not require notice-and-comment rulemaking under the Administrative Procedure Act, 5 U.S.C. 551, 553(b)(3)(A), the Commission invited public comment. The comment period on the interim rule closed on August 17, 2006. The Commission received comments from the Secretary through the U.S. Department of Labor's Office of the Solicitor; the United Mine Workers of America (the ''UMWA''); and other individual members of the mining community or bar who practice before the Commission.

The final rule retains the same approach as the interim rule; however, the text of the rule has changed in several areas in response to comments received. In addition, the Commission on its own has made several changes upon further consideration of the interim rule. Finally, the Commission has made conforming changes to four of its other procedural rules.

II. Section-by-Section Analysis and Summary of Comments to Rule 24

The title of the interim rule is ''Accident response plan dispute proceedings.'' One commenter stated that the title is confusing because section 2 of the MINER Act, which Rule 24 implements, is entitled ''Emergency Response.'' Congress used both terms—''accident response plan'' and ''emergency response plan''—in section 2 in referring to the plans and apparently viewed the terms as interchangeable. Nevertheless, the term, ''emergency response plans,'' is broader in scope than the current title used in the interim rule and provides a more precise description of the variety of plans covered by section 2, which Rule 24 implements. Therefore, in agreement with the comment, the Commission has revised the title of Rule 24 to ''Emergency response plan dispute proceedings.'' Consistent with the change in the title, all other references in Rule 24 to the plans have been changed to ''emergency response plans.''

Interim Rule 24(a) requires that the Secretary refer to the Commission, within one day of its issuance, any citation arising from a dispute over the content of an emergency response plan. In her comment, the Secretary states that the one-day period provided in the interim rule for referral of the dispute to the Commission is insufficient to complete her administrative review of the documents in the referral. The Commission, however, is constrained by the mandate of section 316(b)(2)(G)(ii) of the MINER Act, which requires that a citation issued by the Secretary shall be referred to the Commission ''immediately.'' In addition, section 316(b)(2)(G)(i) also states that any such dispute ''shall be resolved on an expedited basis.'' The Commission has determined that a period of two business days should address, to some degree, the Secretary's concerns, while adhering to the strictures of the MINER Act. In addition, the Commission notes that preparation and review of the documentation needed for a referral can occur concurrently with the preparation of the citation, thus alleviating the need for additional time to prepare the documents after issuance of the citation.

The Secretary also suggested that Rule 24(a) specify that filing, as well as service, of the referral can be accomplished through facsimile transmission. The Commission concluded that Rule 24(c) and its other applicable procedural rules (Rules 5(e)(1) and 7(c)(1)) are sufficiently specific on allowing filing and service via facsimile, and that no clarification is needed in subparagraph (a). However, the Commission is separately amending Rules 5(e)(1) and 7(c)(1) to provide that filing of referrals by facsimile transmission is an exception to the prohibition in those rules against filing or serving by facsimile documents that are more than 15 pages in length. Thus, filing or service of documents under Rule 24 may be accomplished through facsimile transmission even though such documents exceed 15 pages in length.

Interim Rule 24(b) specifies that the Secretary is required to file, as part of a referral: The citation; a notice describing the dispute; a short and plain statement of her position on the disputed provision; and a copy of the emergency response plan. The Secretary states that the rule should not require her to submit a copy of the entire emergency response plan, noting that the plan is likely to be lengthy and include many undisputed provisions. The Commission agrees, and the rule has been revised to provide that copies of only the disputed plan provisions shall be submitted with the referral.

The Secretary also commented that subparagraph (b) does not require a ''short and plain statement'' from the operator, as it does from the Secretary. The Secretary reasoned that such a statement from the operator would assist in framing the issues for resolution and assist the parties and the Judge in determining the need for a hearing. The Commission agrees with the Secretary's position. The Commission has revised the interim rule to add a new subparagraph (c) to require the operator to file a ''short and plain statement'' of its position with respect to the disputed plan provision within five calendar days after the referral. The addition of this subparagraph requires the redesignation of the subsequent subparagraphs.

Interim Rule 24(c) currently specifies that the filing of any document with the

Commission is effective upon receipt and that copies shall be expeditiously served on parties, such as by courier service or facsimile transmission. Subparagraph (c) is redesignated as (d). One commenter suggested that the paragraph be clarified to specify that the referral is effective upon receipt. The Commission intends that the filing of all documents in emergency response plan dispute proceedings, including the referral, is effective upon receipt and has explicitly included a reference to the referral in the final rule.

The UMWA proposed that present subparagraph (c) also require service of the referral on miners' representatives. Further, the UMWA stated that Rule 4 (*Parties, intervenors, and amici curiae*) should be amended to provide that any miners and miners' representatives who submitted comments during the emergency plan review process will be designated as parties in the Commission proceeding. Finally, the UMWA recommended that the Commission require that the operator, after service of the referral, post the referral on its bulletin board at the mine.

The Commission recognizes the importance of miner participation in the formulation of emergency response plans. In light of that consideration, the Commission is revising the interim rule to provide for service of the referral on any miners and miners' representatives who have participated in the plan review process. Regarding the suggestion that miners and miners' representatives who submitted comments be designated as parties, the Commission believes that its current intervention rule provides a sufficient mechanism for their participation. The Commission does not view the requirements of Rule 4, which governs the process for gaining intervenor status in a Commission proceeding, as burdensome; nor does the Commission view the interests of miners and miners' representatives in an emergency plan dispute proceeding as sufficiently different to require an additional rule of intervention. As to the suggestion regarding posting of the referral, the Commission has concluded that, as with other Mine Act violations, posting the citation underlying the referral would sufficiently inform miners of the dispute over the emergency response plan provision and that posting the referral itself, which may be unwieldy in size, would be unnecessary.

Interim Rule 24(d) has been redesignated as (e), and the heading that follows has been revised to read, ''*Proceedings before the Judge,*'' to more accurately describe the content of the provision. Interim Rule 24(d)(1) presently requires parties to submit to the Judge ''all relevant materials regarding the dispute'' within 15 days of the referral. The subparagraph further requires that a party who seeks to stay the operation of the disputed plan provision, pending an appeal of the Judge's decision, should file a request for a stay when its materials are submitted to the Judge. Two commenters stated that the MINER Act provides that only an operator can seek a stay of the Judge's decision. One of the commenters also added that seeking a stay of the disputed plan provision before the Judge's decision has been issued might be problematic because the dispute regarding the plan provision would be, as yet, unresolved, and it might be difficult to know what relief to request from the Judge.

Upon review of the MINER Act and the comments, the Commission has concluded that the comments have merit. The Commission has clarified that only an operator can seek a stay of the disputed plan provision, as is provided for in section 316(b)(2)(G)(iii) of the MINER Act. The Commission has also deleted the requirement that a party seek a stay before the Judge has issued his decision from Interim Rule 24(d)(1) and moved the procedure for seeking a stay to newly designated subparagraph (f).

Interim Rule 24(d)(2) afforded the parties the opportunity for a hearing before a Commission Administrative Law Judge, either at the request of a party or by order of the Judge. The preamble accompanying the interim rule, 71 FR 40655, stated that, although the MINER Act does not explicitly provide for hearings on emergency plan disputes, section 105(d) of the Mine Act states, ''the Commission shall afford an opportunity for a hearing [on any notice of contest].'' 30 U.S.C. 815(d). One commenter disagreed with the Commission's rationale for requiring a hearing upon a party's request. The commenter stated that section 105(d) applies to orders and citations issued under section 104 or to proposed penalty assessments issued under section 105. The commenter noted that citations relating to emergency response plans are issued under section 316, which is silent regarding the right to a hearing.

Upon further consideration of the interim rule, the Mine Act, and the MINER Act, the Commission agrees that the mandatory hearing procedures specified in section 105(d) of the Mine Act are not directly applicable to emergency response plan dispute proceedings. The Commission has revised the interim rule to provide in the final rule that, when a party requests a hearing on an emergency response plan dispute, the Judge has discretion whether to grant the request. The commenter further suggested that the Judge should order a hearing only when there are factual issues in dispute. However, the Commission views the standard governing the need for a hearing more broadly: That is, the Judge should order a hearing whenever it would assist in resolving the issues. In any event, the Commission expects that the question of whether a hearing should be held and the question of the precise form that such a hearing will take will be resolved consistent with due process considerations.

Another commenter objected to the reference in the interim rule to the ''hearing on the referral.'' The commenter explained that the hearing more accurately involves the emergency response plan dispute. The Commission agrees with the commenter and has clarified in the final rule that the hearing concerns the disputed plan provision. Contrary to another comment, the Commission sees no need to define ''disputed plan provision.'' The Commission believes that a broad definition of what constitutes a ''disputed plan provision'' would likely not be useful and that any issue as to whether a particular provision is disputed could best be answered in the specific context of an actual case. The same commenter also asked the Commission to specify the legal standard that would be applied in reviewing plan provisions. The Commission has concluded that it would be inappropriate to specify in its procedural rules the standard for resolving disputes over emergency response plan provisions. The commenter also requested that the Commission specify which party bears the burden of proof. While the Commission concludes that the burden of proof in establishing a violation alleged in a citation is on the Secretary, the Commission believes it is unnecessary to address this well-settled principle in its procedural rules.

Upon further consideration of the requirement in the interim rule regarding the Judge's authority to sua sponte order a hearing, the Commission has increased the time for a Judge to issue such an order from 5 days to 10 days following the filing of the referral, so that the Judge has sufficient time to review the record in the proceeding and evaluate the need for a hearing.

Final Rule 24(e)(2)(iii) states that, if a hearing on the referral is ordered, the hearing shall be held within 15 calendar days of the filing of the referral. The

Commission anticipates that such a hearing shall be scheduled so as to be completed within that time period.

Interim Rule 24(e) has been redesignated as (f), the heading has been changed to more accurately reflect the content of the section (including the procedure for requesting a stay), and subheadings have been added for clarity. Interim Rule 24(e)(1) presently provides for the issuance of the Judge's decision, including a disposition on the request for a stay of the inclusion of the disputed provision in the emergency response plan, and Interim Rule 24(e)(2) addresses notification and service of the decision. In light of the change to delete the requirement that a party prospectively seek a stay at the time materials are submitted to the Judge, newly designated Rule 24(f)(1) has also been revised to delete the reference to the Judge's issuance of a ruling on the stay at the time of the decision. Further, the specifics of the issuance and notification of the Judge's decision have been moved into this subparagraph from Interim Rule 24(e)(2).

Subparagraph (e)(1) of the interim rule states that, within 15 calendar days following receipt by the Judge of all submissions and testimony, the Judge shall issue his or her decision. The Secretary commented that this provision arguably conflicts with section 2(b)(2)(G)(ii) of the MINER Act, 30 U.S.C. 316(b)(2)(G)(ii), which requires the parties to submit all relevant material regarding the dispute to the judge within 15 days of the referral and requires the Judge to issue his or her decision ''within 15 days of the receipt of the submission.'' The Secretary stated that, to the extent a hearing may last longer than one day, the requirement in Rule 24(e) that the Judge issue a decision within 15 calendar days following receipt of all submissions and testimony arguably conflicts with this statutory provision. She suggested that the final rule should conform to the statute.

Because the Commission expects that hearings shall be scheduled to be completed within 15 calendar days of the referral, the Commission concludes that the language of the rule is consistent with the statute, and therefore retains the relevant language without further revision.

Newly designated Rule 24(f)(2) specifies the procedures for seeking a stay from the Judge after issuance of the decision on the disputed plan provision. Initially, the rule provides that, notwithstanding the provisions of Rule 69(b), 29 CFR 2700.69(b), the judge retains jurisdiction over a request for a stay after the issuance of the decision. The subparagraph provides that an operator may seek from the Judge, within two business days after service of the decision, a stay of the inclusion of the disputed provision in the emergency response plan during the pendency of an appeal with the Commission. The Secretary has two business days to respond to the stay request following service of the operator's motion. The Judge, in turn, has two business days following filing of the Secretary's response to issue an order granting or denying the stay. One commenter requested that the Commission place in the rule the standard under which a Judge would issue a stay. The Commission declines to do so because the determination of the appropriate standard involves substantive legal analysis that is best resolved through individual case disposition.

Interim Rule 24(f) has been redesignated as (g). The interim rule specifies that Commission rules governing petitions for discretionary review of Mine Act cases apply to appeals from Judges' decisions in proceedings involving emergency response plan disputes. Newly designated subparagraph (g) contains a new provision clarifying that a Judge's order granting or denying an operator's request for a stay may also be reviewed in conjunction with the Judge's disposition of the underlying disputed plan provision. One commenter suggested that the interim rule did not clearly state whether the procedures in the rules that are applicable to a case on appeal before the Commission governed emergency response dispute proceedings. In response, the reference in Rule 24 to Rule 75, 29 CFR 2700.75, which governs the filing of briefs with the Commission, has been modified to clarify that the provisions in that rule apply except to the extent that they are superseded by a Commission briefing order. Such orders are specifically provided for in the rule, and it may be anticipated that, in some instances, the order will modify the page limits or time periods for filing in Rule 75.

Finally, one commenter requested that the Commission incorporate into the subparagraph a ''good cause'' standard for extending the time for filing briefs, when all parties have agreed to such an extension. However, the Commission believes that the ''extraordinary circumstances'' test in the interim rule should be retained because a more lenient standard would undermine the time-sensitive scheme that Congress embodied in the MINER Act for resolving disputes over plan provisions in emergency response plans.

III. Summary of Changes to Other Procedural Rules in Light of Rule 24

The Commission is also amending four of its other Procedural Rules to make them consistent with Rule 24. Procedural Rules 5 and 7, 29 CFR 2700.5 and 2700.7, govern the filing and service of documents by facsimile transmission, respectively. Presently, those rules prohibit the use of fax for filing or service when the document is more than 15 pages in length. Accordingly, subparagraph (1) of Rule 5(e), *Manner and effective date of filing*, is revised to add Rule 24 proceedings to the list of enumerated exceptions to the 15-page limitation on documents that can be filed by fax. Subparagraph (1) of Rule 7(c), *Methods of service*, is also revised to add Rule 24 proceedings to the list of enumerated exceptions to the 15-page limitation on documents that can be served by fax. These revisions will permit parties to fax documents exceeding 15 pages in Rule 24 proceedings, so that parties may file and serve lengthy pleadings and other documents expeditiously.

The Commission is revising Procedural Rule 8, 29 CFR 2700.8, governing time computation, to expressly except Rule 24, in addition to Rule 45, 29 CFR 2700.45, from the provisions of Rule 8(a). In the proposed change to Rule 8, the language excluding the application of Rule 8(a) is moved from the prefatory language of Rule 8 to subsection (a), where it is more appropriate. In order to clarify time computation under Rule 24, the Commission has described time periods in Rule 24 in terms of ''calendar'' and ''business'' days, similar to the language in Rule 45. In addition, a third example discussing the application of Rule 8 to a Rule 24 proceeding has been added to further clarify the application of Rule 8. Finally, Rule 69(b), 29 CFR 2700.69(b), is revised to recognize that Rule 24(f)(2) creates an exception to the general principle that a Judge no longer has jurisdiction over an emergency response plan dispute proceeding following the issuance of his decision on the merits. Rule 24(f)(2) specifies that a Judge retains jurisdiction over the proceeding to dispose of a stay request from the operator.

Public Comment

The Commission, which is always open to comments and suggestions, welcomes comment on this procedural rule.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

■ For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission amends 29 CFR part 2700 as follows:

PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 is revised to read as follows:

Authority: 30 U.S.C. 815, 820, 823, and 876.

■ 2. Section 2700.5 is amended by revising the second sentence of paragraph (e)(1) and the second and third sentences of paragraph (e)(2) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or information requests.

* * * * *

(e) *Manner and effective date of filing.* * * *

(1) * * * With the exception of documents filed pursuant to §§ 2700.70 (Petitions for discretionary review), 2700.45 (Temporary reinstatement proceedings), 2700.24 (Emergency response plan dispute proceedings), or Subpart F (Applications for temporary relief), documents filed by facsimile transmission shall not exceed 15 pages, excluding the facsimile cover sheet. * * *

(2) * * * When filing is by mail, filing is effective upon mailing, except that the filing of a motion for extension of time, any document in an emergency response plan dispute proceeding, a petition for review of a temporary reinstatement order, a motion for summary decision, a petition for discretionary review, a motion to exceed page limit is effective upon receipt. *See* §§ 2700.9(a), 2700.24(d), 2700.45(f), 2700.67(a), 2700.70(a), (f), and 2700.75(f).

* * * * *

■ 3. Section 2700.7 is amended by revising the second sentence of paragraph (c)(1) to read as follows:

§ 2700.7 Service.

* * * * *

(c) *Methods of service.* * * *

(1) * * * With the exception of documents served pursuant to §§ 2700.70 (Petitions for discretionary review), 2700.45 (Temporary reinstatement proceedings), 2700.24 (Emergency response plan dispute proceedings), or subpart F (Applications for temporary relief), documents served by facsimile transmission shall not exceed 15 pages, excluding the facsimile cover sheet. * * *

* * * * *

■ 4. Section 2700.8 is amended by revising its introductory text and paragraph (a) and adding Example 3 to read as follows:

§ 2700.8 Computation of time.

The due date for a pleading or other deadline for party or Commission action (hereinafter ''due date'') is determined sequentially as follows:

(a) Except to the extent otherwise provided herein (see, *e.g.*, §§ 2700.24 and 2700.45), when the period of time prescribed for action is less than 11 days, Saturdays, Sundays, and federal holidays shall be excluded in determining the due date.

* * * * *

Example 3: Pursuant to § 2700.24(a), the Secretary of Labor files a referral of a citation arising out of a dispute over the content of an operator's emergency response plan. Certain subsequent deadlines in such cases are specifically established by reference to calendar days, and thus paragraph (a) of this section would not necessarily apply in determining due dates. For instance, if the referral was filed on Thursday, January 4, 2007, the short and plain statement the operator must file in response within 5 calendar days would be due Tuesday, January 9, 2007, because the intervening weekend days would not be excluded in determining the due date. If the fifth calendar day were to fall on a weekend, holiday, or other day on which the Commission is not open however, the terms of paragraph (c) would apply and the due date would be the next day the Commission is open.

■ 5. Section 2700.24 is revised to read as follows:

§ 2700.24 Emergency response plan dispute proceedings.

(a) *Referral by the Secretary.* The Secretary shall immediately refer to the Commission any citation arising from a dispute between the Secretary and an operator with respect to the content of the operator's emergency response plan, or any refusal by the Secretary to approve such a plan. Any referral made pursuant to this paragraph shall be made within two business days of the issuance of any such citation.

(b) *Contents of referral.* A referral shall consist of a notice of plan dispute describing the nature of the dispute; a copy of the citation issued by the Secretary; a short and plain statement of the Secretary's position with respect to any disputed plan provision; and a copy of the disputed provision of the emergency response plan.

(c) *Short and plain statement by the operator.* Within five calendar days following the filing of the referral, the operator shall file with the Commission a short and plain statement of its position with respect to the disputed plan provision.

(d) *Filing and service of pleadings.* The filing with the Commission of any document in an emergency response plan dispute proceeding, including the referral, is effective upon receipt. A copy of each document filed with the Commission in such a proceeding shall be expeditiously served on all parties and on any miner or miners' representative who has participated in the emergency response plan review process, such as by personal delivery, including courier service, by express mail, or by facsimile transmission.

(e) *Proceedings before the Judge.*

(1) *Submission of materials.* Within 15 calendar days of the referral, the parties shall submit to the Judge assigned to the matter all relevant materials regarding the dispute. Such submissions shall include a request for any relief sought and may include proposed findings of fact and conclusions of law. Such materials may be supported by affidavits or other verified documents, and shall specify the grounds upon which the party seeks relief. Supporting affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated.

(2) *Hearing.*

(i) Within 5 calendar days following the filing of the Secretary's referral, any party may request a hearing and shall so advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the other parties.

(ii) Within 10 calendar days following the filing of the Secretary's referral, the Commission's Chief Administrative Law Judge or his designee may issue an order scheduling a hearing on the Judge's own motion, and must immediately so notify the parties.

(iii) If a hearing is ordered under paragraphs (e)(2)(i) or (ii) of this section, the hearing shall be held within 15 calendar days of the filing of the referral. The scope of such a hearing is limited to the disputed plan provision or provisions. If no hearing is held, the Judge assigned to the matter shall review the materials submitted by the parties pursuant to paragraph (e)(1) of this subsection, and shall issue a decision pursuant to paragraph (f) of this section.

(f) *Disposition.*

(1) *Decision of the Judge.* Within 15 calendar days following receipt by the Judge of all submissions and testimony made pursuant to paragraph (e) of this

subsection, the Judge shall issue a decision that constitutes the Judge's final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. The parties shall be notified of the Judge's decision by the most expeditious means reasonably available. Service of the decision shall be by certified or registered mail, return receipt requested.

(2) *Stay of plan provision.* Notwithstanding § 2700.69(b), a Judge shall retain jurisdiction over a request for a stay in an emergency response plan dispute proceeding. Within two business days following service of the decision, the operator may file with the judge a request to stay the inclusion of the disputed provision in the plan during the pendency of an appeal to the Commission pursuant to paragraph (g) of this section. The Secretary shall respond to the operator's motion within two business days following service of the motion. The judge shall issue an order granting or denying the relief sought within two business days after the filing of the Secretary's response.

(g) *Review of decision.* Any party may seek review of a Judge's decision, including the Judge's order granting or denying a stay, by filing with the Commission a petition for discretionary review pursuant to § 2700.70. Neither an operator's request for a stay nor the issuance of an order addressing the stay request affects the time limits for filing a petition for discretionary review of a Judge's decision with the Commission under this subparagraph. The Commission shall act upon a petition on an expedited basis. If review is granted, the Commission shall issue a briefing order. Except as otherwise ordered or provided for herein, the provisions of § 2700.75 apply. The Commission will not grant motions for extension of time for filing briefs, except under extraordinary circumstances.

■ 6. Section 2700.69 is amended by revising paragraph (b) to read as follows:

§ 2700.69 Decision of the Judge.

* * * * *

(b) *Termination of the Judge's jurisdiction.* Except to the extent otherwise provided herein, the jurisdiction of the Judge terminates when his decision has been issued.

* * * * *

Dated: January 11, 2007.

Michael F. Duffy,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. E7–557 Filed 1–17–07; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Docket No. BPD GSRS 06–03]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds—Securities Eligible for Purchase in Legacy Treasury Direct

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule provides that the Department of the Treasury may announce that certain marketable Treasury securities to be offered will not be eligible for purchase or holding in the Legacy Treasury Direct system. Treasury is issuing this amendment to the auction rules because the Legacy Treasury Direct system will eventually be phased out.

DATES: Effective January 18, 2007.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at *http://www.treasurydirect.gov* or from the Electronic Code of Federal Regulations (e-CFR) Web site at *http://www.gpoaccess.gov/ecfr.* It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director) or Chuck Andreatta (Associate Director), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504–3632 or e-mail us at *govsecreg@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: The Uniform Offering Circular (''UOC''), in conjunction with the announcement for each auction, provides the terms and conditions for the sale and issuance in an auction to the public of marketable Treasury bills, notes and bonds.[1] There are three book-entry securities systems—the commercial book-entry system, TreasuryDirect ®, and Legacy Treasury Direct ®—into which we issue marketable Treasury securities.[2] The current UOC generally authorizes purchases of all types of marketable Treasury securities in any of the three book-entry systems. The Legacy Treasury Direct system, which was implemented in 1986, will eventually be phased out, leaving only the newer, on-line TreasuryDirect system as the system for purchasing marketable Treasury securities directly on the records of the Bureau of the Public Debt, Department of the Treasury.[3] The commercial book-entry system will remain an option for all securities for those investors who want to purchase and hold their securities through a depository institution or dealer.

As we begin phasing out Legacy Treasury Direct, we plan to discontinue the practice of generally allowing all marketable Treasury securities being offered by Treasury to be purchased and held in this system. This final rule amendment states explicitly that we may announce that certain marketable securities to be offered will not be eligible for purchase or holding in Legacy Treasury Direct. Any such restriction will be included in that security's offering announcement. This change will not affect any outstanding securities currently held in Legacy Treasury Direct.

Procedural Requirements

This final rule is not a significant regulatory action for purposes of Executive Order 12866. The notice and public procedures and delayed effective date requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 533(a)(2).

Since a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The Office of Management and Budget previously approved the collections of information in this final amendment in accordance with the Paperwork Reduction Act under control number

[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR part 356. A final rule converting the UOC to plain language and making certain other minor changes was published in the **Federal Register** on July 28, 2004 (69 FR 45202).

[2] On September 30, 2005, Treasury issued a final amendment to the UOC to make the changes necessary to accommodate participation in Treasury marketable auctions for securities to be held in either the TreasuryDirect or the Legacy Treasury Direct system (70 FR 57347).

[3] Legacy Treasury Direct was called TreasuryDirect from 1986 to 2005. The regulations for Legacy Treasury Direct are found at 31 CFR part 357. The regulations for TreasuryDirect are found at 31 CFR part 363.

1535–0112. We are not making substantive changes to these requirements that would impose additional burdens on auction bidders.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government Securities, Securities.

■ For the reasons stated in the preamble, 31 CFR part 356 is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR PUBLIC DEBT SERIES NO. 1–93)

■ 1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102 *et seq.;* 12 U.S.C. 391.

■ 2. Amend § 356.4 by revising the introductory paragraph and paragraph (c) to read as follows:

§ 356.4 What are the book-entry systems in which auctioned Treasury securities may be issued?

There are three book-entry securities systems—the commercial book-entry system, TreasuryDirect®, and legacy Treasury Direct®—into which we issue marketable Treasury securities. We may obtain and transfer securities in these three book-entry systems at their par amount. Par amounts of Treasury inflation-protected securities do not include adjustments for inflation. Securities may be transferred from one system to the other, unless the securities are not eligible to be held in the receiving system. See Department of the Treasury Circular, Public Debt Series No. 2–86, as amended (part 357 of this chapter) and part 363 of this chapter.

* * * * *

(c) *Legacy Treasury Direct.* In this system, we maintain the book-entry securities of account holders directly on the records of the Bureau of the Public Debt, Department of the Treasury. Bids for securities to beheld in Legacy Treasury Direct are generally submitted directly to us, although such bids may also be forwarded to us by a depository institution or dealer. From time to time, Treasury may announce that certain securities to be offered will not be eligible for purchase or holding in Legacy Treasury Direct.

Dated: January 12, 2007.

Donald V. Hammond,

Fiscal Assistant Security.

[FR Doc. 07–209 Filed 1–16–07; 1:47 pm]

BILLING CODE 4810–39–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2005–0124; FRL–8270–6]

RIN 2060–AN34

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of HFE–7300

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This revision would add 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane [also known as HFE–7300 or L–14787 or $C_2F_5CF(OCH_3)CF(CF_3)_2$] to the list of compounds excluded from the definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone formation. If you use or produce HFE–7300 and are subject to EPA regulations limiting the use of VOC in your product, limiting the VOC emissions from your facility, or otherwise controlling your use of VOC for purposes related to attaining the ozone NAAQS, then you will not count HFE–7300 as a VOC in determining whether you meet these regulatory obligations. This action may also affect whether HFE–7300 is considered as a VOC for State regulatory purposes, depending on whether the State relies on EPA's definition of VOC. As a result, if you are subject to certain Federal regulations limiting emissions of VOCs, your emissions of HFE–7300 may not be regulated for some purposes.

DATES: This final rule is effective on January 18, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0124. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539–02), Research Triangle Park, NC 27711; telephone (919) 541–3356; fax number (919) 541–0824; or by e-mail at *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to you if you are a State that regulates VOC emissions as precursors to ozone formation or if you produce or use HFE–7300 or other compounds for which HFE–7300 may substitute. HFE–7300 has a variety of potential uses including as a heat-transfer fluid and substitute for ozone depleting substances and substances with high global warming potentials, such as hydroflurocarbons, perfluorocarbons, and perfluoropolyethers. HFE–7300 may be used in azeotropic mixtures for use in coating deposition, cleaning, and lubricating applications.

II. Background

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA and State governments limit the amount of VOC and NO_X that can be released into the atmosphere. The VOC's are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (also known as organic compounds) have different levels of reactivity—that is, they do not react at the same speed or do not form ozone to the same extent. It has been EPA's policy that organic compounds with a negligible level of reactivity need not be regulated to reduce ozone. The EPA determines whether a given organic compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. The EPA lists these compounds in its regulations (at 40 CFR 51.100(s)) and excludes them from the definition of VOC. The

chemicals on this list are often called ''negligibly reactive'' organic compounds.

Since 1977 (42 FR 35314), EPA has used the reactivity of ethane as the threshold of negligible reactivity. Compounds that are less reactive than or equally reactive to ethane may be deemed negligibly reactive. Compounds that are more reactive than ethane continue to be considered reactive VOCs and subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

Since 1977, the primary method for comparing the reactivity of a specific compound to that of ethane has been to compare the k_{OH} values for ethane and the specific compound of interest. The k_{OH} value represents the molar rate constant for reactions between the subject compound (e.g., ethane) and the hydroxyl radical (i.e., OH). This reaction is very important since it is the primary pathway by which most organic compounds initially participate in atmospheric photochemical reaction processes.

III. Petition for Exclusion of HFE–7300

On August 30, 2004, the Performance Chemicals and Fluid Division of the 3M Company submitted to EPA a petition requesting that the compound 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane [also know as HFE–7300 or L–14787 or $C_2F_5CF(OCH_3)CF(CF_3)_2$] be added to the list of compounds which are considered to be negligibly reactive in the definition of VOC at 40 CFR 51.100(s).

HFE–7300 has several potential uses. As a hydrofluoroether (HFE), this compound may be used as an alternative heat-transfer fluid to ozone-depleting substances, such as chlorofluorocarbons (CFCs). Under the Significant New Alternatives Policy (SNAP) program (CAA 612; 40 CFR part 82 subpart G), EPA has identified some HFEs as acceptable substitutes for ozone-depleting compounds, although HFE–7300 has not been specifically identified. Because they do not contain chlorine or bromine, HFEs do not deplete the ozone layer. All HFEs have an ozone depletion potential (ODP) of 0 although some HFEs have high global warming potential (GWP). In its petition, 3M points out that it has suggested HFE–7300 be used to reduce greenhouse gases resulting from emissions of compounds such as hydroflurocarbons, perfluorocarbons, and perfluoropolyethers in certain applications and, therefore, help reduce global warming potential.

According to a U.S. patent application submitted by 3M Innovative Properties Company, HFE–7300 possesses the capacity to form a myriad of azeotrope mixtures with other organic compounds such as 1-bromopropane, hexamethyldisilazane, isobutyl acetate, methylisobutyl ketone, trans-1,2-dichloroethylene, and trifluoromethylbenzene which may not be exempt from VOC regulation. The patent application indicated that the azeotrope mixtures can be formulated at compositions of HFE–7300 ranging from 1 to 100 percent, depending on the organic co-solvent and the desired properties of the azeotrope. This patent application lists a broad range of processes and applications where these azeotropes can be used. Some of these azeotrope uses include: (1) Coating deposition applications, where the azeotrope functions as a carrier for a coating material, (2) heat-transfer fluids in heat-transfer processes, (3) to clean organic and/or inorganic substrates, and (4) to formulate working fluids or lubricants for machinery operations and manufacturing processes.

In support of their petition, 3M Company supplied information on the photochemical reactivity of HFE–7300. The 3M Company stated that, as a hydrofluoroether, this compound is very similar in structure, toxicity, and atmospheric properties to other compounds such as $C_4F_9OCH_3$, $(CH_3)_2CFCF_2OCH_3$, $C_4F_9OC_2H_5$, $(CH_3)_2CFCF_2OC_2H_5$, n-$C_3F_7OCH_3$, and $C_3F_7CF(OC_2H_5)CF(CF_3)_2$ which are exempt from the VOC definition.

Other information submitted by 3M Company consists mainly of a peer-reviewed article entitled ''Atmospheric Chemistry of Some Fluoroethers,'' Guschin, Molina, Molina: Massachusetts Institute of Technology, May 1998, which has been submitted to the docket. This article discusses a study in which the rate constant for the reaction of the subject compound with the OH radical (k_{OH} value) is shown to be 1.5×10^{-14} cm^3/molecule/sec at 25 °C. This is less than the k_{OH} value for ethane, 2.4×10^{-13} cm^3/molecule/sec at 25 °C, and slightly more than that for methane.

The scientific information which the petitioner has submitted in support of the petition has been added to the docket for this rulemaking. This information includes references for the journal articles where the rate constant values are published.

The EPA has included the 3M Company Material Safety Data Sheet for HFE–7300 indicating the compound as having low toxicity. This information has been placed in the docket.

IV. EPA Response to the Petition

The information provided by the petitioner demonstrates that HFE–7300 meets the criteria that the EPA has established for negligible reactivity based on a comparison of k_{OH} values. Therefore, on February 9, 2006 (71 FR 6729), the EPA proposed adding 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (or HFE–7300) to the list of compounds appearing in 40 CFR 51.100(s).

The final applies this compound only in its pure state and does not apply to any of its azeotrope mixtures or organic blends in which any of the other constituents are not VOC exempt compounds. The term ''pure state'' is taken to mean at a composition purity level of at least 99.96 percent by weight of 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl pentane $[C_2F_5CF(OCH_3)CF(CH_3)_2]$(cited in the patent application 10/739,231 published on June 23, 2005 titled ''Azeotrope-like Compositions and Their Use,'' Publication Number:US 2005/0137113 A1). For emissions from the use of azeotropic mixtures and organic blends that contain both VOC exempt and non-exempt compounds, the proposed exemption applies to the mass (or weight) fraction of the emissions that consists of VOC exempt compounds.

The EPA received no comments on this proposal.

V. Final Action

This final action is based on EPA's review of the material in Docket No. EPA-HQ-OAR–2005–0124. The EPA hereby will amend its definition of VOC at 40 CFR 51.100(s) to exclude HFE–7300 as VOC for ozone SIP and ozone control purposes. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. States may not take credit for controlling this compound in their ozone control strategy.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not contain any

recordkeeping or reporting requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply, with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency does not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this 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 this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule will revise EPA's definition of VOC for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA. This final rule revision adds 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane [also known as HFE–7300 or L–14787 or $C_2F_5CF(OCH_3)CF(CF_3)_2$] to the list of compounds excluded from the definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone formation.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Since this final rule is deregulatory in nature and does not impose a mandate upon any source, this rule is not estimated to result in the expenditure by State, local and Tribal governments or the private sector of $100 million in any 1 year. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Thus, this rule is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final action addressing the exemption of a chemical compound from the VOC definition does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action does not impose any new mandates on State or local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA had specifically solicited comment on

the proposed rule for this action from State and local officials, but the EPA received no comments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This action does not have any direct effects on Indian Tribes. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits additional comment on this final rule from Tribal officials, but EPA received no comments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent the chemical compound may affect children's health. EPA has placed the available data regarding the health effects of this chemical compound in Docket No. EPA-HQ-OAR–2005–0124. In the proposed rule, the EPA invited the public to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early life exposure to the chemical compound HFE–7300. No such information was identified.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). The EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability to manufacturers and users of this specific exempt chemical compound. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this rule will be effective upon publication in the **Federal Register**.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 11, 2007.

Stephen L. Johnson,

Administrator.

■ For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7641q.

§ 51.100 [Amended]

■ 2. Section 51.100 is amended at the end of paragraph (s)(1) introductory text by removing the words ''and methyl formate ($HCOOCH_3$), and perfluorocarbon compounds which fall into these classes:'' and adding in their place the words; ''methyl formate ($HCOOCH_3$), (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE–7300) and perfluorocarbon compounds which fall into these classes:''

[FR Doc. E7–638 Filed 1–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0797; FRL–8269–2]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the Incorporation by Reference Section in a final rule pertaining to the May 17, 1999, approval of the State of Wisconsin's Prevention of Significant Deterioration (PSD) rules. That rulemaking erroneously incorporated by reference a section of the Wisconsin Administrative Code dealing with the state's hazardous pollutants rule. That section of the rule was not included in the state's request for SIP approval of its PSD rules. EPA, therefore, is removing this provision from the SIP.

DATES: *Effective Date:* This final rule is effective on January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Susan Siepkowski, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, *siepkowski.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a document on May 27, 1999, (64 FR 28745) approving Wisconsin's PSD rules into the SIP. In this approval EPA erroneously incorporated by reference into 40 CFR part 52, subpart YY (§ 52.2570(c)(98)(i)), Section NR 445m of the Wisconsin Administrative Code. No provisions in Section NR 445 were requested for SIP approval in Wisconsin's November 6, 1996, SIP submittal for approval of its PSD program. Further, NR 445m is a typographical error, as NR 445m does not exist in the Wisconsin Administrative Code. Therefore, the reference under § 52.2570(c)(98)(i) to NR 445m, as well as any implied reference to NR 445 is being removed.

Correction

In the final rule published in the **Federal Register** on May 27, 1999 (64 FR 28745), on page 28747 in the third column, last paragraph, ''AM–9–95 modifies Chapter NR, Sections 30.03, 30.04, 400 Note, 400.02, 400.03, 401.04, 404.06, 405.01, 405.02, 405.04, 405.05, 405.07, 405.08, 405.10, 406, 407, 408, 409, 411, 415, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 429, 436, 438, 439, 445m, 447 * * *'' is corrected to read: ''AM–9–95 modifies Chapter NR, Sections 30.03, 30.04, 400 Note, 400.02, 400.03, 401.04, 404.06, 405.01, 405.02, 405.04, 405.05, 405.07, 405.08, 405.10, 406, 407, 408, 409, 411, 415, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 429, 436, 438, 439, 447 * * *''.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'', 66 FR 28355 (May 22, 2001). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of January 18, 2007. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR part 52 for Wisconsin is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: December 29, 2006.

Gary Gulezian,

Acting Regional Administrator, Region 5.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Particulate matter, Reporting and recordkeeping requirements.

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

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by revising paragraph (c)(98) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(98) On November 6, 1996, the State of Wisconsin submitted rules pertaining to requirements under the Prevention of Significant Deterioration program. Wisconsin also submitted rule packages as revisions to the state implementation plans for particulate matter and revisions to the state implementation plans for clarification changes.

(i) *Incorporated by reference.* The following sections of the Wisconsin Administrative Code (WAC) are incorporated by reference. Both rule packages, AM–27–94 and AM–9–95, were published in the (Wisconsin) Register in April 1995, No. 472, and became effective May 1, 1995. AM–27–94 modifies Chapter NR, Sections 400.02(39m), 404.05, 405.02, 405.07, 405.08, 405.10, 405.14, and 484.04 of the WAC. AM–9–95 modifies Chapter NR, Sections 30.03, 30.04, 400 Note, 400.02, 400.03, 401.04, 404.06, 405.01, 405.02, 405.04, 405.05, 405.07, 405.08, 405.10, 406, 407, 408, 409, 411, 415, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 429, 436, 438, 439, 447, 448, 449, 484, 485, 488, 493, and 499 of the WAC.

* * * * *

[FR Doc. E7–521 Filed 1–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0008; FRL–8268–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final notice of deletion of the Berkley Products Company Dump Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion for Berkley Products Company Dump Superfund Site (Site), located in West Cocalico Township, Lancaster County, Pennsylvania from the National Priorities List (NPL).

The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This direct final deletion is being published by EPA with concurrence of the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP) because EPA has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been implemented to protect human health, welfare and the environment. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion will be effective March 19, 2007 unless EPA receives adverse comments by February 20, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0008, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instruction for submitting comments.
- Email: *schrock.roy@epa.gov.*
- Fax: 215–814–3002
- Mail: Mr. Roy Schrock, Remedial Project Manager (3HS22), U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.
- Hand Delivery: 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0008. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA's Region III, Regional Center for Environmental Information (RCEI) 2nd floor, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–1029, (215) 814–5254 or (800) 553–2509, Monday through Friday 8 a.m. to 5 p.m. excluding legal holidays and at the West Cocalico Township Municipal Building, 156B West Main, West Cocalico Township, Reinholds, Pennsylvania

17569, (717) 336–8720, Monday through Friday 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Schrock, Remedial Project Manager (3HS22), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; telephone number: 1–800–553–2509 or (215) 814–3210; fax number: 215–814–3002; e-mail address: *schrock.roy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region III is publishing this direct final notice of deletion of the Berkley Products Company Dump Superfund Site from the NPL.

EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that future conditions warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 19, 2007 unless EPA receives adverse comments on this document by February 20, 2007. If adverse comments on this document are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA, as appropriate, will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Berkley Products Company Dump Superfund Site and explains how the Site meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) The responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the site poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, if hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, CERCLA Section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate such remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site:

1. EPA consulted with PADEP on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

2. PADEP has concurred with the deletion of the Site from the NPL.

3. Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' Section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate Federal, State, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

4. EPA Region III has placed copies of documents supporting the deletion in the Site information repositories identified above.

5. If adverse comments on this notice or the companion notice of intent to delete also published in today's **Federal Register** are received within the 30-day public comment period, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before the effective date. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following summary provides EPA's rationale for the deleting this Site from the NPL:

Site Location

The Berkley Products Company Dump Site (Site) is located one and a half miles northeast of Denver, Pennsylvania, in West Cocalico Township, Lancaster County. Also known as Schoeneck Landfill, the Site is east of Wollups Hill Road, north of Swamp Bridge Road.

The Site is approximately 1,000 feet west of Cocalico Creek. The headwaters of Cocalico Creek are in the valley south of South Mountain near Blue Lake. This valley is located a few miles north of the Site. Conestoga Creek, along with its tributaries, Muddy Creek, Little Conestoga Creek, and Cocalico Creek, drains the northeastern and north-central portion of Lancaster County and eventually enters the Susquehanna River. Seasonally, wet springs located immediately north of the Site discharge into Cocalico Creek to the north. On the southern side of the Site, a seep was located on the slope of the landfill material. The seep was related to rain events.

The land use in the immediate vicinity of the Site is residential in nature. The Site is near dense woods and several single family homes. A few open areas have been converted into farm land by the local residents

Site History

The Site was used as a municipal waste dump from approximately 1930 until 1965. In 1965, the Lipton Paint Company (Lipton), a subsidiary of Berkley Products Company, purchased the property. The operation continued to receive household trash from neighboring communities as well as paint wastes from Berkley Products Company. The property was closed by Lipton due to a lack of available fill area, and was covered with soil. Then, in September 1970, the property was sold to private owners and has been used as a residence since that time.

Prior to 1965, the dump received paper, wood, cardboard and other domestic trash from the northeastern corner of Lancaster County. The only commercial wastes identified during that period were from local shoe companies. Those wastes included leather scraps and empty glue and dye pails.

During the period from 1965 to 1970, different sources estimate that the dump received a total of 650 to 40,000 gallons of paint wastes from Berkley Products Company. These wastes included primarily pigment sludges and wash solvents. EPA has learned that the solvents were sometimes used to burn the household trash and that the sludges were disposed of in five gallon pails. Information gathered about the final years of operation of the Site indicates that the municipal trash was dumped to the south of the access road, toward the hillside, while the paint wastes were deposited in the northern part of the dump.

The Berkley Products Company produced paints and varnishes with solvents, ethyl cellulose resin and pigments with lead oxide and lead chromate. The solvents included toluene, xylene, aliphatic naphthas, mineral spirits, methyl ethyl ketones, methyl isobutyl ketones, ethyl acetate, butyl acetate, glycol ether, butyl celasol, methyl alcohol and isopropyl alcohol.

This Site was originally investigated by the Pennsylvania Department of Environmental Resources (PADER) in 1984. In March of that year, PADER completed a Potential Hazardous Waste Site Identification form and the Site was included on EPA's CERCLIS, a list of potentially hazardous waste sites. A Preliminary Assessment (PA) was also completed in 1984, by EPA, and the Site was scheduled for further investigation pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (CERCLA), 42 U.S.C. 9601–9675.

In July 1984, EPA collected field samples and the results were presented in a Site Investigation (SI) report dated March 5, 1986. The information from the SI was used to score the Site using the Hazard Ranking System. The Site was nominated for the National Priorities List (NPL) of Superfund sites in 1986 with a score of 30.00 and was finalized as an NPL site in March 1989. The regulations enacted pursuant to CERCLA generally require that a Remedial Investigation and Feasibility Study (RI/FS) be conducted at each NPL site and subsequently, a remedial response action selected to address the problems identified.

During the search for potentially responsible parties (PRP) for the Site EPA conducted interviews with former owners, operators and employees of the Site. Company records were also obtained and deed information was researched. That information has been compiled and reviewed to determine liability and also to estimate types and quantities of wastes disposed at the Site and to determine disposal practices during operations. Based on the findings of the PRP search, EPA sent Notice Letters to two parties, Berkley Products Company and the landowner that had purchased the closed landfill. These Notice Letters identified the parties as PRPs, but waived the sixty day moratorium, established at CERCLA Sections 122(a) and 122(e), to negotiate a Consent Order to perform the RI/FS. These waivers were issued pursuant to CERCLA Section 122(a) because the Berkley Products Company did not have the financial assets to pay for the remedy, and the current landowners had purchased the property after landfill operations had ceased.

EPA initiated the RI/FS in 1990 to identify the types, quantities and locations of contaminants, to evaluate the potential risks, and to develop and evaluate remedial action alternatives to address the contamination problems at this Site. A CERCLA removal action was completed at the Site in May 1992 to address some preliminary findings of the RI. During the field investigation of the RI, buried drums containing paint wastes were uncovered in the northeastern portion of the Site. This area was excavated, and 59 drums were overpacked and removed. An additional seven drums were overpacked and removed from the southern slope of the landfill. A 35-foot-long by 15-foot-deep exploration trench uncovered no additional drums. The wastes were classified as Polychlorinated Biphenyl (PCB) flammable liquids, solids, and paint solvents.

The field investigations, data analysis and evaluation of alternatives that comprise the RI/FS were completed in June 1996 for the Site.

Record of Decision Findings

The Remedial Investigation found the Site to be a landfill covering approximately 4½ acres situated on the crest of a hill. The landfill materials were composed of primarily municipal trash and debris along with an area of buried steel drums and residues of apparent dumping of organic compounds as well as paint and organic solvents.

The risks involved a direct contact threat and possible impacts on residential well water supplies in the area. The Site also showed the potential for ecological risks.

Monitoring wells at the perimeter of the landfill contained organic compound and a variety of compounds were detected. Some of the compounds identified were lead, benzene, trichloroethylene (TCE), tetrachloroethylene (PCE), polyaromatic (PAHs) hydrocarbons and polychlorinated biphenyls (PCBs).

On June 28, 1996, EPA issued a ROD for the Site which required the following components:

- Pre-design investigations and activities.
- Site preparation.
- Consolidation of landfill wastes.
- Site grading.
- Cover system placement, with the following components as determined necessary for compliance with the relevant sections of Pennsylvania's Hazardous Waste Regulations:

—Subgrade.
—Gas vent system.
—Barrier layers.
—Drainage layer.
—Top layer (vegetated).

- Security fencing.
- Removal actions as determined to be necessary during consolidation activities, and to be conducted in compliance with all state and local laws, to the extent not inconsistent with federal laws.
- Erosion control measures.
- Long-term monitoring to include groundwater, surface runoff, leachate spring and seep monitoring (annual), reside residential well monitoring (semi-annual) and monitoring wells (quarterly).
- Institutional controls to restrict new well installation in the contaminated zone.
- Long-term operation and maintenance of the remedy.
- Five-year reviews.

On August 20, 1999 an Explanation of Significant Differences was issued which revised the remedy. The ROD anticipated that the bulk of the consolidated wastes at the Site would be incorporated into the on-site landfill and capped in place. During the design of the cap, the volume of the waste to be consolidated was determined to exceed the capacity of the cap being designed for the designated landfill area. Therefore, the ESD required excavation, characterization, and offsite disposal of the excess waste materials. Then the on-site landfill could be capped as described in the ROD.

Operation and Maintenance

The first round of surface water and groundwater monitoring occurred in October 2002. After this sampling event, sampling the surface water and springs was discontinued because no contaminants were detected in the seeps and creek north of the landfill and upgradient from the Site. Sampling the leachate seep from the landfill was also discontinued because the cover eliminated the seep.

Operation and Maintenance (O&M) activities were transferred to the Pennsylvania Department of Environmental Resources (PADEP) after this sampling event since there was no responsible party capable of performing the work for the Site. URS Corporation (URS) was contracted in June 2003 by the PADEP to complete the post-closure operations and maintenance. Quarterly site inspections and monitoring were initiated in 2003.

A number of monitoring wells are located at the Site and between the landfill and the residential wells. There are approximately 14 residential wells that are also monitored under the O&M plan.

Groundwater monitoring and sampling was conducted during the spring of 2004, the fall of 2004, the spring of 2005 and the spring of 2006. Activities performed by URS also include inspections of both sediment basins.

Mowing the vegetation on the cap is conducted under a separate contract issued by PADEP on a yearly basis.

Five Year Review

CERCLA requires a five-year review of all sites where hazardous substances remain above health-based levels which prevents unlimited use and unrestricted exposure. The first five-year review for the Site was completed in August 2005. The five-year review found that the objectives of the ROD and ESD were met by the implemented remedy. Periodic monitoring conducted by EPA and PADEP indicate that the selected remedies have been effective in eliminating the environmental threats posed by the landfill to the surrounding environment and human populations. Five-year reviews will continue to be conducted.

Institutional Controls

The institutional controls to restrict new well installation in the contaminated zone were established on June 8, 2001 by an Access Order issued during the construction phase of the remedial action and are still in effect. The Access Order required that the property owner shall not interfere with the operation, alter or disturb the integrity, of any structures or devices now or hereinafter built, installed or otherwise placed by EPA and/or its Representatives on the Site or Property. This effectively prevents any well installation through the cap, which covers the contaminated zone. Maintenance of the institutional control is part of the O&M activities conducted by PADEP pursuant to the State Superfund Contract (SSC).

Community Involvement

Public participation activities have been satisfied as required by CERCLA Sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. Documents upon which EPA relied to make this recommendation to delete the Site from the NPL are available to the public in the information repositories.

V. Deletion Action

EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate responses under CERCLA have been completed, and that no further response action, other than operation and maintenance and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 19, 2007 unless EPA receives adverse comments by February 20, 2007. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will also prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relation, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 16, 2006.

Donald Welsh,

Regional Administrator, Region III.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 21777, 56 FR 54757, 3 CFR, 1991 Comp., p/351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under Pennsylvania (''PA'') by removing the entry for ''Berkley Products Co. Dump''.

[FR Doc. E7–537 Filed 1–17–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 011107A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

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

ACTION: Notification of fishery assignments.

SUMMARY: NMFS is notifying the owners and operators of registered vessels of their assignments for the 2007 A season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the 2007 A season HLA limits established for area 542 and area 543 pursuant to the 2006 and 2007 harvest specifications for groundfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 12, 2007, until 1200 hrs, A.l.t., April 15, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Four vessels have registered with NMFS to fish in the A season HLA fisheries in areas 542 and/or 543. In order to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time and in accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels authorized to participate in the first HLA directed fishery in area 542 and/or in the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 3400 Alaska Ranger and FFP 2443 Alaska Juris.

Vessels authorized to participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 3835 Seafisher and FFP 3423 Alaska Warrior.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is unnecessary. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. The notice needs to occur immediately to notify the owner of each vessel of its assignment to allow these vessel owners to plan for participation in the A season HLA fisheries in area 542 and area 543.

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

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

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

Dated: January 11, 2007.

James P. Burgess,

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

[FR Doc. 07–179 Filed 1–12–07; 2:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 11
Thursday, January 18, 2007

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 731

RIN: 3206–AL08

Suitability

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: In support of its mission to ensure the Federal Government has an effective civilian workforce, the Office of Personnel Management (OPM) is proposing to amend its regulations governing Federal employment suitability. The proposed regulations would: authorize agencies to debar from employment for up to three years those found unsuitable, extend the suitability process to those applying for or who are in positions that can be non-competitively converted to the competitive service, provide additional procedural protections for those found unsuitable for Federal employment, and clarify the scope of authority for the Merit Systems Protection Board (MSPB or Board) to review actions taken under the regulations. OPM is also proposing changes to make the regulations more readable.

DATES: Comments must be received on or before March 19, 2007.

ADDRESSES: Send or deliver written comments to Ana A. Mazzi, Deputy Associate Director for Workforce Relations and Accountability Policy, Office of Personnel Management, 1900 E Street NW., Room 7H28, Washington, DC 20415; by FAX to 202–606–2613; or by e-mail to *CWRAP@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2930; by FAX at (202) 606–2613; or by e-mail at *CWRAP@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM proposes to amend the regulations in part 731 of title 5, Code of Federal Regulations (CFR), to modify and more precisely define and clarify the regulations' coverage, the procedural requirements for taking suitability actions, the respective authorities of OPM and agencies, and Merit Systems Protection Board (MSPB or Board) review of suitability actions. OPM also proposes various revisions to make the regulations more readable.

Coverage

OPM proposes to amend §§ 731.101, 731.103, 731.104, 731.106, 731.204, and 731.206 to provide that part 731 also applies to persons who can be noncompetitively converted to the competitive service because of service in their excepted service positions. The regulations currently cover only persons in the competitive service and the Senior Executive Service. Expansion of the regulation's scope to include suitability determinations of persons applying for, entering or employed in, the excepted service when that appointment can lead to their noncompetitive conversion to the competitive service is consistent with OPM's suitability authority. The process for employing such persons in the competitive service is a continuous one beginning with initial appointment to the excepted service and ending in (noncompetitive) conversion to the competitive service. Because these persons can (and most do) enter into the competitive service as a result of their excepted service appointment, albeit through a longer process than others appointed directly, they should be treated in the same manner as those appointed directly, including the same review of their suitability for employment. Already, under part 302 of this chapter, persons in the excepted service are subject to investigations and disqualifying factors similar to those found in part 731 (but without procedural protections). OPM proposes to refer to positions in the competitive service, positions in the excepted service as described in this paragraph, and positions in the Senior Executive Service collectively throughout part 731 as ''covered positions.''

OPM proposes to add definitions of *suitability action* and *suitability determination* to § 731.101 to help the reader better understand the coverage of part 731.

OPM also proposes that persons in intermittent, seasonal, per diem and temporary positions, with less than 180 days aggregate service, are not subject to the investigative requirements of this part as stated in current § 731.104. OPM believes this change is necessary to maintain consistency between this part, which concerns suitability, and part 732 of this chapter, which governs positions of national security. OPM also proposes to clarify the definition of *material* in § 731.101 by saying that a statement may be material whether or not OPM or an agency relies upon it. The added language is not intended to change, but rather to reinforce, the meaning of the current definition in that a ''material'' statement does not actually have to influence or affect an official decision by OPM or an agency.

In addition, OPM proposes to amend paragraph (a) of § 731.101 to state explicitly that suitability determinations are separate and distinct from objections or passover requests concerning preference eligibles (and OPM decisions on those requests) made according to the provisions of § 3318 of title 5, United States Code (U.S.C.), and 5 CFR 332.406. Paragraph (b) of § 731.203 is likewise modified to state clearly that objections and passover issues are not covered by part 731 even if a non-selection for a Federal position is based on a reason provided in § 731.202. OPM also proposes to remove ''denial of appointment'' as a suitability action, as currently defined in § 731.203. Altogether, these proposed changes confirm that a non-selection for a specific position based on reasons set forth in this part is not a suitability action and that an agency objection to or request to pass over a preference eligible applicant for consideration for a particular position is not a suitability action.

Procedures

OPM is proposing to clarify in § 731.106 the level of investigation OPM or the agency may conduct when suitability issues are developed prior to a required investigation. OPM or the agency may conduct the level of investigation sufficient to resolve the issues and to support a suitability action. If the individual is later appointed, the minimum level of investigation must be conducted consistent with the requirements in § 731.106.

OPM is also proposing two changes that provide additional procedural protections for persons who may be

subject to an unfavorable suitability determination or action. First, when an agency makes a decision under part 731, or changes a tentative favorable placement decision to an unfavorable decision based on an OPM report of investigation or upon an agency investigation conducted under OPM-delegated authority, OPM would require that the agency notify the person of the specific reasons for the decision and give the person the opportunity to explain or refute the information. The current regulations do not require agencies to provide this notice and opportunity to respond.

Second, OPM is proposing to clarify that when an agency proposes to find a person unsuitable, the person may elect to have a representative of the person's choice as long as he or she makes a written designation of representation. Persons subject to investigation under part 732 of this chapter currently have this opportunity, and OPM believes that it is appropriate to extend this option to persons subject to investigation under part 731 as well.

OPM is proposing to amend § 731.303 to discontinue the current practice of allowing only *employees* to give oral answers to proposed suitability actions by OPM. This would simplify and streamline the suitability process with OPM's procedures mirroring those used by agencies with delegated authority. This will ensure that all persons are guaranteed the same rights to answer proposed suitability actions regardless of their status as applicants, appointees, or employees under the rule.

Authorities

OPM is proposing to expand the debarment authority that an agency currently possesses. Specifically, OPM proposes to permit an agency to debar from employment with that agency any person it finds unsuitable for up to three years, as opposed to a period of one year as provided in the current regulations. OPM is proposing this change to give agencies the same flexibility when deciding the appropriate length of debarment that OPM has. In addition, OPM is clarifying the regulations to indicate more clearly that an agency or OPM, when warranted, may make a subsequent suitability determination and impose an additional debarment period for the same conduct on which a previous suitability action was based. Simply put, a negative suitability action does not wipe the slate clean. It is an adjudication concerning an individual's suitability for Federal service during a particular time period, not expiation for wrongdoing. Thus, an additional debarment period may be appropriate where the conduct was of a heinous nature, where the conduct represents a pattern of misconduct, or where a nexus exists between the conduct and the responsibilities associated with the current position. An agency or OPM making determinations in these circumstances would follow all procedural requirements of Part 731, including affording the affected persons the right to answer the agency or OPM and to appeal any negative suitability determinations to the Merit Systems Protection Board.

In § 731.103, OPM is proposing to eliminate the requirement that agencies with delegated authority seek prior approval from OPM before taking action under other authorities, such as part 315, part 359, or part 752 of this chapter, in cases involving evidence of material, intentional false statement in examination or appointment, or deception or fraud in examination or appointment. Agencies, however, would still be required to notify OPM if they have taken, or plan to take, such action.

OPM is proposing modifications to § 731.202 to clarify that OPM or agencies with delegated authority to make suitability determinations and take suitability actions have the authority to rely on the additional suitability considerations contained in paragraph (c) of § 731.202 at their sole discretion. Factors not relied upon by OPM or agencies in individual cases may not be considered by the MSPB.

Finally, OPM is proposing in paragraph (c) of § 731.103 that agencies must exercise their delegated authorities in accordance with OPM regulations and issuances concerning procedures, policy guidance, criteria, standards, supplemental guidance, and quality control procedures established by OPM. OPM is also proposing to clarify in paragraph (d) of § 731.103 that agencies may choose to begin preliminary suitability reviews for all applicants at any time during the hiring process.

Merit Systems Protection Board Review

There is no statutory right to appeal a negative suitability determination. OPM, however, accorded applicants, appointees, and employees the right to appeal a negative suitability action taken by OPM, or an agency with delegated authority from OPM, under the procedures set forth in this part. This right of appeal applies only to an action taken under the procedures set forth in part 731. It does not extend to any other employment action that an agency takes outside of the procedures set forth in part 731 unless Congress or OPM has explicitly accorded a right of redress. In other words, what is not covered by part 731 may not be reviewed by the MSPB. For example, OPM has provided no right to appeal an agency's decision to object to or request to pass over a candidate under part 332 of this chapter, regardless of the basis for the agency's request. That is, even if an agency objects to or requests to pass over an applicant based upon an applicant's fitness or character, the applicant does not have a right of appeal under part 731. Likewise, an agency's reason(s) for not hiring someone is not an appropriate basis to determine whether a person may appeal the agency's action. Rather, the procedures an agency decides to use determine whether an agency's action may be appealed.

The Board recognized this clear distinction in *Vislisel* v. *OPM,* 29 M.S.P.R. 679 (1986). There, the Board observed that a sustained objection is an agency-initiated procedure separate and apart from a suitability determination under part 731. *Id.* at 682. In *Edwards* v. *Department of Justice,* 87 M.S.P.R. 518 (2001), the Board abandoned its approach in *Vislisel,* holding that, in deciding whether an action was an appealable suitability determination, ''what matters is the substance of the action, not the form.'' *Id.* at 522. This is an incorrect reading of the authority that OPM conferred upon the Board.

It is well-settled that the Board possesses jurisdiction only to the extent that Congress or OPM specifically confers jurisdiction upon it by statute and regulation. Moreover, an agency is free to utilize any applicable statutory or regulatory mechanism available if it wishes to take an employment action against an applicant, appointee, or employee. For example, an agency that is dissatisfied with an employee's performance may elect to take action under chapter 43 or 75 of title 5, United States Code, or under part 315 or 359 of this chapter of OPM's regulations if the person is serving a probationary period. Although the action an agency elects to use is based on the individual's poor performance, the agency is not limited to the procedures contained in chapter 43. *Lovshin* v. *Department of the Navy,* 767 F.2d 826 (Fed. Cir. 1985). An agency may elect the statutory or regulatory scheme under which it takes an action, and it is bound to follow the procedures and standards of proof found in the scheme it chooses to use. Similarly, when adjudicating an appeal of an agency action, the Board must assess the agency's action under the procedures elected by the agency and may not hold the agency to standards relating to a legal authority that the agency did not invoke. The Board may

not create an appeal right where neither Congress nor OPM has expressly granted it. *King* v. *Jerome,* 42 F.3d 1371, 1374 (Fed. Cir. 1994).

These proposed regulations reaffirm and clarify that there is a distinction between objections or passovers and suitability actions and that OPM has not authorized an appeal to MSPB for objections or passovers.

Finally, while continuing to authorize suitability appeals, OPM is proposing to clarify the scope of jurisdiction conferred on MSPB. The proposed rule would eliminate the requirement that MSPB remand a case to OPM or an agency if fewer than all the charges are sustained and replace it with a requirement that the Board affirm the suitability determination and the suitability action when one or more charges are sustained. The specter of two simultaneous reviews in the same case by MSPB and OPM or an agency has led to confusion and uncertainty about the relationship of the two reviews, e.g., whether one takes precedence over the other and whether the outcome of one moots the review of the other. The proposed rule eliminates that confusion.

Readability

In addition to the above substantive changes, OPM proposes to rewrite the regulations in part 731 to make them more readable. Under this rewriting effort, OPM is proposing a number of grammatical and stylistic changes to the regulations to clarify their intended meaning. One example applied throughout the regulations, is a proposal to use ''person'' consistently (instead of ''individual'') to describe those affected by the regulations. Another example is that the word ''shall'' is replaced in most cases by the word ''must'' to clearly state requirements. The current regulations use the terms interchangeably. OPM also is proposing to highlight the words ''applicant,'' ''appointee,'' and ''employee'' to emphasize their unique meanings when applied at various locations in the regulations.

Executive Order 12866, Regulatory Review

The Office of Management and Budget has reviewed the proposed rule in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they will affect Federal agencies, employees, and applicants only.

List of Subjects in 5 CFR Part 731

Administrative practices and procedures, Government employees.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM is proposing to revise 5 CFR part 731 as follows:

PART 731—SUITABILITY

Subpart A—Scope

Subpart B—Suitability Determinations and Actions

Subpart C—OPM Suitability Action Procedures

Subpart D—Agency Suitability Action Procedures

Subpart E—Appeal to the Merit Systems Protection Board

Subpart F—Savings Provision

Authority: 5 U.S.C. 1302, 3301, 7301, 7701; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 12731, 3 CFR, 1990 Comp., p.306., 5 CFR, parts 1, 2 and 5.

Subpart A—Scope

§ 731.101 Purpose.

(a) The purpose of this part is to establish criteria and procedures for making determinations of suitability and for taking suitability actions regarding employment in positions in the competitive service, in positions in the excepted service where the incumbents can be noncompetitively converted to the competitive service, and under career appointments to positions in the Senior Executive Service (hereinafter in this part, these three types of positions are referred to collectively as ''covered positions'') pursuant to 5 U.S.C. 3301, E.O. 10577 (3 CFR, 1954–1958 Comp., p. 218) and 5 CFR 1.1, 2.1(a) and 5.2. Section 3301 of title 5, United States Code, directs consideration of ''age, health, character, knowledge, and ability for the employment sought.'' E.O. 10577 (codified in relevant part at 5 CFR 1.1, 2.1(a) and 5.2) directs OPM to examine ''suitability'' for competitive Federal employment. This part concerns only determinations of ''suitability,'' that is, those determinations based on a person's character or conduct that may have an impact on the integrity or efficiency of the service. Determinations made and actions taken under this part are distinct from objections or passover requests concerning preference eligibles, and OPM's decisions on such requests, made under 5 U.S.C. 3318 and 5 CFR 332.406, as well as determinations of eligibility for assignment to, or retention in, sensitive national security positions made under E.O. 10450 (3 CFR, 1949–1953 Comp., p. 936), E.O. 12968, or similar authorities.

(b) *Definitions.* In this part:

Applicant means a person who is being considered or has been considered for employment.

Appointee means a person who has entered on duty and is in the 1st year of a subject to investigation appointment (as defined in § 731.103).

Days mean calendar days unless otherwise specified in this part.

Employee means a person who has completed the first year of a subject to investigation appointment.

Material means, in reference to a statement, one that is capable of influencing, affects, or has a natural tendency to affect, an official decision even if OPM or an agency does not rely upon it.

Suitability action means an outcome described in § 731.203 and may be taken only by OPM or an agency with delegated authority under the procedures in subparts C and D of this part.

Suitability determination means a decision by OPM or an agency with delegated authority that a person is suitable or is not suitable for employment in the Federal Government or a specific Federal agency.

§ 731.102 Implementation.

(a) An investigation conducted for the purpose of determining suitability under this part may not be used for any other purpose except as provided in a Privacy Act system of records notice

published by the agency conducting the investigation.

(b) Under OMB Circular No. A–130 Revised, issued November 20, 2000, agencies are to implement and maintain a program to ensure that adequate protection is provided for all automated information systems. Agency personnel screening programs may be based on procedures developed by OPM. The Computer Security Act of 1987 (Pub. L. 100–235) provides additional requirements for Federal automated information systems.

(c) OPM may set forth policies, procedures, criteria, standards, quality control procedures, and supplementary guidance for the implementation of this part in OPM issuances.

§ 731.103 Delegation to agencies.

(a) Subject to the limitations and requirements of paragraph (g) of this section, OPM delegates to the heads of agencies authority for making suitability determinations and taking suitability actions (including limited, agency-specific debarments under § 731.205) in cases involving *applicants* for and *appointees* to covered positions in the agency.

(b) When an agency, acting under delegated authority from OPM, determines that a Governmentwide debarment by OPM under § 731.204(a) may be an appropriate action, it must refer the case to OPM for debarment consideration. Agencies must make these referrals prior to any proposed suitability action, but only after sufficient resolution of the suitability issue(s), through subject contact or investigation, to determine if a Governmentwide debarment appears warranted.

(c) Agencies exercising authority under this part by delegation from OPM must implement policies and maintain records demonstrating that they employ reasonable methods to ensure adherence to OPM issuances as described in § 731.102(c).

(d) Agencies may begin to determine an applicant's suitability at any time during the hiring process. Because suitability issues may not arise until late in the application/appointment process, it is generally more practical and cost effective to first ensure that the applicant is eligible for the position, deemed by OPM or a Delegated Examining Unit to be among the best qualified, and/or within reach of selection. However, in certain circumstances, such as filling law enforcement positions, an agency may choose to initiate a preliminary suitability review at the time of application. Whether or not a person is likely to be eligible for selection, OPM must be informed in all cases where there is evidence of material, intentional false statements, or deception or fraud in examination or appointment and OPM will take a suitability action where warranted.

(e) When an agency, exercising authority under this part by delegation from OPM, makes a suitability determination or changes a tentative favorable placement decision to an unfavorable decision, based on an OPM report of investigation or upon an investigation conducted pursuant to OPM-delegated authority, the agency must:

(1) Ensure that the records used in making the determination are accurate, relevant, timely, and complete to the extent reasonably necessary to ensure fairness to the person in any determination;

(2) Ensure that all applicable administrative procedural requirements provided by law, the regulations in this part, and OPM issuances as described in § 731.102(c) have been observed;

(3) Consider all available information in reaching its final decision on a suitability determination or suitability action, except information furnished by a non-corroborated confidential source, which may be used only for limited purposes, such as information used to develop a lead or in interrogatories to a subject, if the identity of the source is not compromised in any way; and

(4) Keep any record of the agency suitability determination or action as required by OPM issuances as described in § 731.102(c).

(f) OPM may revoke an agency's delegation to make suitability determinations and take suitability actions under this part if an agency fails to conform to this part or OPM issuances as described in § 731.102(c).

(g) OPM retains jurisdiction to make final determinations and take actions in all suitability cases where there is evidence that there has been a material, intentional false statement, or deception or fraud in examination or appointment. OPM also retains jurisdiction over all suitability cases involving a refusal to furnish testimony as required by § 5.4 of this chapter. Agencies must refer these cases to OPM for adjudication for suitability action under this authority. Although no prior approval is needed, notification to OPM is required if the agency wants to take, or has taken, action under its own authority (5 CFR part 315, 5 CFR part 359, or 5 CFR part 752). In addition, paragraph (a) of this section notwithstanding, OPM may, in its discretion, exercise its jurisdiction under this part in any case it deems necessary.

§ 731.104 Appointments subject to investigation.

(a) To establish a person's suitability for employment, appointments to covered positions identified in § 731.101 require the person to undergo an investigation by OPM or by an agency with delegated authority from OPM to conduct investigations. Certain appointments do not require investigation. Except when required because of position risk level (high, moderate, or low) changes, a person in a covered position, who has undergone a suitability investigation, need not undergo another one simply because the person has been:

(1) Promoted;

(2) Demoted;

(3) Reassigned;

(4) Converted from career-conditional to career tenure;

(5) Appointed or converted to an appointment in a covered position if the person has been serving continuously with the agency for at least 1 year in one or more positions under an appointment subject to investigation; or

(6) Transferred, provided the person has served continuously for at least 1 year in a position subject to investigation.

(b) (1) Either OPM or an agency with delegated suitability authority may investigate and take a suitability action against an applicant, appointee, or employee in accordance with § 731.105. There is no time limit on the authority of OPM or an agency with delegated suitability authority to conduct the required investigation of an applicant who has been appointed to a position. An employee does not have to serve a new probationary or trial period merely because his or her appointment is subject to investigation under this section. An employee's probationary or trial period is not extended because his or her appointment is subject to investigation under this section.

(2) The subject to investigation condition also does not eliminate the need to conduct investigations required under § 731.106 for public trust positions when the required investigation commensurate with the risk level of the position has not yet been conducted.

(3) Suitability determinations must be made for all appointments that are subject to investigation.

(c) Positions that are intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments, do not require

a background investigation as described in § 731.106(c)(1). The employing agency, however, must conduct such checks as it deems appropriate to ensure the suitability of the person.

§ 731.105 Authority to take suitability actions.

(a) Neither OPM nor an agency acting under delegated authority may take a suitability action in connection with any application for, or appointment to, a position that is not subject to investigation under § 731.104(a)(1) through (6).

(b) OPM may take a suitability action under this part against an *applicant* or *appointee* based on any of the criteria of § 731.202;

(c) Except as limited by § 731.103(g), an agency, exercising delegated authority, may take a suitability action under this part against an *applicant* or *appointee* based on the criteria of § 731.202;

(d) OPM may take a suitability action under this part against an *employee* based on the criteria of § 731.202(b)(3), (4), or (8).

(e) An agency may not take a suitability action against an *employee.* Nothing in this part precludes an agency from taking an adverse action against an employee under the procedures and standards of part 752 of this chapter or terminating a probationary employee under the procedures of part 315 or part 359 of this chapter. Agencies must notify OPM if it wants to take, or has taken, action under these authorities.

§ 731.106 Designation of public trust positions and investigative requirements.

(a) *Risk Designation.* Agency heads must designate every covered position within the agency at a high, moderate, or low risk level as determined by the position's potential for adverse impact to the efficiency or integrity of the service. OPM will provide an example of a risk designation system for agency use in an OPM issuance as described in § 731.102(c).

(b) *Public Trust Positions.* Positions at the high or moderate risk levels would normally be designated as ''Public Trust'' positions. Such positions may involve policy making, major program responsibility, public safety and health, law enforcement duties, fiduciary responsibilities or other duties demanding a significant degree of public trust, and positions involving access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain.

(c) *Investigative requirements.*

(1) Persons receiving an appointment made subject to investigation under this part must undergo a background investigation. OPM is authorized to establish minimum investigative requirements correlating to risk levels. Investigations should be initiated before appointment but no later than 14 calendar days after placement in the position.

(2) All positions subject to investigation under this part must also receive a sensitivity designation of Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive, when appropriate. This designation is complementary to the risk designation, and may have an effect on the position's investigative requirement. Sections 732.201 and 732.202 of this chapter, detail the various sensitivity levels and investigation types. Detailed procedures for determining investigative requirements for all positions based upon risk and sensitivity will be established in an OPM issuance as described in § 731.102(c).

(3) If suitability issues develop prior to the required investigation, OPM or the agency may conduct an investigation sufficient to resolve the issues and support a suitability determination or action, if warranted. If the person is appointed, the minimum level of investigation must be conducted as required by paragraph (c)(1) of this section.

(d) *Risk level changes.* If a person moves to a higher risk level position, or if the risk level of his or her position itself is changed, the person may remain in or encumber the position. Any upgrade in the investigation required for the new risk level should be initiated within 14 calendar days after the move or the new designation is final.

(e) *Completed investigations.* Any suitability investigation completed by an agency under provisions of paragraph (d) of this section must result in a suitability determination by the employing agency. The subject's employment status (i.e., applicant, appointee, or employee as defined in § 731.101) will determine the applicable agency authority and procedures to be followed in any action taken.

Subpart B—Suitability Determinations and Actions

§ 731.201 Standard.

The standard for a suitability action defined in § 731.203 and taken against an applicant, appointee, or employee is that the action will protect the integrity or promote the efficiency of the service.

§ 731.202 Criteria for making suitability determinations.

(a) *General.* OPM, or an agency to which OPM has delegated authority, must base its suitability determination on the presence or absence of one or more of the specific factors (charges) in paragraph (b) of this section.

(b) *Specific factors.* In determining whether a person is suitable for Federal employment, only the following factors will be considered a basis for finding a person unsuitable and taking a suitability action:

(1) Misconduct or negligence in employment;

(2) Criminal or dishonest conduct;

(3) Material, intentional false statement, or deception or fraud in examination or appointment;

(4) Refusal to furnish testimony as required by § 5.4 of this chapter;

(5) Alcohol abuse of a nature and duration that suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of the applicant or appointee or others;

(6) Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation;

(7) Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force; and

(8) Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.

(c) *Additional considerations.* OPM and agencies may consider the following additional considerations to the extent OPM or the relevant agency, in their sole discretion, deems them pertinent to the individual case:

(1) The nature of the position for which the person is applying or in which the person is employed;

(2) The nature and seriousness of the conduct;

(3) The circumstances surrounding the conduct;

(4) The recency of the conduct;

(5) The age of the person involved at the time of the conduct;

(6) Contributing societal conditions; and

(7) The absence or presence of rehabilitation or efforts toward rehabilitation.

§ 731.203 Suitability actions by OPM and other agencies.

(a) For purposes of this part, a suitability action is an action resulting in one or more of the following:

(1) Cancellation of eligibility;

(2) Removal;

(3) Cancellation of reinstatement eligibility; and

(4) Debarment.

(b) A non-selection or cancellation of eligibility for a specific position based

on an objection or passover of a preference eligible under 5 CFR 332.406 is *not* a suitability action even if the non-selection is based on reasons set forth in § 731.202.

(c) A suitability action may be taken against an applicant or an appointee when OPM or an agency exercising delegated authority under this part finds that the applicant or appointee is unsuitable for the reasons cited in § 731.202, subject to the agency limitations of § 731.103(g).

(d) OPM may require that an appointee or an employee be removed on the basis of a material, intentional false statement, deception or fraud in examination or appointment; refusal to furnish testimony as required by § 5.4 of this chapter; or a statutory or regulatory bar which prevents the person's lawful employment.

(e) OPM may cancel any reinstatement eligibility obtained as a result of a material, intentional false statement, deception or fraud in examination or appointment.

(f) An action to remove an appointee or employee *for suitability reasons* under this part is not an action under part 752, 359, or 315 of this chapter. Where behavior covered by this part may also form the basis for a part 752, 359, or 315 of this chapter action, agencies may take the action under part 315, 359, or 752 of this chapter, as appropriate, instead of under this part. Agencies must notify OPM if it wants to take, or has taken, action under these authorities.

(g) Agencies do not need approval from OPM before taking unfavorable suitability actions. However, they are required to report to OPM all unfavorable suitability actions taken under this part within 30 days after they take the action. Also, all actions based on an OPM investigation must be reported to OPM as soon as possible and in no event later than 90 days after receipt of the final report of investigation.

§ 731.204 Debarment by OPM.

(a) When OPM finds a person unsuitable for any reason listed in § 731.202, OPM, in its discretion, may, for a period of not more than 3 years from the date of the unfavorable suitability determination, deny that person examination for, and appointment to, covered positions.

(b) Upon the expiration of a period of debarment, OPM may redetermine a person's suitability for appointment in accordance with the procedures of this part. An additional debarment period may be imposed for the same conduct on which the previous suitability action was based, when warranted.

(c) OPM, in its sole discretion, determines the duration of any period of debarment imposed under this section.

§ 731.205 Debarment by agencies.

(a) Subject to the provisions of § 731.103, when an agency finds an applicant or appointee unsuitable based upon reasons listed in § 731.202, the agency may, for a period of not more than 3 years from the date of the unfavorable suitability determination, deny that person examination for, and appointment to, either all or specific covered positions within that agency.

(b) Upon the expiration of a period of agency debarment, the agency may redetermine a person's suitability for appointment at that agency in accordance with the procedures of this part. An additional debarment period may be imposed for the same conduct on which the previous suitability action was based, when warranted.

(c) The agency, in its sole discretion, determines the duration of any period of debarment imposed under this section.

(d) The agency is responsible for enforcing the period of debarment and taking appropriate action if a person applies for, or is inappropriately appointed to, a position at that agency during the debarment period. This responsibility does not limit OPM's authority to exercise jurisdiction itself and take any action OPM deems appropriate.

Subpart C—OPM Suitability Action Procedures

§ 731.301 Scope.

This subpart covers OPM-initiated suitability actions against an *applicant, appointee,* or *employee.*

§ 731.302 Notice of proposed action.

(a) OPM will notify the applicant, appointee, or employee (hereinafter, the ''respondent'') in writing of the proposed action, the charges against the respondent, and the availability of review, upon request, of the materials relied upon. The notice will set forth the specific reasons for the proposed action and state that the respondent has the right to answer the notice in writing. The notice will further inform the respondent of the time limit for the answer as well as the address to which an answer must be made.

(b) The notice will inform the respondent that he or she may be represented by a representative of the respondent's choice and that if the respondent wishes to have such a representative, the respondent must designate the representative in writing.

(c) OPM will serve the notice of proposed action upon the respondent by mail or hand delivery no less than 30 days prior to the effective date of the proposed action to the respondent's last known residence or duty station.

(d) If the respondent encumbers a position covered by this part on the date the notice is served, the respondent is entitled to be retained in a pay status during the notice period.

(e) OPM will send a copy of the notice to any employing agency that is involved.

§ 731.303 Answer.

(a) *Respondent's answer.* A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the answer. To be timely, a written answer must be submitted no more than 30 days after the date of the notice of proposed action.

(b) *Agency's answer.* An employing agency may also answer the notice of proposed action. The time limit for filing such an answer is 30 days from the date of the notice. In reaching a decision, OPM will consider any answer the agency makes.

§ 731.304 Decision.

The decision regarding the final suitability action will be in writing, be dated, and inform the respondent of the reasons for the decision and that an unfavorable decision may be appealed in accordance with subpart E of this part. OPM will also notify the respondent's employing agency of its decision. If the decision requires removal, the employing agency must remove the appointee or employee from the rolls within 5 work days of receipt of OPM's final decision.

Subpart D—Agency Suitability Action Procedures

§ 731.401 Scope.

This subpart covers agency-initiated suitability actions against an *applicant* or *appointee.*

§ 731.402 Notice of proposed action.

(a) The agency must notify the applicant or appointee (hereinafter, the ''respondent'') in writing of the proposed action, the charges against the respondent, and the availability for review, upon request, of the materials relied upon. The notice must set forth the specific reasons for the proposed action and state that the respondent has the right to answer the notice in writing. The notice must further inform the respondent of the time limit for the answer as well as the address to which such answer must be delivered.

(b) The notice must inform the respondent that he or she may be represented by a representative of the respondent's choice and that if the respondent wishes to have such a representative, the respondent must designate the representative in writing.

(c) The agency must serve the notice of proposed action upon the respondent by mail or hand delivery no less than 30 days prior to the effective date of the proposed action to the respondent's last known residence or duty station.

(d) If the respondent is employed in a position covered by this part on the date the notice is served, the respondent is entitled to be retained in a pay status during the notice period.

§ 731.403 Answer.

A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the answer. To be timely, a written answer must be submitted no more than 30 days after the date of the notice of proposed action.

§ 731.404 Decision.

The decision regarding the final action must be in writing, be dated, and inform the respondent of the reasons for the decision and that an unfavorable decision may be appealed in accordance with subpart E of this part. If the decision requires removal, the employing agency must remove the appointee from the rolls within 5 work days of the agency's decision.

Subpart E—Appeal to the Merit Systems Protection Board

§ 731.501 Appeal to the Merit Systems Protection Board.

(a) *Appeal to the Merit Systems Protection Board.* When OPM or an agency acting under delegated authority under this part takes a suitability action against a person, that person may appeal the action to the Merit Systems Protection Board (hereinafter ''Board''). If the Board finds that at least one of the charges brought by OPM or an agency against the person is supported by a preponderance of the evidence, regardless of whether all specifications are sustained, it must affirm the suitability determination and the suitability action.

(b) *Appeal procedures.* The procedures for filing an appeal with the Board are found at part 1201 of this title.

Subpart F—Savings Provision

§ 731.601 Savings provision.

No provision of the regulations in this part is to be applied in such a way as to affect any administrative proceeding pending on [DATE OF THE EFFECTIVE DATE OF THE FINAL RULE]. An administrative proceeding is deemed to be pending from the date of the agency or OPM ''notice of proposed action'' described in §§ 731.302 and 731.402.

[FR Doc. E7–592 Filed 1–17–07; 8:45 am]

BILLING CODE 6326–39–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket Number DHS–2007–0003]

Privacy Act of 1974: Implementation of Exemptions; Redress and Response Records System

AGENCY: Privacy Office, Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is amending its regulations to exempt portions of a new system of records from certain provisions of the Privacy Act. Specifically, the Department proposes to exempt portions of the Redress and Response Records System from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

DATES: Comments must be received on or before February 20, 2007.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2007–0003 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Facsimile:* 866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; telephone 571–227–3813; facsimile: 866–466–5370.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS), elsewhere in this edition of the **Federal Register**, published a Privacy Act system of records notice describing records in the DHS Redress and Response Records System. This system maintains records for the DHS Traveler Redress Inquiry Program (TRIP), which is the traveler redress mechanism being established by DHS in connection with the Rice-Chertoff Initiative, as well as in accordance with other policy and law. DHS TRIP will facilitate the public's ability to provide appropriate information to DHS for redress requests when they believe they have been denied entry, refused boarding for transportation, or identified for additional screening by DHS components or programs at their operational locations. Such locations include airports, seaports, train stations and land borders. DHS TRIP will create a cohesive process to address these redress requests across DHS.

DHS TRIP will serve as a mechanism to share redress-related information and facilitate communication of redress results across DHS components. It will also facilitate efficient adjudication of redress requests. Once the information intake is complete, DHS TRIP will facilitate the transfer of or access to this information for the DHS components or other agencies redress process, which will address the redress request.

This system contains records pertaining to various categories of individuals, including: individuals seeking redress or individuals on whose behalf redress is sought from DHS; individuals applying for redress on behalf of another individual; and DHS employees and contractors assigned to interact with the redress process.

No exemption shall be asserted with respect to information submitted by and collected from individuals or their representatives in the course of any redress process associated with this System of Records.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5), DHS will also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Moreover, DHS will add these exemptions to Appendix C to 6 CFR Part 5, DHS Systems of Records Exempt from the Privacy Act. Such exempt records or information may be law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. Specifically, the exemptions are required to: preclude subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS' and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information.

In addition, because such investigations may arise out of DHS programs and activities, information in this system of records may pertain to national security and related law enforcement matters. In such cases, allowing access to such information could alert subjects of such investigations into actual or potential criminal, civil, or regulatory violations, and could reveal, in an untimely manner, DHS' and other agencies' investigative interests in law enforcement efforts to preserve national security.

Additionally, DHS needs these exemptions in order to protect information relating to background investigations from disclosure to subjects of investigations and others who could interfere with investigatory activities. Specifically, the exemptions are required to: withhold information to the extent it identifies witnesses promised confidentiality as a condition of providing information during the course of the background investigation; prevent subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the privacy of third parties; ensure DHS' and other federal agencies' ability to obtain information from third parties and other sources; and safeguard sensitive information.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies.

Nonetheless, DHS will examine each separate request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

Again, DHS shall not assert any exemption with respect to information submitted by and collected from the individual or the individual's representative in the course of any redress process associated with the underlying System of Records.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Sensitive information, Privacy, Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. At the end of Appendix C to Part 5, add the following new paragraph:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

3. DHS–ALL–005, Redress and Response Records System. A portion of the following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g); however, these exemptions apply only to the extent that information in this system records is recompiled or is created from information contained in other systems of records subject to such exemptions

pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). *Further, no exemption shall be asserted with respect to information submitted by and collected from the individual or the individual's representative in the course of any redress process associated with this system of records.* After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained. *Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:*

(a) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected terrorist by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (c)(4) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(c) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement counterterrorism, investigatory and intelligence records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism, law enforcement, or intelligence investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(d) From subsection (e)(1) because it is not always possible for DHS or other agencies to know in advance what information is relevant and necessary for it to complete an identity comparison between the individual seeking redress and a known or suspected terrorist. Also, because DHS and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(e) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism, law enforcement, or intelligence efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, law enforcement, or intelligence investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(f) From subsection (e)(3), to the extent that this subsection is interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism, law enforcement, or intelligence efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(g) From subsections (e)(4)(G), (H) and (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(h) From subsection (e)(5) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision, however, the DHS has implemented internal quality assurance procedures to ensure that data used in the redress process is as thorough, accurate, and current as possible. In addition, in the collection of information for law enforcement, counterterrorism, and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. The DHS has, however, implemented internal quality assurance procedures to ensure that the data used in the redress process is as thorough, accurate, and current as possible.

(i) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(j) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(k) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: January 12, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. 07–191 Filed 1–12–07; 3:38 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–07–03]

Cattlemen's Beef Promotion and Research Program; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This action announces the Agricultural Marketing Service's (AMS) review of the Cattlemen's Beef Promotion and Research Program, which is conducted under the Beef Promotion and Research Order (Order), under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice must be received by March 19, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to Kenneth R. Payne, Chief, Marketing Programs, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Fax: (202) 720–1125; via e-mail at *beefcomments@usda.gov* or online at *www.regulations.gov.* All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. Comments will be available for public inspection via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-beef.htm* or during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed

Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251 or e-mail *Kenneth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION: The Order (7 CFR part 1260) is authorized under the Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*). This program is a national beef program for beef and beef product promotion, research, consumer information, and industry information as part of a comprehensive strategy to strengthen the beef industry's position in the marketplace by maintaining and expanding existing domestic and foreign markets and by developing new markets for beef and beef products. The program is funded by a mandatory assessment of $1-per-head, collected each time cattle are sold. All producers owning and marketing cattle, regardless of the size of their operation or the value of their cattle, must pay the assessment. A comparable assessment is collected on all imported cattle, beef, and beef products. Assessments collected under this program are used for promotion, research, consumer information, and industry information.

The national program is administered by the Cattlemen's Beef Board (Board), which has 104 producer and importer members. Board members serve 3-year terms, but no individual may serve more than two consecutive 3-year terms. Producer members represent 35 States and 4 geographic units. The program became effective on July 18, 1986, when the Order was issued. Assessments began on October 1, 1986.

On February 18, 1999, AMS published in the **Federal Register** (64 FR 8014) its plan to review certain regulations. On January 4, 2002, AMS published in the **Federal Register** (67 FR 525) an update to its plan to review regulations, including the Cattlemen's Beef Promotion and Research Program, which is conducted under the Order, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations that, although may not meet the threshold requirement under section 610 of the RFA, warrant review. Accordingly, this notice and request for comments is made for the Order.

The purpose of the review is to determine whether the Order should continue without change or whether it should be amended or rescinded (consistent with the objectives of the Act) to minimize the impact on small entities. AMS will consider the following factors: (1) The continued need for the Order; (2) The nature of complaints or comments received from the public concerning the Order; (3) the complexity of the Order; (4) the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Written comments, views, opinions, and other information regarding the Order's impact on small businesses are invited.

Authority: 7 U.S.C. 2901–2918.

Dated: January 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–598 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

RIN 1904–AB67

Alternative Fuel Transportation Program; Replacement Fuel Goal Modification

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE or Department).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Office of Energy Efficiency and Renewable Energy proposed to amend the Replacement Fuel Goal provided under the Energy Policy Act of 1992 (EPAct 1992), Public Law 102–486. 71 FR 54771 (September 19, 2006). The purpose of the proposed amendment is to revise the goal to a level which is achievable, in accordance with requirements under section 504 of EPAct 1992.

Due to technical difficulties in receiving the electronic comments on the proposed rule for the Replacement Fuel Goal, the comment period, which originally ended on November 3, 2006, is reopened and comments will be accepted until January 31, 2007, to ensure that all comments submitted during the original comment period are entered in the docket. All comments already received by DOE have been posted in the written comments section of the electronic docket at *http://www1.eere.energy.gov/vehiclesandfuels/epact/private/plg_docket.html.* If comments were previously submitted but are not posted in this location, the comments should be resubmitted to DOE prior to the new deadline.

DATES: The comment period for the proposed rule published on September 19, 2006 which ended on November 3, 2006 is reopened and extended to January 31, 2007.

ADDRESSES: You may submit comments, identified by the number RIN 1904–AB67, by either of the following methods:

—E-mail: Submit through both *regulatory_info@afdc.nrel.gov* and *dana.o'hara@hq.doe.gov.* Include the number 1094–AB67 in the subject line of the message.

— Mail: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2G, RIN 1904–AB67, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–9171; or Mr. Chris Calamita, Office of the General Counsel (GC–72), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–9507.

SUPPLEMENTARY INFORMATION: In the proposed rule published September 19, 2006, DOE proposed to modify the 2010 goal of 30 percent of U.S. motor fuel production to be supplied by replacement fuels, established in section 502(b)(2) of the Energy Policy Act of 1992, because it is not achievable. 71 FR 54771. The Department has authority to review the goal and to modify it, by rule, if it is not achievable, and in doing so may change the percentage level for the goal and/or the timeframe for achievement of the goal. (42 U.S.C. 13254(b).) The Department has preliminarily determined through its analysis that the 30 percent replacement fuel production goal could potentially be met, not by 2010, but at a later date. The Department consequently is proposing to keep the replacement fuel goal of 30 percent originally provided in EPAct 1992 (section 502(b)(2)), but extend the date for achieving the goal to 2030.

Due to technical difficulties in receiving the electronic comments on the proposed rule, the comment period is reopened until January 31, 2007. During the original comment period,

some comments were not accepted by the electronic docket. We believe that all comments originally blocked from submission have since been resubmitted successfully.

However, to ensure that all comments submitted electronically during the original comment period are included in the docket for this rulemaking, we are reopening the comment period. If an interested person submitted a comment electronically during the original comment period, and that comment is not posted on the electronic docket (*http://www1.eere.energy.gov/vehiclesandfuels/epact/private/plg_docket.html*), that comment should be resubmitted as directed under the **ADDRESSES** heading.

Issued in Washington, DC, on January 11, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–607 Filed 1–17–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26719; Airspace Docket No. 06–AAL–41]

Proposed Revision of Class E Airspace; Valdez, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace at Valdez, AK. Two new Standard Instrument Approach Procedures (SIAPs) are being published for the Valdez Airport. Adoption of this proposal would result in modification of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Valdez, AK.

DATES: Comments must be received on or before March 5, 2007.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–26719/Airspace Docket No. 06–AAL–41, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–26719/Airspace Docket No. 06–AAL–41.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would modify Class E airspace at Valdez, AK. The intended effect of this proposal is to modify the Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Valdez Airport, in Valdez, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has drafted two new SIAPs for the Valdez Airport. The approaches are (1) Localizer Type Directional Aid (LDA)/Distance Measuring Equipment (DME)–G, Original and (2) LDA–H, Original. The LDA–G is a Special procedure and will not be published in the U.S. Terminal Procedures (Alaska) publication. Revised Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Valdez Airport area would be established by this action. The proposed airspace is sufficient to contain aircraft executing the new and existing instrument procedures at the Valdez Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this

document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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 1, 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 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Valdez Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Valdez, AK

Valdez Pioneer Field, AK
(Lat. 61°08′02″ N, long. 146°14′54″ W.)
Valdez Localizer
(Lat. 61°07′58″ N, long. 146° 15′47″ W.)
Johnstone Point VORTAC
(Lat. 60°28′51″ N, long. 146°35′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Valdez Airport, AK, and within 3.1 miles each side of the Valdez Localizer front course extending from the 6.6-mile radius to 12.8 miles southwest of the Valdez Localizer; and that airspace extending upward from 1,200 feet above the surface within 50 miles of the Johnstone Point VORTAC, AK, extending clockwise from the Johnstone Point VORTAC, AK, 177°(M)/200°(T) radial to the 053°(M)/076°(T) radial.

* * * * *

Issued in Anchorage, AK, on January 10, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Area Group.

[FR Doc. E7–601 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 255

Guides Concerning the Use to Endorsements and Testimonials in Advertising

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests public comment on the overall costs, benefits, and regulatory and economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising (''the Guides''), as part of the Commission's systematic review of all current regulations and guides. The Commission is also releasing consumer research it commissioned regarding the messages conveyed by consumer endorsements. The Commission is seeking comment on this research and upon several other specific endorsement-related issues.

DATES: Written comments must be received by March 19, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Endorsement Guides Review, Project No. P034520'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex S), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by using the following Web link: *http://secure.commentworks.com/ftc-endorsements* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link *http://secure.commentworks.com/ftc-endorsements.* If this notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it received, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

receives before placing those comments on the FTC Web sites. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Shira Modell, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3116.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1972, the Commission published for public comment proposed Guides Concerning the Use of Endorsements and Testimonials in Advertising, 37 FR 25548 (1972). Extensive comment was received from interested parties. On May 21, 1975, the Commission promulgated, under the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 41–58, three sections of the 1972 proposal as final guidelines (16 CFR 255.0, 255.3 and 255.4) and republished three others, in modified form, for additional public comment 40 FR 22127 (1975). Public comment was received on the three re-proposed guidelines, as well as on one of the final guidelines. On January 18, 1980, the Commission promulgated three new sections as final guidelines (16 CFR 255.1, 255.2 and 255.5) and modified one example to one of the final guidelines adopted in May 1975 (16 CFR 255.0 Example 4). 45 FR 3870 (1980).

The Guides are designed to assist businesses and others in conforming their endorsement and testimonial advertising practices to the requirements of Section 5 of the FTC Act. Although the Guides are interpretive of laws administered by the Commission, and thus are advisory in nature, proceedings to enforce the requirements of law as explained in the Guides can be brought under the FTC Act.

The Guides define both endorsements and testimonials broadly to mean any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. 16 CFR 255.0(a) and (b). The Guides state that endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. 16 CFR 255.1(a). Furthermore, endorsements may not contain any representations that would be deceptive, or could not be substantiated, if made directly by the advertiser. *Id.*

The Guides advise that an advertisement employing a consumer endorsement on a central or key attribute of a product will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve. 16 CFR 255.2(a). If an advertiser does not have adequate substantiation that the endorser's experience is representative, the advertisement should contain a clear and conspicuous disclosure. *Id.*

The Guides define an expert endorser as someone who, as a result of experience, study or training, possesses knowledge of a particular subject that is superior to that generally acquired by ordinary individuals. 16 CFR 255.0(d). An expert endorser's qualifications must, in fact, give him or her the expertise that he or she is represented as possessing with respect to the endorsement. 16 CFR 255.3(a). Moreover, an expert endorsement must be supported by an actual exercise of expertise and the expert's evaluation of the product must have been at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented. 16 CFR 255.3(b).

Among other things, the Guides also state that:

(1) Advertisements presenting endorsements by what are represented to be ''actual consumers'' should utilize actual consumers, or clearly and conspicuously disclose that the persons are not actual consumers. 16 CFR 255.2(b).

(2) An organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. 16 CFR 255.4.

(3) When there is a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience), such connection must be fully disclosed. 16 CFR 255.5.

II. Regulatory Review Program

The Commission has determined to review all of its rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's existing rules and guides, and their regulatory and economic impact. The information thus obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising; possible conflict between the Guides and state, local, or other federal laws; and the effect on the Guides of any technological, economic, or other industry changes.

Specifically, the Commission solicits written public comment on the following questions with respect to the guides appearing in 16 CFR 255.

(1) Is there a continuing need for the Guides?

(a) What benefits have the Guides provided to consumers?

(b) Have the Guides imposed costs on consumers?

(2) What changes, if any, should be made to the Guides to increase their benefits to consumers?

(a) How would these changes affect the cost the Guides impose on businesses and others following their suggestions?

(b) How would these changes affect the benefits to consumers?

(3) What significant burdens or costs, including costs of compliance, have the Guides imposed on businesses and others following their suggestions?

(a) Have the Guides provided benefits to those following their suggestions? If so, what benefits?

(4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on those following their suggestions? How would these changes affect the benefits provided by the Guides?

(5) Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Guides were issued, what effects, if any, have changes in relevant technology, such as email and the Internet, or economic conditions had on the Guides?

III. Consumer Endorsements and Extrinsic Evidence

In conjunction with its regulatory review of the Guides, the Commission is releasing reports on two studies it commissioned regarding the messages conveyed by consumer endorsements. Both studies are available on the Commission's Web site, *http://www.ftc.gov*, or from the Commission's Public Reference Office, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The first report, ''The Effect of Consumer Testimonials and Disclosures of Ad Communication for a Dietary Supplement'' (''the Endorsement Booklet Study''), can be found at *http://www.ftc.gov/reports/endorsements/study1/report.pdf.*[2] It reports the results

[2] Questionnaires and advertisements used in the study and resulting data from the study are

Continued

of a consumer survey, conducted in the course of a law enforcement investigation, that examined the communication effects of a promotional booklet for a dietary supplement. The booklet consisted solely of three pages of consumer endorsements, primarily from senior citizens, touting the product's efficacy for treating various diseases and conditions. The survey was designed to examine whether consumer endorsements by themselves communicate product efficacy (*i.e.*, that the product works for the user discussed in the testimonials) and typicality (*i.e.,* that endorsers' experiences are representative of what consumers will generally achieve with the advertised product), and whether any of several prominent disclosures qualify the claims conveyed by the advertisements.

According to the authors, the study suggest ''that multiple testimonials about a product effectively communicate efficacy claims, *i.e.,* that the product works for the uses discussed in the testimonials. Testimonials also appear to communicate that the product will work for all, most, or about half of the people who use it. Finally, the study suggests that prominent disclosures in ads containing multiple testimonials may be ineffective in limiting the communication of efficacy and typicality claims. This study used disclosures that were more prominent and stronger than the disclosures typically used in ads containing testimonials.''

The second report, ''Effects of Consumer Testimonials in Weight Loss, Dietary Supplement and Business Opportunity Advertisements'' (''the Second Endorsement Study''), can be found at *http://www.ftc.gov/reports/endorsements/study2/report.pdf*.[3] It reports the results of a consumer survey examining the messages conveyed to consumers by one-page print advertisements containing consumer endorsements for a weight loss program, a cholesterol-lowering dietary supplement, or a business opportunity. Advertisements contained testimonials by either one or five individuals who claimed to have achieved specific (that is, numerically quantified) results with the advertised product or system (*e.g.*, ''I am earning an extra $2,300 a month.''). Some of the advertisements also included one of several disclosures regarding the typicality of the consumer endorsers' experiences. The study was designed to explore these advertisements' communication of product efficacy and typicality.

According to the authors, the testimonials tested in this study communicated to a substantial percentage of consumers that the advertised products:

- Would enable new users to achieve results similar to those portrayed by the testimonials (*i.e.*, the testimonialists communicated product efficacy); and
- Would enable a substantial proportion (half or more) of new users to achieve results similar to those portrayed by the testimonialists (*i.e.*, the testimonials communicated typicality).

The study authors also concluded that two of the disclosures tested (''results not typical'' and ''experiences of a few'') in most cases failed to significantly reduce the communication of efficacy and typicality. The authors concluded that a third disclosure (which stated how much weight the average user loses in three months), tested on the advertisement for the weight loss program, did significantly reduce such communication in most cases.

The Commission solicits written public comment on the following questions.

(1) What are the implications and limitations of the Endorsement Booklet Study with respect to the question of whether consumer testimonials about a product's efficacy or performance convey that the product is effective for the purpose(s) discussed in the testimonials? What are the implications and limitations of the study with respect to the question of whether consumer testimonials convey that the endorser's experience is representative of what consumers will generally achieve with the advertised product? Is there any other research or evidence that would be relevant in answering these questions?

(2) What are the implications and limitations of the Endorsement Booklet Study with respect to the effectiveness of disclaimers in limiting any communication of product efficacy from consumer testimonials? What are the implications and limitations of the study with respect to the effectiveness of disclaimers in limiting any communication of typicality from consumer testimonials? Is there any other research or evidence that would be relevant in answering these questions?

(3) What are the implications and limitations of the Second Endorsement Study with respect to the question of whether consumer testimonials about a product's efficacy or performance convey that the product is effective for the purpose(s) discussed in the testimonials? What are the implications and limitations of the Second Endorsement Study with respect to the question of whether consumer testimonials convey that the endorser's experience is representative of what consumers will generally achieve with the advertised product? Is there any other research or evidence that would be relevant in answering these questions?

(4) What are the implications and limitations of the Second Endorsement Study with respect to the effectiveness of disclaimers in limiting any communication of product efficacy from consumer testimonials? What are the implications and limitations of the Second Endorsement Study with respect to the effectiveness of disclaimers in limiting any communication of typicality from consumer testimonials? Is there any other research or evidence that would be relevant in answering these questions?

(5) Is there any other research that would be relevant in assessing the messages communicated by consumer testimonials?

(6) Is there any other research that would be relevant in assessing the effectiveness of disclaimers in limiting any communication from consumer testimonials of product efficacy or typicality?

(7) In 2002, Commission Staff analyzed the use of consumer testimonials and disclaimers in the context of weight-loss advertising, *see* Weight-Loss Advertising: An Analysis of Current Trends, a Federal Trade Commission Staff Report, Sept. 2002. (*http://www.ftc.gov/bcp/reports/weightloss.pdf*).

(a) What other evidence is there regarding the prevalence or effect of consumer testimonials, either generally or for specific product categories, especially with respect to the typicality of the testimonials?

(b) What other evidence is there regarding the prevalence or effect of disclaimers of typicality?

(8) What other research is there on the role of consumer endorsements in marketing?

(9) The current Guides allow advertisers to use testimonials that are not generally representative of what consumer can expect from the advertised product so long as the advertisers clearly and conspicuously disclose either (1) what the generally expected performance would be in the depicted circumstances, or (2) the limited applicability of the depicted results to what consumers can generally

available at *http://www.ftc.gov/reports/endorsements/study1/materials/*.

[3] Questionnaires and advertisements used in the study and resulting data from the study are available at *http://www.ftc.gov/reports/endorsements/study2/materials/*.

expect to receive, *i.e.*, that the depicted results are not representative.

(a) What would be the effects on advertisers and consumers of requiring clear and conspicuous disclosure of the generally expected performance whenever the testimonial is not generally expected performance whenever the testimonial is not generally representative of what consumers can expect from the advertised product?

(b) What information, other than what is required to substantiate an efficacy or performance claim, would be required for an advertiser to determine generally expected results? How difficult would it be for the advertiser to make this determination? Do the answers to these questions vary by product type and, if so, how?

IV. Material Connections

Section 255.5 of the Guides states that advertisers must disclose connections between themselves and their endorsers that might materially affect the weight or credibility of the endorsement (*i.e.,* the connection is not reasonably expected by the audience).

Section 255.5 also indicates that consumers will ordinarily expect that endorsers who are well known personalities (*i.e.,* celebrities) or experts will be compensated for their endorsements; therefore, an advertiser need not disclose the payment of compensation to such endorsers. A September 2003 petition submitted to the Commission by Commercial Alert suggests an exception to the principle that consumers will ordinarily expect that endorsers who are well known personalities are compensated for their endorsements. According to an August 11, 2002 New York Times article cited by the petitioners, ''dozens of celebrities * * * have been paid hefty fees to appear on television talk shows and morning news programs and to disclose intimate details of ailments that afflict them or people close to them. Often, they mention brand-name drugs without disclosing their financial ties to the medicine's maker.'' The Commission is interested in any extrinsic evidence regarding consumer expectations about celebrity endorsements made during an interview. Specifically, the Commission solicits written public comment on the following questions.

(1) Is there any research showing whether consumers have any expectations regarding compensation paid to celebrities who speak favorably about particular products while being interviewed outside the context of an advertisement (*e.g.,* during television talk shows) and, if so, what does that research show?

(2) Would knowledge that a celebrity endorsing a product during such an interview is being paid for doing so affect the weight or credibility consumers give to the celebrity's endorsement?

V. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be received on or before March 19, 2007. All comments should be filed as prescribed in the **ADDRESSES** section above.

List of Subjects in 16 CFR Part 255

Advertising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 07–197 Filed 1–17–07; 8:45 am]

BILLING CODE 6750–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1211

Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is proposing to amend 16 CFR part 1211, Safety Standard for Automatic Residential Garage Door Operators, to reflect changes made by Underwriters Laboratories, Inc. in its standard UL 325.

DATES: Written comments in response to this document must be received by the Commission no later than February 20, 2007.

ADDRESSES: Comments should be filed by e-mail to *cpsc-os@cpsc.gov*. Comments also may be filed by telefacsimile to (301) 504–0127 or they may be mailed or delivered, preferably in five copies, to the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7923. Comments should be captioned ''Garage door operators.''

FOR FURTHER INFORMATION CONTACT: John Murphy, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland, 20814–4408, telephone 301–504–7664 or e-mail: *jmurphy@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The Commission issued part 1211 on December 21, 1992 to minimize the risk of entrapment by residential garage door openers. As mandated by section 203 of Public Law 101–608, subpart A of part 1211 codifies garage door operator entrapment provisions of Underwriter Laboratories, Inc. (''UL'') standard UL 325, third edition, ''Door, Drapery, Louver and Window Operators and Systems.'' Subparagraph (c) of section 203 of Public Law 101–608 also required the Commission to incorporate into part 1211 any revisions that UL proposed to the entrapment protection requirements of UL 325, unless the Commission notified UL that the revision does not carry out the purposes of Public Law 101–608.

Recently, UL revised some provisions of UL 325 in response to a request from Commission staff. The staff identified several incidents in which children became entrapped beneath a garage door that had been left partially open. In most of these incidents, a child tried to crawl under the partially open door and became stuck under the door. A bystander pressed the wall control button thinking the door would go up and release the child. Instead, the garage door moved down compressing and further entrapping the child. The Commission determined that the entrapment related revisions incorporated into the UL standard do carry out the purposes of Public Law 101–608. The proposed rule would revise part 1211 to reflect the changes UL made to UL 325. UL set an effective date of February 21, 2008 for these provisions in the UL standard. The Commission proposes the same effective date for these provisions in the CPSC standard.

To address the same entrapment hazard, UL also added to its standard a requirement that the statement ''Never go under a stopped partially open door'' be added to garage door operator instruction manuals. The Commission is proposing to make this change in the CPSC standard as well. UL set an effective date of September 14, 2004 for this provision in UL 325. The Commission proposes that the instruction manual provision in the CPSC standard would become effective when it is published as a final rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant impact on a substantial number of small

entities. The changes are minor. Moreover, UL has already made these changes to its UL 325 standard which is widely followed by the industry. The Commission also certifies that this rule will have no environmental impact. The Commission's regulations state that safety standards for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this proposed rule alters that expectation.

Public Law 101–608 contains a preemption provision. It states: ''those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule'' are subject to preemption under 15 U.S.C. 2075. Public Law 101–608, section 203(f).

List of Subjects in 16 CFR Part 1211

Consumer protection, Imports, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 1211 is proposed to be amended as follows:

PART 1211—SAFETY STANDARDS FOR AUTOMATIC RESIDENTIAL GARAGE DOOR OPENERS

1. The authority citation for part 1211 continues to read as follows:

Authority: Sec. 203 of Public Law 101–608, 104 Stat. 3110; 15 U.S.C. 2063 and 2065.

2. Section 1211.7 is amended by revising paragraphs (a), (b), (f) and (g) to read as follows:

§ 1211.7 Inherent entrapment protection requirements.

(a)(1) Other than for the first 1 foot (305mm) of door travel from the full upmost position both with and without any external entrapment protection device functional, the operator of a downward moving residential garage door shall initiate reversal of the door within 2 seconds of contact with the obstruction as specified in paragraph (b) of this section. After reversing the door, the operator shall return the door to, and stop at, the full upmost position. Compliance shall be determined in accordance with paragraphs (b) through (i) of this section.

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when the operator senses a second obstruction during the upward travel.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm).

(b)(1) A solid object is to be placed on the floor of the test installation and at various heights under the edge of the door and located in line with the driving point of the operator. When tested on the floor, the object shall be 1 inch (25.4 mm) high. In the test installation, the bottom edge of the door under the driving force of the operator is to be against the floor when the door is fully closed.

(2) For operators other than those attached to the door, a solid object is not required to be located in line with the driving point of the operator. The solid object is to be located at points at the center, and within 1 foot of each end of the door.

(3) To test operators for compliance with requirements in paragraphs (a)(3), (f)(3), and (g)(3) of this section, § 1211.10(a)(6)(iii), and § 1211.13(c), a solid rectangular object measuring 4 inches (102 mm) high by 6 inches (152 mm) wide by a minimum of 6 inches (152 mm)long is to be placed on the floor of the test installation to provide a 4-inch (102 mm) high obstruction when operated from a partially open position.

* * * * *

(f)(1) An operator, using an inherent entrapment protection system that monitors the actual position of the door, shall initiate reversal of the door and shall return the door to, and stop the door at, the full upmost position in the event the inherent door operating ''profile'' of the door differs from the originally set parameters. The entrapment protection system shall monitor the position of the door at increments not greater than 1 inch (25.4 mm).

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm).

(g)(1) An operator, using an inherent entrapment protection system that does not monitor the actual position of the door, shall initiate reversal of the door and shall return the door to and stop the door at the full upmost position, when the lower limiting device is not actuated in 30 seconds or less following the initiation of the close cycle.

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel. When the door is stopped manually during its descent, the 30 seconds shall be measured from the resumption of the close cycle.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm). When the door is stopped manually during its descent, the 30 seconds shall be measured from the resumption of the close cycle.

3. Section 1211.10 is amended by revising paragraph (a)(1) and adding a new paragraph (a)(6) to read as follows:

§ 1211.10 Requirements for all entrapment protection devices.

(a) *General requirements.* (1) An external entrapment protection device shall perform its intended function when tested in accordance with paragraphs (a)(2) through (4) and (6) of this section.

* * * * *

(6)(i) An operator using an external entrapment protection device, upon detecting a fault or an obstruction in the path of a downward moving door, shall initiate reversal and shall return the door to, and stop the door at, the full upmost position.

(ii) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel.

(iii) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator has reversed the door a minimum of 2 inches (50.8 mm).

4. Section 1211.13 is amended by adding a new paragraph (c) to read as follows:

§ 1211.13 Inherent force activated secondary door sensors.

(a) * * *

(b) * * *

(c) *Obstruction test.* For a door traveling in the downward direction,

when an inherent secondary entrapment protection device senses an obstruction and initiates a reversal, a control activation shall not move the door downward until the operator reverses the door a minimum of 2 inches (50.8 mm). The test is to be performed as described in § 1211.7(b)(3).

5. Section 1211.14 is amended by revising paragraph (b)(2) to read as follows:

§ 1211.14 [Amended]

(a) * * *

(b) *Specific required instructions.*

(1) * * *

(2) The User Instructions shall include the following instructions:

Important Safety Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and Follow all Instructions.

2. Never let children operate, or play with door controls. Keep the remote control away from children.

3. Always keep the moving door in sight and away from people and objects until it is completely closed. No One Should Cross the Path of the Moving Door.

4. NEVER GO UNDER A STOPPED PARTIALLY OPEN DOOR.

5. Test door opener monthly. The garage door MUST reverse on contact with a 1½ inch object (or a 2 by 4 board laid flat) on the floor. After adjusting either the force or the limit of travel, retest the door opener. Failure to adjust the opener properly may cause severe injury or death.

6. For products requiring an emergency release, if possible, use the emergency release only when the door is closed. Use caution when using this release with the door open. Weak or broken springs may allow the door to fall rapidly, causing injury or death.

7. Keep Garage Door Properly Balanced. See owner's manual. An improperly balanced door could cause severe injury or death. Have a qualified service person make repairs to cables, spring assemblies and other hardware.

8. Save These Instructions.

Dated: January 11, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–580 Filed 1–17–07; 8:45 am]

BILLING CODE 6335–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 302

[EPA–HQ–RCRA–2006–0984, FRL–8270–7]

RIN 2050–AG15

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend today the list of hazardous wastes from non-specific sources (called F-wastes) under 40 CFR 261.31 by modifying the scope of the EPA Hazardous Waste No. F019 (Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process). The Agency would be amending the F019 listing to exempt wastewater treatment sludges from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process. EPA is proposing two options that would require that the wastes be disposed in a landfill unit that meets certain liner design criteria. These proposed modifications to the F019 listing would not affect any other wastewater treatment sludges either from the chemical conversion coating of aluminum, or from other industrial sources. Additionally, this action would amend the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list of Hazardous Substances and Reportable Quantities under 40 CFR 302.4 so that the F019 listing description is consistent with the proposed amendment to F019 under 40 CFR 261.31.

DATES: Comments must be received on or before March 19, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before February 20, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2006–0984 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *rcra.docket@epamail.epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2006–0984.
- *Mail:* Comments may be submitted by mail to: OSWER Docket, Office of Solid Waste, U.S. Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2006–0984. Please include a total of three copies of your comments. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* Deliver your comments to: EPA Docket Center, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2006–0984. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2006–0984. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as a part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects

or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. The Public Meeting Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the OSWER Docket and the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. James Michael of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (E-mail address and telephone number: *michael.james@epa.gov,* (703) 308–8610). For information on the procedures for submitting CBI data, contact Ms. LaShan Haynes (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (E-mail address and telephone number: *haynes.lashan@epa.gov,* (703) 605–0516).

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who is Potentially Affected by This Proposed Rule?

This regulation could directly affect businesses that generate certain wastes from the manufacturing of motor vehicles in the (1) automobile manufacturing industry and (2) light truck/utility vehicle manufacturing industry (NAICS codes 336111 and 336112, respectively). Other motor vehicle manufacturing industries (e.g., heavy duty truck or motor home manufacturing (NAICS code 336120)) are not affected by this rule. The wastes affected by this proposed rule are wastewater treatment sludges generated from the chemical conversion coating of aluminum using a zinc phosphating process and are currently listed as EPA Hazardous Waste No. F019 (see 40 CFR 261.31). If the rule is promulgated in either of the two ways it is proposed today, these wastes would not be hazardous waste, provided the wastes are disposed in a landfill unit that meets certain liner design criteria. Impacts on potentially affected entities are summarized in Section VI of this Preamble. The document, ''Estimate of Potential Economic Impacts for USEPA's Proposed Amendment to RCRA Hazardous Wastecode F019 to Exclude Motor Vehicle Manufacturing Industries,'' presents an analysis of potentially affected entities (hereinafter, referred to as the Economics Background Document). This document is available in the docket established in support of today's proposed rule. Entities potentially affected by this action are at least 14 current generators within the motor vehicle manufacturing industry consisting of six auto and eight light truck/utility vehicle plants and up to 39 other facilities in these two industries that may begin applying aluminum parts and could potentially generate F019 waste.

To determine whether your facility is affected by this action, you should examine 40 CFR Parts 260 and 261 carefully, along with the proposed regulatory language amending Chapter I of the Code of Federal Regulations (CFR). This language is found at the end of this **Federal Register** notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **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 *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information submitted on 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 the procedures set forth in 40 CFR part 2.

2. *Tips for Preparing your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternative and substitute language for your requested changes.
- Describe any assumptions that you used and provide any technical information and/or data that you used.
- If you estimate potential burden or costs, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Preamble Outline

I. Legal Authority

EPA proposes these regulations under the authority of Sections 2002 and 3001(b) and (f), 3004(d)–(m) and 3007(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, most importantly by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912, 6921(b), 6924(d)–(m) and 6927(a). These statutes combined are commonly referred to as the ''Resource Conservation and Recovery Act'' (RCRA) and will be referred to as such for the remainder of this Notice.

Because EPA is modifying the national listing of F019, EPA believes the appropriate statutory authority is that found in section 3001 (b), rather than the authority in section 3001 (f). RCRA section 3001 (f) pertains solely to the exclusion of a waste generated at a particular facility in response to a petition. Accordingly, neither the procedures nor the standards established in that provision, or in EPA's regulations at 40 CFR 260.22 are applicable to this rulemaking.

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority under which the CERCLA aspects of this rule are promulgated.

II. List of Acronyms

ACRONYMS

Acronym	Definition
BRS	Biennial Reporting System
CBI	Confidential Business Information
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
COPCs	Constituents of Potential Concern
CWA	Clean Water Act
DAF	Dilution and Attenuation Factor
DRAS	Delisting Risk Assessment Software
EPA	Environmental Protection Agency
ICR	Information Collection Request
IWEM	Industrial Waste Management Evaluation Model
LDR	Land Disposal Restrictions
MCL	Maximum Contamination Limit
NAICS	North American Industrial Classification System
NTTAA	National Technology and Transfer Act
OMB	Office of Management and Budget
OSWER	Office of Solid Waste and Emergency Response
PRA	Paperwork Reduction Act
POTW	Publicly Owned Treatment Works ppm parts per million
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
RQ	Reportable Quantity
SIC	Standard Industrial Classification
TRI	Toxics Release Inventory
UMRA	Unfunded Mandates Reform Act
WWT	Wastewater Treatment

III. Overview

Purpose of the Proposed Rule

The Agency is proposing to amend the list of hazardous wastes from non-specific sources under 40 CFR 261.31 by modifying the scope of EPA Hazardous Waste No. F019, which currently reads: ''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.'' The Agency is proposing to amend the F019 listing to exempt the wastewater treatment sludge generated from zinc phosphating, when zinc phosphating is used in the automobile assembly process and provided the waste is disposed in a landfill unit subject to certain liner design criteria. Specifically, under the two options proposed today, these wastes would not be hazardous if they are disposed in a landfill unit subject to, or otherwise meeting, certain liner requirements. Wastes that meet this condition would be exempted from the listing from their point of generation, and would not be subject to any RCRA Subtitle C management requirements for generation, storage, transport, treatment, or disposal (including the land disposal restrictions). Generators of such wastes may be exempted from the F019 listing if they meet the condition for exemption, and they maintain adequate records. EPA is proposing to require generators to keep records showing that they used a landfill that meets the design requirements.

The motor vehicle manufacturing industry incorporates aluminum into vehicle parts and bodies for the purpose of making them lighter-weight and thus more capable of increasing gas mileage. However, when aluminum is incorporated into the body of an automobile, the conversion coating step in the manufacturing process results in the generation of a RCRA-listed hazardous waste (F019) in the form of a wastewater treatment sludge from the

conversion coating process, while the wastewaters from the conversion coating of steel in the same industry do not generate a listed hazardous waste. By removing the regulatory controls under RCRA, EPA is facilitating the use of aluminum in motor vehicles. The Agency believes that the incorporation of aluminum will be advantageous to the environment since lighter-weight vehicles are capable of achieving increased fuel economy and associated decreased exhaust air emissions.

IV. Background

A. How EPA Regulates Hazardous Waste

EPA's regulations establish two ways of identifying solid wastes as hazardous under RCRA. A waste may be considered hazardous if it exhibits certain hazardous properties (''characteristics'') or if it is included on a specific list of wastes EPA has determined are hazardous (''listing'' a waste as hazardous) because the Agency found them to pose substantial present or potential hazards to human health or the environment. EPA's regulations in the Code of Federal Regulations (40 CFR) define four hazardous waste characteristic properties: ignitability, corrosivity, reactivity, and toxicity (see 40 CFR 261.21–261.24). As a generator, you must determine whether or not a waste exhibits any of these characteristics by testing, or by using your knowledge of the process that produced the waste (see § 262.11(c)).

EPA may also conduct a more specific assessment of a waste or category of wastes and ''list'' them if they meet criteria set out in 40 CFR 261.11. Under the third criterion, identified in 40 CFR 261.11 (a)(3), the Agency may list a waste as hazardous if it contains hazardous constituents identified in 40 CFR part 261, Appendix VIII, and if EPA concludes that ''the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.'' EPA places chemicals on the list of hazardous constituents in Appendix VIII ''if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.'' See 40 CFR 261.11(a)(3). When listing a waste, the Agency also adds any hazardous constituents that serve as the basis for listing the waste to 40 CFR part 261, Appendix VII.

The regulations at 40 CFR 261.31 through 261.33 contain the various hazardous wastes the Agency has listed to date. Section 261.31 lists waste generated from non-specific sources, known as ''F-wastes,'' and contain wastes that are usually generated by various industries or types of facilities. Today's proposed regulations would revise the listing for one of these wastes, F019.

If a waste exhibits a hazardous characteristic, or is listed as a hazardous waste, then it is subject to federal requirements under RCRA. Facilities that generate, transport, treat, store or dispose of such waste must meet hazardous waste management requirements, including the need to obtain permits to operate, are commonly referred to as ''Subtitle C'' facilities. (Subtitle C is the subsection of RCRA that governs the management of hazardous waste. EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR parts 260 through 273.)

The RCRA regulations provide a form of relief for listed wastes through a site-specific process known as ''delisting.'' The regulations governing the delisting process are given at 40 CFR 260.20 and 260.22. These regulations set out a procedure and standards by which persons may demonstrate that a specific waste from a particular generating facility should not be regulated as a listed hazardous waste under Subtitle C of RCRA. Under these regulations, any person may petition EPA to remove its waste from regulation by excluding it from the lists of hazardous wastes contained in Part 261. EPA has granted delistings to various facilities that generate or manage F019 wastes, including motor vehicle manufacturing plants. (See Section IV.D.) As a condition to some of the granted delistings, the facility generating that waste must periodically sample and analyze the waste for the presence and quantity of specific chemical constituents of concern. This periodic sampling and analysis is called ''verification sampling.'' In some cases, facilities submit the results of the verification sampling and analysis to EPA to ensure that the waste's continuing status of nonhazardous is appropriate.

A solid waste, that is determined not to be a listed and/or characteristic hazardous waste, may be managed at ''Subtitle D'' facilities. These facilities are approved by state and local governments and generally impose less stringent requirements on management of wastes than Subtitle C facilities. Subtitle D is the statutory designation for that part of RCRA that deals with disposal of nonhazardous solid waste. EPA regulations affecting Subtitle D facilities are found at 40 CFR parts 240 through 247, and 255 through 258. Regulations for Subtitle D landfills that accept municipal waste (''municipal solid waste landfills'') are in 40 CFR part 258.

B. Overview of F019 Listing

Hazardous Waste No. F019 is defined as ''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.'' The hazardous constituents for which the waste is listed are hexavalent chromium and cyanide (complexed). The F019 wastewater treatment sludge is generated from the rinses and overflows from the chemical conversion coating of aluminum. Chemical conversion coating processes involve the application of a coating to a previously deposited metal or a base metal for increased corrosion protection, lubricity, preparation of the surface for additional coatings, or formulation of a special surface appearance. This manufacturing operation includes chromating, phosphating, metal coloring and immersion plating.

Phosphate conversion coatings produce a mildly protective layer of insoluble crystalline phosphate on the surface of a metal. Phosphate coatings are used to provide a more suitable base for paints and other inorganic coatings, to condition the surfaces for cold forming operations by providing a base for drawing compounds and lubricants, and to impart corrosion resistance to the metal surface by the coating itself or by providing a suitable base for rust-preventive oils or waxes. Phosphate conversion coatings are formed by the immersion of iron, steel or zinc plated steel in a dilute solution of phosphoric acid plus other reagents. Phosphate conversion coatings can also involve spray-on applications.

C. Regulatory History of F006/F019

On May 19, 1980, EPA published an interim final rule listing ''wastewater treatment sludges from electroplating operations'' as EPA Hazardous Waste No. F006. See 40 CFR 261.31 (45 FR 33112). The hazardous constituents for which this waste was listed are cadmium, hexavalent chromium, nickel and complexed cyanide. In response to comments on the interim final regulation, the listing was modified on November 12, 1980 (45 FR 74884) to read as follows: ''wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc

plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and, (6) chemical etching and milling of aluminum.''

Additionally, in response to other comments, the Agency separated ''wastewater treatment sludges from the chemical conversion coating of aluminum'' from the F006 listing and listed them as F019. Commenters had argued that these sludges should not be listed as F006 because they do not contain all four of the constituents for which F006 was listed. That is, commenters contended that these wastes do not typically contain cadmium and nickel. EPA agreed that these wastes did not typically contain cadmium and nickel, but maintained that, since the wastes contain hexavalent chromium and complexed cyanides, they should nevertheless be regulated. The Agency, therefore, listed them as hazardous waste, F019, and only listed hexavalent chromium and complexed cyanides as the constituents of concern for these wastes in Appendix VII of Part 261.[1]

On December 2, 1986 (51 FR 43350), EPA issued an interpretive rule stating that the Agency had re-evaluated its previous interpretations of the scope of the application of F006 and had determined that those interpretations were overly broad. As a result, the Agency stated that the following processes were not included in the F006 listing: chemical conversion coating, electroless plating and printed circuit board manufacturing. EPA further clarified that the F006 listing includes wastewater treatment sludges from: (1) Common and precious metals electroplating, except tin, zinc (segregated basis), aluminum and zinc plating on carbon steel; (2) anodizing, except sulfuric acid anodizing of aluminum; (3) chemical etching and milling, except when performed on aluminum; and, (4) cleaning and stripping, except when associated with tin, zinc, and aluminum plating on carbon steel. While this interpretation removed chemical conversion coating from the scope of F006, it did not affect the F019 listing. That is, wastewater treatment sludges from the chemical conversion coating of aluminum continued to be regulated as F019.

Through a number of delistings and the Agency's evaluation for today's proposal, EPA has since learned that one of the chemical conversion coating operations—zinc phosphating—may not result in the generation of a hazardous wastewater treatment sludge. (See discussion below describing the zinc phosphating process.) Therefore, EPA is proposing today to amend the F019 listing to exempt the wastewater treatment sludges from zinc phosphating, when such phosphating is used at motor vehicle manufacturing plants, provided certain disposal conditions are met.

EPA is not reopening any aspect of the F019 listing other than those specifically identified in this proposal, and will not respond to any comments that address issues beyond the specific proposals outlined in this notice.

D. Description of the Zinc Phosphating-Conversion Coating Process at Motor Vehicle Manufacturing Plants

The zinc phosphating process at motor vehicle manufacturing plants is a multiple stage immersion process. The number of stages in the zinc phosphating process may vary from plant to plant, but they generally involve: cleaning and surface preparation, rinsing, conversion coating and rinsing.

Cleaning and surface preparation: The purpose of this stage is to remove the physical contaminants from the surface of the assembled vehicle body so that the conversion coating will be applied evenly and continuously across the metal surfaces. Typical surface contaminants are metal working oil, rust protection oil, dirt and oxides from corrosion. Since the surface of the metal becomes part of the coating, this stage is particularly important. Improper processing can result in blisters or poor appearance in the metal finish. Cleaning and surface preparation is typically done first with water and surfactants followed by an alkaline solution. The alkaline solution removes microscopic layers of metal to ensure that metal is exposed and available for the chemical conversion reactions.

Rinsing: The rinse stage stops the metal removal by washing away the alkaline solution. Rinsing is done with water followed by an alkaline rinse conditioner, which prepares the metal surface for the conversion coating process.

Conversion coating: During this stage, the conversion coating process converts the metal surface of the assembled vehicle bodies by dissolving the metal and forming ''sites'' into which the zinc phosphate coating is deposited. The zinc phosphate coating provides a stable, corrosion resistant base for painting. The phosphated conversion coating bath contains phosphoric acid with certain metals (zinc and manganese) and accelerators such as nickel. Fluoride is added to control crystal structure and maintain the composition of the bath. Hexavalent chromium and complexed cyanides are not used in this zinc phosphating conversion coating process.[2]

Rinsing: Once the conversion coating process is completed, the assembled vehicle bodies go through a water rinse to stop the conversion coating process and to remove any excess salts from the metal surfaces. A final acidic rinse is then used to seal the pores in the zinc phopshate coating and to remove any excess materials from the metal surfaces. During this final rinse, a sealant is added for additional corrosion protection. From here, the assembled vehicle bodies then proceed to the painting process.

E. Amount of F019 Sludge Generated by the Motor Vehicle Manufacturing Industry

As of 2003, 11 automobile manufacturing plants (NAICS 336111) generated a total of 5,300 tons per year of F019 sludge ranging between 177 and 1,249 tons per year per plant (average of 477 tons per year per plant), and 12 light truck/utility vehicle manufacturing plants (NAICS 336112) generated a total of 9,300 tons per year of F019 sludge ranging between 112 to 1,620 tons per year per plant (average of 772 tons per year per plant). As of year-end 2005, EPA regional offices have delisted 47 former F019 generators in 19 industries, including 35,000 cubic yards (i.e., about 35,000 tons) per year of F019 sludge formerly generated by 15 motor vehicle manufacturing plants. Historically, between 1995 and 2003, the annual count of F019 generators in the motor vehicle manufacturing industries affected by this proposed rule has fluctuated between 10 to 22 generators, and between 8,000 to 13,000 tons per year of F019 sludge generated.

F. Composition of the F019 Sludge

The F019 sludge from motor vehicle manufacturers is generated from dewatering of wastewater, typically

[1] Note that aluminum conversion coating using the zinc phosphating process utilizes nickel, as noted in section IV.D.; thus, nickel is a potential constituent of concern in the waste at issue in this proposed amendment.

[2] The analytical data for sludge samples show the presence of chromium and cyanide. Chromium appears to arise, in part, from the use of trivalent chromium in ''sealing'' during the rinsing step in the process; the source of trace levels of cyanide is not clear. However, levels of hexavalent chromium and cyanide were not present at levels of concern based on EPA's risk assessment (i.e., the ''Technical Support Document: Assessment of Potential Risks from Managing F019 Waste from Motor Vehicle Manufacturing Industry'' in the docket for this proposed rulemaking); also see Section V.B.

yielding a pressed ''filter cake'' with a solids content that ranges between 30% and 50% by weight. Reviewing the Material Safety Data Sheets for the chemicals used in, and prior to, the conversion coating process indicates that a wide range of elements can be expected to be present in the wastewaters and the sludges resulting from wastewater treatment.

The specific chemical constituents that are found in motor vehicle manufacturers' F019 sludge, listed in order of frequency found, are nickel, fluoride, zinc, barium, copper and chromium (all found in 100% of a selected number of samples reviewed); tin, formaldehyde, lead, cobalt, mercury, sulfide and xylenes (found in 70–99% of a selected number of samples reviewed); acrylamide, vanadium, arsenic, cyanide, hexavalent chromium, and ethylbenzene (found in 50–69% of a selected number of samples reviewed).

G. How F019 Sludge Is Currently Managed

According to data from the 2003 RCRA Hazardous Waste Biennial Report (*http://www.epa.gov/enviro/html/brs/brs_query.html*), F019 sludges generated by motor vehicle manufacturers are disposed in RCRA Subtitle C regulated facilities, after de-watering, stabilization and/or other treatment. Although two of the 17 generators in the motor vehicle manufacturing industry reportedly disposed their F019 sludges onsite (about 300 tons/year), all of the 22 automobile and light truck/utility vehicle manufacturing plants in 2003 reported managing F019 sludges offsite at RCRA Subtitle C regulated landfills in six states (IL, LA, MI, OK, PA, and SC), located at transport distances of 19 to 1,500 miles (average 400 miles).

EPA recognizes that several recent rulemakings related to RCRA-listed hazardous wastes have proposed conditional exemptions from the regulatory definition of ''solid waste'' when such wastes, by virtue of their being recycled, are treated more as commodities than as wastes. For example, see 68 FR 61588, October 28, 2005. The Agency is not aware of any recycling or reclamation of F019 sludges; therefore, EPA believes that current market conditions do not support the recycling of F019 waste for the purposes of recovering the metal content of such waste. EPA requests comment on whether our understanding is accurate and whether recycling of F019 waste is economically feasible under today's market conditions. If recycling of F019 wastes becomes economically feasible or beneficial in the future, the Agency will consider its options for how to address this, including through a subsequent rulemaking, such as the ongoing rulemaking related to the definition of solid waste.

V. Approach Used in This Proposed Listing Amendment

A. Concentration-Based Approach vs. Disposal in a Landfill Meeting Certain Liner Design Criteria

On April 22, 2005, EPA, through a posting on EPA's website, indicated that the Agency was in the process of considering a possible amendment to the F019 hazardous waste listing under RCRA. This possible amendment would have exempted waste water treatment sludges from the zinc phosphating processes at automotive assembly plants in the motor vehicle manufacturing industry when concentrations of constituents of concern in those wastes fell below risk-based exemption levels. On the F019 Web page, EPA provided waste sampling data and the methodology that the Agency would use in considering the revision of the F019 listing using a concentration-based approach. Interested parties were invited to review and comment on the information collected to support the possible amendment that EPA was considering. The comment period for the web posting closed on June 1, 2005. Twelve comments were received. All commenters supported a revision to the F019 listing, although some expressed concern regarding testing conditions for potential chemicals of concern in the waste and how the concentration-based exemption would be structured. Copies of these comments are included in the docket for today's proposed rulemaking.

Below in Section V. B., EPA presents a detailed discussion of the Agency's approach in assessing the potential risks to human health and the environment and how EPA chose the potential constituents of concern that could be used in the concentration-based approach. However, as the Agency conducted the risk analysis and developed the implementation schemes to go with this approach, several issues arose. First, a variety of issues arose related to establishing precise exemption concentrations for the waste, including: the amount of waste ultimately disposed in the modeled landfill (which is dependent on annual volume and years of disposal); which toxicity benchmarks to use (e.g., drinking water standards or other health-based values); and exposure assumptions built into the Delisting Risk Assessment Software (DRAS) model (e.g., groundwater consumption for different age groups). (See Section V. B. for a more detailed discussion on the documentation of the DRAS model.)

Second, in order to accommodate the wide range in the volumes of F019 wastewater treatment sludges generated at the different automotive assembly plants, the Agency would need to develop different exemption levels for each of the constituents of concern for the various annual waste volumes (e.g., 500 cubic yards to 5000 cubic yards per year at 500 cubic yard intervals). In order to ensure compliance with the concentration-based approach, the automotive assembly plants would need to maintain detailed records on the amount of waste generated and implement a representative sampling and analysis program to ensure that they met the exemption levels for the volume of waste each facility generated annually. Furthermore, two constituents were identified that presented potential risks to human health (arsenic and nickel) in an unlined landfill scenario as modeled by DRAS version 2. Rather than attempt to define precise exemption levels for constituents of concern, the Agency believes that it is simpler to require disposal in a landfill that is subject to certain liner design requirements. The Agency is proposing two options for the liner design requirements. Under option one, EPA is proposing that the landfill unit meet the liner requirements for municipal landfills in 40 CFR 258.40 or other liner designs containing a composite liner.[3] Under option two, the Agency is proposing to allow disposal in state-permitted municipal solid waste landfills (subject to regulations in 40 CFR 258) and state-permitted industrial solid waste landfills (subject to Federal regulations at 40 CFR 257), provided the landfill unit includes at least a single clay liner,[4] and also in permitted hazardous waste landfills. This second option could ease implementation,

[3] As noted in Section V.B. below, the Federal regulations for municipal solid waste landfills require that new units (and lateral expansions of existing units) meet design criteria for composite liners and leachate collection systems (or other approved performance standards). A composite liner as defined in § 258.40 consists of a combination of a synthetic liner and an underlying compacted soil/clay liner. Disposal in hazardous waste landfills would also be allowed, because the regulations in § 264.301 and § 265.301 include composite liners.

[4] For this option, EPA assumes that single clay liners, even in older landfills, would meet the typical construction standards, i.e., the clay liner would have a low hydraulic conductivity (i.e., 1×10^{-7} cm/sec) and be of sufficient thickness to ensure structural stability (i.e., 2 to 3 feet of compacted clay). EPA seeks comment on this assumption.

because the generator could rely on the state permitting agency to assure proper liner design. The Agency is seeking comment on this second approach, because the modeling results indicate that units with a less stringent liner design may also reduce the risk from the hazardous constituents of concern to acceptable levels.

As discussed further below, EPA found that disposal of the waste under evaluation in such lined landfills would ensure protection of human health and the environment, without the need for testing and tracking of waste volume. EPA believes that the proposed approaches outlined in today's notice would be easier and less costly to implement than the concentration-based approach, but provides at least the same level of protection for human health and the environment.

B. Overview of the Risk Assessment

1. EPA's Approach To Assessing Potential Risks to Human Health and the Environment

Today's action addresses a specific type of industrial sludge: sludge generated from the management of wastewaters generated at motor vehicle manufacturing (assembly) facilities. In general, industrial wastewater treatment sludges consist of suspended solids removed from wastewaters during treatment, which may involve various steps. As described in one delisting petition, for example, the treatment steps include: grit separation, pH adjustment to remove metals, addition of a coagulant, clarification to generate a dilute sludge, and dewatering of the sludge and grit solids via filter presses.[5]

F019 sludges generated by the motor vehicle manufacturing industries are currently managed by onsite dewatering, followed by truck or rail shipment to offsite RCRA-permitted hazardous waste landfills. Because today's action proposes to allow disposal of the wastewater treatment sludge in landfills subject to, or meeting, certain design criteria, the Agency's risk assessment involved evaluating risks to human health and the environment from this landfill disposal scenario. (See the ''Technical Support Document: Assessment of Potential Risks from Managing F019 Waste from the Motor Vehicle Manufacturing Industry'' in the docket for this proposed rulemaking for a detailed description of the analysis that the Agency performed, hereinafter, referred to as the Technical Support Document.) EPA initially evaluated the potential risks posed by a hypothetical annual quantity of F019 waste that is disposed of in an unlined nonhazardous waste landfill, and then evaluated potential risks from disposal in landfills that use different liner technologies. The human health and environmental risk evaluation uses several environmental fate, transport, and exposure/risk models: Delisting Risk Assessment Software (DRAS), version 2.0,[6] Tier 1 of the Industrial Waste Management Evaluation Model (IWEM),[7] and EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP).[8] These models have all been peer reviewed; see the Technical Support Document for a detailed description of the use of these models and their peer review.

EPA's Regional Offices, and certain states, use version 2.0 of the DRAS model, or earlier versions of it, to determine whether to grant requests for delistings under 40 CFR 260.22. The DRAS model is a screening tool that contains several assumptions that are designed to be protective of public health. In addition, EPA then adjusted the DRAS model results to take into account exposures to children. The DRAS model assesses human health considerations, by assuming that populations that live near the landfill (nearby residents) may be exposed to chemical constituents that are released from the waste that is placed in the landfill. EPA used the DRAS model to calculate the levels of chemical constituents in a waste (waste concentrations) that would not exceed the acceptable levels at the nearby receptor. The acceptable levels are based on the target risks the Agency used in its evaluation. For carcinogens, EPA used an increased probability of developing cancer that is less than or equal to one in one hundred thousand (1×10^{-5}). For non-carcinogens, EPA used a ''hazard quotient'' less than or equal to 1.0; the hazard quotient is the ratio of an individual's chronic daily exposure to a standard, such as the chronic reference dose. (The reference dose is ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure for a chronic duration (up to a lifetime) to the human population (including sensitive subpopulations) that is likely to be without an appreciable risk of deleterious effects during a lifetime.'')[9] These target risk levels are consistent with those discussed in EPA's hazardous waste listing determination policy (see the discussion in a proposed listing for wastes from the dye and pigment industries, December 22, 1994 (59 FR 66072)).

The DRAS model assesses environmental risk by examining the aquatic organisms in a body of surface water downhill from the landfill (ecological receptors) that are exposed to small quantities of chemical constituents that are released from the waste in the landfill. As with the human health considerations, the Agency can assess an acceptable risk level for those aquatic organisms, such that the sustainability of the organisms' population in the surface water body is not compromised. The DRAS model then calculates the levels of chemical constituents in waste placed in the landfill (i.e., waste concentrations) that should not be exceeded in order to have acceptable levels of these constituents in the nearby body of surface water.

For a landfill disposal scenario, the DRAS model predicts how constituents of potential concern, or COPCs, will move through the environment and affect nearby people or aquatic organisms. The DRAS model predicts releases of COPCs from the waste into the groundwater beneath the landfill, then accounts for human exposure from drinking contaminated groundwater, inhaling volatile constituents when using contaminated groundwater for showering, and dermal contact from bathing with contaminated groundwater. The DRAS model also

[5] See General Motors Corporation Oklahoma City Assembly Plant Delisting Petition for F019 Wastewater Treatment Plant Sludge Filter Cake, Section 3, Facility Operations in the docket.

[6] ''RCRA Delisting Technical Support Document''. EPA906–D–98–001. Interim Final. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Prepared by U.S. Environmental Protection Agency, Region 6, Dallas, TX April 2002.

[7] ''Industrial Waste Management Evaluation Model (IWEM) User's Guide.'' EPA530–R–02–013. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, D.C. August 2002, and ''Industrial Waste Management Evaluation Model (IWEM) Technical Background Document.'' EPA530–R–02–012. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, DC August 2002.

[8] ''EPA's Composite Model for Leachate Migration with Transformation Products EPACMTP: User's Guide.'' U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, DC 1997, ''EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) Technical Background Document.'' EPA530–R–03–006. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, DC April 2003, and ''EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) Parameters/Data Background Document''. EPA530–R–03–003. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Solid Waste. Washington, DC April 2003.

[9] See EPA's Integrated Risk Information System (IRIS) at *http://www.epa.gov/iris/index.html.*

predicts releases of COPCs from the waste (both waste particles and volatile emissions) into the air above the landfill. DRAS then accounts for inhalation of volatile constituents and particles, and for windblown particles landing on soil and a child ingesting the contaminated soil. Finally, the DRAS model predicts releases of COPCs from the waste, due to storm water that erodes waste from an open landfill and runs off into a nearby body of surface water. Then the DRAS model takes into account human exposure from eating fish and drinking contaminated surface water, and for the exposures of the fish to contaminated surface water. In addition, EPA adjusted the DRAS model results to take into account exposures to children. See the Technical Support Document for a complete description of the scenario that is modeled in DRAS version 2.0, the human health and ecological exposure pathways, and the data sources the Agency used as model inputs. The DRAS version 2.0 technical documentation, ''User's Guide for the EPA Region 6 Delisting Risk Assessment Software'' (EPA906–D–98–001) and the ''Delisting Technical Support Document,'' which is distributed as part of the DRAS modeling software, provides further details about the specific assumptions and the mathematical equations that the model uses. These documents are in the docket.

2. How EPA Chose Constituents of Potential Concern for Evaluation

Section IV. F. describes briefly the constituents likely to be present in motor vehicle manufacturers' F019 waste. To identify constituents of potential concern, EPA reviewed information from 13 motor vehicle manufacturing facilities' delisting petitions.[10] This information included material safety data sheets (MSDS's) that identify the specific chemicals used in the conversion coating process; these chemicals are likely to be present in the wastewater that is treated and from which F019 sludge results.

EPA also compiled the analytical data received from the 13 facilities' delisting petitions (and from verification sampling at several facilities) into a spreadsheet that is available in the docket for this rulemaking. These 13 facilities analyzed F019 sludge samples for approximately 240 chemical constituents. Many chemicals were not found in the F019 sludge at the detection limits used. If these ''non-detect'' chemicals were not mentioned on the material safety data sheets, then EPA did not evaluate these constituents further. For example, petitioners analyzed sludge samples for pesticides, such as 2-sec-butyl-4,6-dinitrophenol (Dinoseb); however, these were not found in the MSDS's or in the sludge samples, nor would one expect to find them in a motor vehicle manufacturing facility's wastewater treatment sludge.

Of the constituents analyzed in the F019 wastes, 56 were detected in one or more samples. EPA evaluated the concentrations reported by the petitioners for these 56 chemicals (including concentrations that laboratories reported as estimates). The Agency used the DRAS model methodology to evaluate potential risks for 55 detected constituents for human health risks and 49 for environmental risks.[11]

3. Evaluation of Potential Human Health and Environmental Risks

For both human health and environmental risk evaluations, EPA's analysis assumed the disposal of a total waste volume of 90,000 cubic yards of F019 into a landfill. This waste volume corresponds to either a 4,500 cubic yards per year disposal rate for 20 years, or a 3,000 cubic yards per year disposal rate for 30 years. EPA believes it is quite unlikely that motor vehicle manufacturers would dispose of amounts greater than 90,000 cubic yards for an extended period of time in the same landfill based on a review of the delisting facilities' stated annual F019 sludge production quantities. EPA examined the information contained in the delisting petitions submitted and more recent data provided by facilities in the motor vehicle manufacturing industry. Combining the data from both sources for past generation of this waste, EPA found that the volumes of sludges disposed ranged from 426 to 3,892 cy/yr (median was 1,088 cy/yr, and the 90th percentile ranked value was approximately 2,900 cy/yr). Therefore, the use of 3,000 cubic yards per year or 4,500 cubic yards per year represents a protective upper-bound for the waste volumes reported by the generators and is likely to overestimate volumes currently produced by the automotive industry. A number of the constituents detected in the waste appear to be present at levels that may be of concern from a human health viewpoint. (None of the constituents that EPA evaluated for potential environmental harm appeared to be present at levels of concern.) When using the maximum detected concentrations and a total volume of 90,000 cubic yards disposed in a landfill, the DRAS modeling indicated that two of the 55 waste constituents evaluated for human health effects showed an estimated hazard quotient greater than 1, or showed an individual's estimated lifetime potential excess cancer risk to be greater than one in one hundred thousand.

Based on the assessment using DRAS, the Agency determined that only two constituents (arsenic and nickel) had maximum detected values that exceeded the levels that DRAS modeling indicated would result in an acceptable exposure level. (The other constituents had estimated hazard quotients less than 1 and estimated individual lifetime excess cancer risk of less than one in one hundred thousand.) For nickel in groundwater used as drinking water, the estimated hazard quotient was three. For arsenic in groundwater used as drinking water, the estimated individual excess lifetime cancer risk was three in one hundred thousand. Thus, using protective exposure assumptions, the Agency found that disposing of a total of 90,000 cubic yards of waste (equivalent to 3,000 cubic yards disposed per year for 30 years) containing these two constituents, at their maximum detected concentrations in an unlined landfill, exceeded the DRAS limit by up to a factor of 3. The Technical Support Document describes the DRAS modeling and results, with discussion and conclusions, in considerably greater detail.

As described above, two constituents (arsenic and nickel) were at levels that may be of concern using upper-bound assumptions for waste quantities disposed and constituent concentrations in unlined landfills. Furthermore, the constituents were reported to be prevalent in the waste samples. Therefore, EPA examined the robustness of one of the key assumptions of the DRAS version 2.0 modeling—modeling

[10] The 13 motor vehicle manufacturing facilities are BMWMC (BMW Manufacturing Corp.), located in Greer, South Carolina; Nissan, in Smyrna, Tennessee; General Motors (GM) in Lansing, Michigan; GM in Lake Orion, Michigan; GM in Oklahoma City, Oklahoma (draft petition submitted and available only in the EPA Headquarters docket for today's notice); GM in Lordstown, Ohio; GM in Pontiac, Michigan; GM in Hamtramck, Michigan; GM in Flint, Michigan; GM Grand River in Lansing, Michigan; Ford in Wixom, Michigan; Ford in Wayne, Michigan; and DaimlerChrysler Jefferson North in Detroit, Michigan.

[11] For human health, one constituent, sulfide, was not evaluated using the DRAS methodology because it lacks an appropriate toxicity value. For ecological risk, two constituents, sulfide and fluoride, were not evaluated using the DRAS methodology because they are not present in the DRAS version 2 data base for constituents, and lack appropriate toxicity values for environmental risks. For another five of the 56 constituents, EPA lacked appropriate aquatic toxicity benchmarks to complete an environmental risk assessment. See the Technical Support Document in the docket for this proposed rulemaking for details.

disposal in a landfill without a liner. Within the past 15 years, changes to landfill requirements in the United States (the promulgation of federal regulations that require municipal solid waste landfills to meet certain leakage prevention requirements, and requirements for collecting and managing landfill gases, *e.g.*, see 40 CFR 258.40) have caused substantial changes in landfill practices. The majority of municipal solid waste landfills, and probably many landfills that accept nonhazardous industrial solid waste but not municipal solid waste, now are designed, built, and operated with liner systems that typically include composite liners and leachate collection systems (or other approved performance standards). The potential risks found by the DRAS version 2.0 modeling were all from groundwater exposure pathways. As a result, current landfills with liner systems and leachate collection systems should dramatically lessen impacts on local groundwater conditions.

DRAS does not have an option to model the impact of liners on landfill releases. Therefore, to examine the potential impact of liners, the Agency compared the levels calculated by the Industrial Waste Management Evaluation Model (IWEM), for single-lined and composite-lined landfills.[12] IWEM is the ground-water modeling component of the Guide for Industrial Waste Management, used for recommending appropriate liner system designs for the management of RCRA Subtitle D industrial waste. The initial IWEM evaluation (Tier 1) provides a screening assessment with results that are protective over a range of conditions and situations. The results of the IWEM analysis indicate that the use of a composite-lined landfill would result in acceptable risk levels for the two key constituents of concern. The IWEM generally uses more protective assumptions than the DRAS model. For example, the IWEM model assumes that the drinking water well is at a fixed location along the center line of the potential plume of contamination at a distance of 150 meters from the unit; the DRAS model allows the well location to vary downgradient from the unit.

To further examine the effectiveness of composite liners, EPA also used the modeling performed for lined landfills in the recent listing rule for dye and pigment production wastes (February 24, 2005, 70 FR 9138). In this rule, the Agency established a conditional exemption for wastes disposed in landfills meeting specified liner design requirements, similar to the proposal in today's notice. The results from that effort show that composite-lined landfills provided significant protection (about two orders of magnitude) compared to an unlined unit.[13] Therefore, based on both the IWEM results and the modeling in the dye and pigment waste listing, EPA believes that disposal of F019 sludges from motor vehicle manufacturers in composite-lined landfills (or other approved performance standards) is protective of human health and the environment.

The Agency also considered whether the presence of just a single clay liner would be sufficient to reduce the risks below levels of concern. In addition to the IWEM results that showed disposal in a composite-lined landfill was protective, this analysis also yielded levels that would be allowed for a landfill with a single clay liner and for an unlined landfill. For nickel, the levels that would be allowed for a single clay liner were approximately 3-fold higher than the allowable levels for an unlined unit. For arsenic, the allowable level for a single clay liner was approximately 7-fold higher than the allowable level for an unlined unit. Thus, a single clay liner (as defined in the IWEM model assumptions) may be sufficiently protective to allow disposal in a unit with such a single liner, because a single clay liner may reduce the risks from these constituents to levels below the DRAS levels of concern. (EPA is somewhat uncertain about the appropriateness of extending the apparent margin of safety afforded by a single clay liner from one model (IWEM) to another model's results (DRAS), and we are seeking comment on this approach.) Therefore, EPA is requesting comment on a second regulatory option that would allow disposal of this waste in all state-permitted municipal solid waste landfills (regulated under 40 CFR Part 258) and state-permitted industrial solid waste landfills (regulated under 40 CFR Part 257), even those that do not meet the liner design requirements in § 258.40, provided the landfills are equipped with at least a single clay liner.[14] The second option, for example, would allow disposal in a state-permitted municipal landfill that was constructed prior to the effective date for the § 258.40 regulations (an ''existing'' unit), provided the unit had at least a single clay liner. EPA expects that this would provide additional regulatory flexibility for generators, and would not be likely to result in adverse health effects.

Therefore, EPA is taking comment on a second option, which would allow disposal in a landfill with a single clay liner, as well as allowing disposal in landfills with the more protective composite liner systems. Under this option, the regulatory language for the F019 could be revised to read as follows.

> Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be hazardous if the wastes are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a unit that is subject to, or otherwise meets, the liner requirements in § 258.40, § 264.301, § 265.301.

EPA is requesting comments on whether adequate clay liners are found in active older municipal landfill units and industrial solid waste landfills, and whether this requirement would provide any significant regulatory relief for generators by meaningfully expanding their disposal options. EPA is also seeking comment on the likelihood of generators of the F019 waste constructing landfill units at their facilities and what types of liner systems would be used for these onsite units. EPA also solicits comment on whether the option allowing disposal in a landfill unit with a clay liner (permitted or licensed by the state) will be straightforward to implement or whether it will raise implementation or compliance issues for the waste generator, such as the availability of state standards for clay liners in older landfills.

The Agency is seeking comments on the level of regulatory relief that would be provided by both of these proposed approaches. Municipal landfills, for example, have been required to have composite liners (or performance based equivalents) as set out in 40 CFR 258.40, except for ''existing'' units (*i.e.*, generally units or cells that existed prior to 1993). Therefore, EPA believes that most lined landfill units are likely to have composite liners. The Agency is seeking information on the extent to

[12] In IWEM, a single cay liner is a layer of compacted clay three feet thick (hydraulic conductivity of 1×10^{-7} cm/sec), and a composite liner consists of a geomembrane liner (high density polyethylene) overlying the clay layer.

[13] The results for zinc and several other metals (lead, copper, and barium) demonstrated that composite lined landfills reduced risks from landfill releases factors of 133 to 269 compared to unlined units. See ''Risk Assessment Technical Background Document for the Dye and Pigment Industry Hazardous Waste Listing Determination,'' November 10, 2003, Table 2–1b, page 2–4.

[14] This second proposed option would also allow disposal in a hazardous waste landfill regulated under § 264.301 or § 265.301, which require composite liner systems.

which generators would use the option of sending waste to units with only single clay liners (under proposed option two) and any information relevant to the existence and likely use of landfill units with single clay liners. In addition, EPA is seeking comments on the burden associated with the recordkeeping requirements that would result from documenting compliance with disposal of the exempt waste in a landfill unit with a single clay liner or a composite liner. Under the second proposed option, the generator would be required to document that the waste went to a permitted landfill unit that was equipped with a clay liner. In this case, however, the generator would be able to rely on the permitting agency to ensure that the clay liner was adequate. EPA solicits comments on any issues that might be raised by this approach to recordkeeping and documentation.

4. Uncertainty in the Risk Assessment Results

The Technical Background Document describes the risk results, and gives examples of the known uncertainties associated with the risk results. The risk results used for this proposal are based on the same kinds of data and health protective models that the Agency typically uses in national-scale waste policy decision making. The risk results show estimated risks for an individual at the ''high-end'' of the risk distribution, and are designed to be protective of human health and the environment. As such, the resulting risk estimates are likely to reflect protective outcomes in more than 90 percent of the situations modeled.[15] When using central tendency assumptions [16] for an unlined landfill, the hazard quotient for nickel was calculated to be 0.1 and the cancer risk factor for arsenic was two in a million, both values being well below the risk thresholds used by the Agency in hazardous waste listing determinations.

Our overall assessment is that the models we use could overestimate the potential adverse effects of disposing of the F019 waste in either unlined or lined landfills. Thus, actual exposures that would be experienced by future residents near the landfill will likely be lower than those estimated using the DRAS version 2 model. Examples of the protective assumptions used in the high-end DRAS results include: (1) The disposal volume (the 90th percentile value of 3,000 cubic yards per year in the same landfill for 30 years), (2) the constituent concentrations (the maximum values found in the sampling data from the 13 delisting submissions), and (3) exposure levels (90th percentile value for ingestion of groundwater by children for 350 days per year).

The risk results represent EPA's reasonable efforts in using existing knowledge of the national waste management system, the science of environmental fate and transport of chemicals, and the science of toxicology to assess the likely hazards of managing the F019 waste as nonhazardous. The Agency believes that, in spite of some of the specific uncertainties that exist, the risk estimates provide a useful basis for our decision about whether to continue to regulate this waste as a hazardous waste. EPA is requesting comments on our risk assessment approach and on the resulting risk estimates.

VI. Implementation of the F019 Proposed Rule

A. Land Disposal Conditions

The proposed amendment to the F019 listing exempts certain wastes disposed in landfill units that are subject to certain liner design requirements. This exemption is based on EPA's risk analysis demonstrating that wastes disposed in landfills with certain types of liners do not present significant risks for sludges generated by motor vehicle manufacturers. Today's first proposal would allow motor vehicle manufacturers (as defined in § 261.31(b)(i)) to manage wastes from chemical conversion coating of aluminum when using a zinc phosphating process as nonhazardous, if the wastes are disposed in a landfill subject to, or otherwise meeting, the landfill requirements in § 258.40, § 264.301 or § 265.301. The second proposal in today's notice would also exempt the waste if the generators dispose of the waste in a state-permitted non-hazardous landfill unit that has, at a minimum, a single clay liner.

The requirements under § 258.40, which apply to new municipal solid waste landfills or new units at existing municipal solid waste landfills, require use of a composite liner and leachate collection system (or a design meeting a protective performance standard and approved by the Director of an approved state program or by EPA). The infiltration rates used by IWEM (and also for the Dye and Pigment listing; 70 FR 9138, February 24, 2005) were based on data from landfills with composite liners similar to the design required under § 258.40. Consequently, EPA's proposed option number one allows disposal of wastes in a municipal solid waste landfill unit that is subject to the § 258.40 design requirements. EPA is specifying that the landfill unit must be subject to these requirements because some operating landfills may still use older units that are not required to meet the design requirements in § 258.40. The Agency's risk assessment shows that unlined landfills may not be sufficiently protective for some of the sludges from automobile manufacturing, i.e., higher volume sludges with high levels of key constituents of concern. Federal law requires that all municipal landfills comply with the Part 258 landfill regulations. Additionally, states have permitting programs to implement the Part 258 requirements for municipal landfills. Permit programs must ensure that municipal landfill units in the states comply with the § 258.40 design standards (see 40 CFR 239.6(e)). Consequently, landfill cells subject to the Part 258.40 design standards are required to comply with the federal standards or more stringent state standards.

Some generators of F019 wastes may still choose to send wastes to Subtitle C hazardous waste landfills. New landfill units and lateral expansions of existing hazardous waste landfills are required to have ''double'' composite liners including synthetic components. See 40 CFR 264.301 and 265.301. The Agency would expect that these liner systems have even lower infiltration rates than the composite liners required under § 258.40, because the Subtitle C requirements include another composite liner, in addition to the composite liner (or equivalent) required of municipal solid waste landfills (e.g., see § 261.301(c)). Therefore, EPA is proposing to give generators the option of sending wastes to landfill units subject to these stricter hazardous waste liner requirements.

The Agency is also proposing to include a third class of landfills in the exemption, namely, Subtitle D industrial solid waste landfills that meet the liner design requirements in § 258.40 or Subtitle C landfills. These ''industrial landfills'' are subject to Federal regulations in Part 257, which apply to non-municipal, nonhazardous waste landfills. While the Part 257

[15] Conceptually, ''high-end'' means above the 90th percentile of the risk distribution; see Guidance on Risk Characterization for Risk Managers and Risk Assessors, February 26, 1992 memorandum from F. Henry Habicht, II, Deputy Administrator, to Assistant Administrators and Regional Administrators. We use the term ''high-end'' here to refer to modeling inputs that are at or above the 90th percentile of a data set.

[16] Note that the results described as ''central tendency'' here reflect changes in annual waste volume, disposal time, and constituent concentration (and for non-cancer effects, drinking water intake). Other variables, such as the dilution/attenuation factor and exposure frequency (and for cancer effects, drinking water intake) remain at high-end values.

regulations do not have liner requirements, states have regulations governing the design of such landfills that often include requirements for liner systems.[17] EPA believes that generators should have the option of using lined industrial landfills that are as protective as lined municipal solid waste landfills.

Therefore, under the first option, EPA is proposing that the amended listing include an exemption for wastes disposed in any landfill that is subject to, or meets, the landfill requirements in § 258.40, § 264.301, or § 265.301. Under the second option, EPA is proposing an alternative approach that would also allow disposal of the subject waste in a landfill unit with a single clay liner as described previously.

Note, however, that this exemption would not apply if wastewaters from aluminum conversion coating processes using the zinc phosphating process are commingled with wastewaters arising from aluminum conversion coating using other non-exempt processes (e.g., chromating processes); the sludge resulting from such commingled wastewaters would still carry the F019 waste code, because it would be derived, in part, from an aluminum conversion coating process that is not zinc phosphating. Furthermore, aluminum conversion coating sludges derived from zinc phosphating at motor vehicle manufacturers are still subject to the ''mixture rule,'' and would become hazardous waste if mixed with any other listed hazardous waste.[18] In addition, the motor vehicle manufacturers would also be subject to the requirements of § 268.3 (dilution prohibited as a substitute for treatment). Finally, if the zinc phosphating sludges were generated such that they exhibit one of the hazardous waste characteristics (see § 261.20 through § 261.24), the waste would continue to be regulated as a hazardous waste.

1. How Generators Document Compliance With the Landfill Condition

Under the proposed option number one, generators of wastewater treatment sludges claimed to be nonhazardous are responsible for ensuring that shipments of such waste are placed in landfill units that meet the design criteria specified in § 258.40, § 264.301, or § 265.301. Under option two, generators would also need to document compliance if they send their waste shipments to a state-permitted landfill unit that has an adequate single clay liner. Under either option, generators wishing to qualify for the exemption from the F019 listing would be required to maintain records to show that their wastes are placed in an appropriate landfill unit, whether the unit is at a municipal solid waste landfill, hazardous waste landfill, or an industrial solid waste landfill (in the case of option two, this would include disposal in a unit with a single clay liner). EPA is proposing a flexible performance standard that would allow the generator to demonstrate that shipments of waste were received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description through various means. A generator may be able to demonstrate fulfillment of the landfill disposal condition by means of a signed contract with the owner/operator of a municipal solid waste landfill, a hazardous waste landfill, or an industrial solid waste landfill receiving the waste; the generator should also retain specific shipping documents to demonstrate that the contract was implemented. The contract must show that the landfill owner/operator would use only units subject to the applicable Part 258 or Part 264 or Part 265 design requirements (under option two, the contract, state permit, or documentation from the state may also be used to document that units meeting the single liner specifications would be used). A generator may also be able to support a claim of fulfilling the landfill design requirements by means of signed nonhazardous waste bills of lading, manifests, or invoices documenting delivery, provided they show that wastes were placed in municipal solid waste landfill units subject to the applicable Part 258 design requirements or Subtitle C landfill units subject to the Part 264 or Part 265 design requirements. Similarly, the generator would be responsible for documenting that non-municipal, nonhazardous waste landfill units (industrial landfill units) meet the specified liner standards. States have regulations governing the design of such industrial solid waste landfills, and landfill operators must have certifications or permit conditions available to provide to generators who wish to use such landfills instead of municipal solid waste or hazardous waste landfill units. Therefore, state regulations could help support a claim that the nonhazardous waste bills of lading, manifests, or invoices documenting delivery satisfy the applicable liner requirements.

2. Consequences of Failing To Meet the Disposal Conditions or Recordkeeping Requirements

Disposal in a landfill subject to or meeting the landfill design requirements is a condition of the exemption to the listing under the two approaches being proposed. If a generator does not fulfill this condition, the sludges would be F019 listed wastes, subject to the applicable Subtitle C requirements. Therefore, the Agency advises generators to properly store the wastewater treatment sludges that are claimed to be nonhazardous wastes to ensure that improper releases do not occur. EPA encourages all generators to store all wastes in containers, tanks, or buildings, so as to reduce potential releases to the environment through spills, wind dispersal, and precipitation. The exemption for these wastes is conditioned upon disposal in the landfill units that are subject to, or otherwise meet, the specified design criteria.

In addition, a generator claiming that the wastewater treatment sludges are not F019 listed waste must maintain sufficient documentation to demonstrate that shipments of such waste were disposed in a landfill subject to or meeting the liner design standards specified under the conditional exemption. The proposed regulatory text (§ 261.31(b)(4)(iii)) specifies necessary records that a generator claiming the exemption must keep.

Generators taking advantage of the exemption that fail to meet the condition of disposing the wastewater treatment sludges in a landfill unit that meets certain liner design criteria would be subject to enforcement action, and the wastewater treatment sludges may be considered to be hazardous waste from the point of their generation. EPA could choose to bring an enforcement action under RCRA § 3008(a) for all violations of hazardous waste regulatory requirements occurring from the time the wastewater treatment sludges are generated up to the time they are finally disposed. Releases of hazardous waste could also potentially be addressed through enforcement orders, such as orders under RCRA §§ 3013 and 7003. States could choose to take an enforcement action for violations of state hazardous waste requirements under state authorities.

Generators claiming the exemption from the F019 listing must be able to demonstrate to the appropriate

[17] Commercial offsite landfills are subject to regulations by states, including liner requirements. See the report by Association of State and Territorial Solid Waste Management Officials (ASTSWMO), ''Non-Municipal, Subtitle D Waste Survey,'' March 1996, and the EPA report, ''State Requirements for Industrial Non-Hazardous Waste Management Facilities,'' October 1995.

[18] The ''mixture'' rule at § 261.3(a)(2)(iv) provides that, with limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a hazardous waste.

regulatory agency that the condition of the exemption is being met. In accordance with existing requirements, the facility claiming the exemption bears the burden of proof to demonstrate conformance with the requirements specified in the regulation. See 40 CFR 261.2(f).

EPA requests comment on whether the proposed record-keeping requirements should also be made conditions of the exemption, rather than established as separate recordkeeping requirements. In addition, the Agency seeks comments on whether additional requirements or conditions are necessary to ensure that the waste is not improperly disposed or released prior to disposal in landfills meeting the landfill requirements in § 258.40, § 264.301 or § 265.310 (or under the second proposed option, a municipal or industrial solid waste landfill with a single clay liner). EPA is considering the need to include a condition for the exemption that the waste be stored so as to minimize releases to the environment. The regulatory condition being considered by the Agency could include the following possible regulatory language.

Generators of wastewater treatment sludges that are claimed to be nonhazardous must manage such wastes in a manner that prevents their loss to the environment. Such wastes must be stored in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of these materials into the environment. At a minimum, any building used for this purpose must be an engineered structure that has a floor, walls and a roof to prevent wind dispersal and contact with precipitation. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and precipitation. Containers, such as super sacks, drums, or roll-on/roll-off containers, used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Generators may store the waste on site for no longer than 90 days.

EPA may make all or some of these requirements conditions in the final rule.[19]

EPA obtained information from delisting petitions that indicates generators of the F019 sludge store the dewatered sludges in containers or bins prior to shipment offsite for disposal. During visits to three vehicle manufacturing plants generating sludges, EPA found that sludge dewatering equipment and sludge containers were kept inside buildings, reducing any potential for releases. While these management practices may reflect the fact that the delisted sludges were previously hazardous waste, we expect that these practices would continue after an exemption.[20] We seek any further information from commenters as to the current sludge management practices at facilities that currently generate F019 wastes (or delisted F019), and any information on practices at vehicle manufacturers that do not currently generate F019 (i.e., plants that do not use aluminum). If such information indicates that generators are already handling the waste to minimize releases, the Agency will take this into consideration when deciding whether storage conditions are necessary.

3. Land Disposal Restrictions

The Agency today is proposing to amend the F019 listing to exclude wastewater treatment sludges from zinc phosphating, when such phosphating is used at motor vehicle manufacturers. These wastewater treatment sludges will not be hazardous if the wastes are disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements for the liner systems specified in the F019 listing under both of the proposed options.

40 CFR Part 268 prohibits the land disposal of RCRA hazardous waste unless they have been treated to meet a certain level or by a technology specified by EPA. See Table 1.Treatment Standards for Hazardous Wastes in § 268.40. The land disposal restrictions only apply to solid wastes that are RCRA hazardous wastes. Therefore, if the wastewater treatment sludges are disposed in landfill units that are subject to or meet the landfill design criteria outlined in today's proposal, they would not be hazardous waste from the point of generation and, thus, not subject to the land disposal restriction requirements.

B. Interrelationship Between Proposed Rule and Current F019 Delistings

The question arises as to the status of waste generated by facilities that currently have an exemption for their wastes through a delisting under § 260.22. Today's proposed revision to the F019 listing would exempt wastes from motor vehicle manufacturing facilities that meet the landfill disposal conditions. Thus, wastes that are to be disposed in a subtitle D or subtitle C unit that meets the liner design standards specified in the listings are exempted from the listing from their point of generation. As such, the exempt waste would not be subject to any RCRA subtitle C management requirements for generation, storage, transport, treatment, or disposal (including land disposal restrictions). These exempt wastes would never become F019 listed wastes (when the specified disposal conditions are met), and, thus, the existing delistings (including any conditions associated with the delisting) would be rendered moot by today's proposal, presuming the authorized state adopts the rule, where applicable. However, EPA realizes that facilities with delistings may wish to avoid any confusion that might arise in the implementation of the exemption proposed in today's notice. Therefore, the facility may wish to seek to have its delisting withdrawn by the regulatory authority (the EPA Region or state), unless the facility wishes to continue to manage its waste pursuant to its existing delisting. However, EPA encourages facilities with delistings to be sure that the state in which they operate has adopted the exemption prior to moving to drop an existing delisting. See the discussion below in Section VII. State Authorization for additional information on the authorization process.

VII. State Authorization

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally-enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state

[19] For a facility that generates a volume of 3,000 cy/yr, an average weekly volume would be about 60 cy. This would probably require 2 to 3 dumpsters (20 to 40 cy in size). Given that generators are unlikely to want to store many dumpsters, we believe that a 90 day limit is reasonable and would not be burdensome.

[20] Two facilities were generating delisted F019 sludges, and one had just added conversion coating of aluminum to its process and eventually obtained a delisting. See note to docket on site visits by Mr. James Michael.

must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to the 1984 Hazardous and Solid Waste Amendments (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states still are required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.

Today's rule is proposed pursuant to non-HSWA authority. The proposed changes in this rule are less stringent than the current Federal requirements. Therefore, states will not be required to adopt and seek authorization for the proposed changes. EPA will implement the changes to the exemptions only in those states which are not authorized for the RCRA program. Nevertheless, EPA believes that this proposed rulemaking has considerable merit, and the Agency thus strongly encourages states to amend their programs and become Federally-authorized to implement these rules once they become final.

VIII. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Designation and List of Hazardous Substances and Reportable Quantities

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) defines the term ''hazardous substance'' to include RCRA listed and characteristic hazardous wastes. When EPA adds a hazardous waste under RCRA, the Agency also will add the waste to its list of CERCLA hazardous substances. EPA also establishes a reportable quantity, or RQ, for each CERCLA hazardous substance. EPA provides a list of the CERCLA hazardous substances along with their RQs in Table 302.4 at 40 CFR 302.4. If a person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount that equals or exceeds its RQ, then that person must report that release to the National Response Center (NRC) pursuant to CERCLA section 103. That person also may have to notify state and local authorities.

Because today's rule is proposing to modify the scope of the EPA Hazardous Waste No. F019 under 40 CFR 261.31 listing to exclude wastewater treatment sludges from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process, and if the wastes are disposed in a landfill is subject to, or meets certain liner design requirements, the Table 302.4 at 40 CFR 302.4 would be modified to adopt the same definition and scope.

IX. Relationship to Other Rules—Clean Water Act

We believe that today's proposed regulatory changes will not: (1) Increase the amount of discharged wastewater pollutants at the industry or facility levels; or (2) interfere with the ability of industrial generators and recyclers of electroplating residuals to comply with the Clean Water Act requirements (e.g., Metal Finishing Effluent Guidelines, 40 CFR Part 433).

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, although the annual effect of this proposed rule is expected to be less than $100 million, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

The following is a summary of EPA's economic analysis as contained in the Economics Background Document in support of this proposal, which is available for public review and comment in the EPA Docket (*www.regulations.gov*). Although 73 industries in 42 states generate 0.7 million tons per year of RCRA F019 hazardous waste sludge as of 1999, the scope of this F019 proposed rule is limited to the (1) automobile manufacturing industry (NAICS 336111) and (2) the light truck/utility vehicle manufacturing industry (NAICS 336112). The Agency defined this scope in relation to 15 recent (1997–2005) delisting final determinations for these two motor vehicle manufacturing industries in EPA Regions 4 and 5.[21] Under the current F019 listing description, motor vehicle manufacturers become F019 sludge generators if they use aluminum parts on vehicle bodies which undergo the chemical conversion (zinc phosphating) process. Motor vehicle manufacturers began in the early 1970's, to substitute lighter-weight aluminum parts for heavier steel parts to achieve national vehicle fleet fuel efficiency and vehicle pollutant emission reduction objectives. If promulgated, the proposed elimination of RCRA Subtitle C hazardous waste regulatory requirements for waste transport, waste treatment/disposal, and waste reporting/recordkeeping in this proposed rule, is expected to provide $1.6 to $4.6 million per year in regulatory cost savings to 14 facilities in these two industries which

[21] The **Federal Register** (FR) citations for the 15 delisting determinations for F019 are: GM in Lake Orion, Michigan (62 FR 55344, October 24, 1997); GM in Lansing, Michigan (65 FR 31096, May 16, 2000); BMWMC in Greer, South Carolina (66 FR 21877, May 2, 2001); Nissan in Smyrna, Tennessee (67 FR 42187, June 21, 2002); GM in Pontiac, Michigan, GM in Hamtramck, Michigan, GM in Flint, Michigan, GM Grand River in Lansing, Michigan, Ford in Wixom, Michigan, Ford in Wayne, Michigan (68 FR 44652, July 30, 2003); DaimlerChrylser Jefferson North in Detroit, Michigan (69 FR 8828, February 26, 2004); GM in Lordstown, Ohio (69 FR 60557, October 12, 2004); Ford in Dearborn, Michigan (70 FR 21153, April 25, 2005); GM in Janesville, Wisconsin (70 FR 71002, November 25, 2005); and, GM Saturn in Spring Hill, Tennessee (70 FR 76168, December 23, 2005).

are known as of 2005 to generate about 8,700 tons per year of F019 sludge, but are not yet delisted (as of year-end 2005). Although today's proposed action presents alternative RCRA Subtitle D non-hazardous waste landfill liner specifications (i.e., liner design criteria) as possible conditions for exemption of F019 sludge from RCRA Subtitle C regulation, the economic impact analysis does not distinguish landfill liner types in this cost savings estimate. Secondary impacts of the proposed rule may also include potential future RCRA regulatory cost avoidance for up to 39 other facilities in these two industries not currently generating F019 sludge, but which may begin applying aluminum parts in vehicle assembly. Furthermore, by reducing regulatory costs, EPA anticipates that this rule may also induce other motor vehicle manufacturing facilities to begin using aluminum in vehicles sooner than they otherwise would, thereby possibly accelerating future achievement of national air quality and fuel efficiency objectives. The Economics Background Document provides estimates for these secondary and induced benefits for this proposed rule.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1189.18 and a copy may be obtained from Susan Auby by mail at U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr.*

EPA under 40 CFR 261.31(b)(4)(iii), proposes to add a recordkeeping requirement for generators. The proposed rule will require generators wanting to demonstrate compliance with the provisions of this proposal to maintain onsite for a minimum of three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design criteria set out in the listing description. An enforcement action by the Agency can extend the record retention period (§ 268.7(a)(8)) beyond the three years.

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule is approximately 35 hours per year and the annual respondent cost for the new paperwork requirements in the rule is approximately $2,600. However, in addition to the new paperwork requirements in the rule, the Agency also estimated the burden and cost that generators could expect as a result of complying with the existing RCRA hazardous waste information collection requirements for the exempted materials (e.g., preparation of hazardous waste manifests, biennial reporting). Taking both the new proposed and existing RCRA requirements into account, EPA expects the rule would result in a net reduction in national annual paperwork burden to the 14 initially affected NAICS 336111 and 336112 facilities of approximately 920 hours and $67,300. As summarized in the Economics Background Document and in the prior sub-section of this notice, EPA expects this net cost savings to be further supplemented by annual cost savings to these same facilities from reduced waste management costs, by the expected shift of sludge management from RCRA Subtitle C hazardous waste management, to RCRA Subtitle D nonhazardous waste management. The net cost to EPA of administering the rule is expected to be negligible, since facilities are not required under this proposed rule to submit any information to the Agency for review and approval. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust existing systems to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID No. EPA–HQ–RCRA–2006–0984. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., 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 potentially subject to this action, ''small entity'' is defined according to the for-profit small business size standards set by the Small Business Administration (SBA), in reference to the two six-digit NAICS code industries affected by this action: (1) NAICS 336111 automobile manufacturing SBA standard of less than 1,000 employees, and (2) NAICS 336112 light truck and utility vehicle manufacturing SBA standard of less than 1,000 employees. Today's action does not directly affect small governmental jurisdictions (i.e., a government of a city, county, town, school district or special district with a population of less than 50,000), or small organizations (i.e., any not-for-profit enterprise which is independently owned and operated and is not dominant in its field).

According to the most recent U.S. Census Bureau ''Economics Census'' data for these two NAICS codes—for data year 2002 published in December 2004 and May 2005, respectively—there were 176 NAICS 336111 establishments operated in 2002 by 161 companies, of which 154 establishments (88%) had less than 1,000 employees (*http://www.census.gov/prod/ec02/ec0231i336111t.pdf*), and there were 97 NAICS 336112 establishments operated in 2002 by 69 companies, of which 62 establishments (64%) had less than

1,000 employees (*http://www.census.gov/prod/ec02/ec0231i336112t.pdf*). These census statistics reveal that both industries consist of large fractions of small establishments according to the SBA definitions, but the census data do not reveal the fraction of companies which are small (which is the more relevant measure). However, it may be inferred that there are large fractions of small companies in both industries, because of the high degree of parity between establishment counts and companies counts of 0.96 for NAICS 336111 (i.e., 154:to:161), and of 0.71 for NAICS 336112 (i.e., 69:to:97).

Because this action is designed to lower the cost of waste management for these industries, this proposal will not result in an adverse economic impact effect on affected entities. Consequently, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. For more information regarding the economic impact of this proposed rule, please refer to the ''Economics Background Document'' available from the EPA Docket (*www.regulations.gov*).

EPA therefore concludes that today's proposed rule will relieve regulatory burden for all size entities, including small entities. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for state, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this proposed rule imposes no enforceable duty on any state, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This proposal does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule directly affects primarily generators of hazardous waste sludges in the NAICS 3361 motor vehicle manufacturing industry group. There are no state and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than $500,000 in any one year. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and

explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule reduces regulatory burden and as explained in our ''Economics Background Document,'' and may possibly induce fuel efficiency and energy savings in the national motor vehicle fleet. It thus should not adversely affect energy supply, distribution or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. Our goal is to ensure that all citizens live in clean and sustainable communities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

The Agency's risk assessment did not identify risks from the management of the zinc phosphating sludge generated by the motor vehicle manufacturing industry provided that the waste is disposed in a landfill that is subject to or meets the landfill design criteria set out in today's proposal. Therefore, EPA believes that any populations in proximity to the landfills used by these facilities should not be adversely affected by common waste management practices for the wastewater treatment sludge.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 11, 2007.

Stephen l. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.31 is amended by:

a. In the table in paragraph (a) by revising the alphanumeric entry F019.

b. Amending paragraph (b) by adding paragraph (b)(4).

The revisions and additions read as follows:

§ 261.31 Hazardous wastes from specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
* * * * * * *		
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be hazardous if the wastes are disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in § 258.40, § 264.301 or § 265.301. For the purposes of this listing, motor vehicle manufacturing is defined in paragraph § 261.31(b)(4)(i) of this section; paragraphs § 261.31(b)(4)(ii) and (iii) of this section describe the responsibilities and recordkeeping requirements for motor vehicle manufacturing facilities.	
* * * * * * *		

* * * * *

(b) * * *

(4) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles (including light duty vans, pick-up trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.

(ii) Generators of wastewater treatment sludges that are claimed to be nonhazardous must ensure that shipments of such waste are placed in landfill units that are subject to or meet the landfill design criteria specified in the F019 listing description.

(iii) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the condition of the listing. These records must include the volume of waste generated and disposed of off-site. Generators must maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Regional Administrator or the state regulatory authority.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

4. In § 302.4, Table 302.4 is amended by revising the entry for F019 in the table to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Statutory code †	RCRA Waste No.	Final RQ pounds (Kg)
* * * *	*		*	*
F019 ..... Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be hazardous if the wastes are disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in § 258.40, § 264.301 or § 265.301. For the purposes of this listing, motor vehicle manufacturing is defined in paragraph § 261.31(b)(4)(i) of this section; paragraphs § 261.31(b)(4)(ii) and (iii) of this section describe the responsibilities and recordkeeping requirements for motor vehicle manufacturing facilities.	.....	.....	4 F019	10 (4.54)

* * * * *

[FR Doc. E7–640 Filed 1–17–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0008; FRL–8268–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Berkley Products Company Dump Priorities List Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete Berkley Products Company Dump Superfund Site (Site), located in West Cocalico Township, Lancaster County, Pennsylvania from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the Site on the determination by EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), that all appropriate actions under CERCLA, other than operation and maintenance and five-year reviews, have been implemented to protect human health, welfare and the environment. However, this deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' Section of today's **Federal Register**, EPA is publishing a direct final notice of deletion of Berkley Products Company Dump Superfund Site without prior notice of intent to delete because EPA views this as a noncontroversial revision and anticipates no adverse comment. EPA has explained its reasons for this deletion in the preamble to the direct final deletion. If EPA receives no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, EPA will not take further action. If EPA receives adverse comment(s), EPA will withdraw the direct final notice of deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments must be received on or before February 20, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0008, by one of the following methods:

• *www.regulations.gov:* Follow the on-line instruction for submitting comments.
• *E-mail: schrock.roy@epa.gov.*
• *Fax:* 215–814–3002.
• *Mail:* Mr. Roy Schrock, Remedial Project Manager (3HS22), U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.
• *Hand Delivery:* 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0008. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA's Region III, Regional Center for Environmental Information (RCEI) 2nd floor, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–1029, (215) 814–5254 OR (800) 553–2509 Monday through Friday 8 a.m. to 5 p.m. excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Schrock, Remedial Project Manager (3HS22), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; telephone number: 1–800–553–2509 or (215) 814–3210; fax number: 215–814–3002; e-mail address: *schrock.roy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules Section of this **Federal Register**.

Information Respositories: Repositories have been established to provide detailed information concerning this decision at the following address:

U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 2nd floor, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, (215) 814–5254 or (800) 553–2509 Monday through Friday 8 a.m. to 5 p.m.

West Cocalico Township Municipal Building, 156B, West Main Street, Reinholds, Pennsylvania 17569, Monday through Friday 8 a.m. to 4:30 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relation, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O.12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: November 16, 2006.

Donald Welsh,

Regional Administrator, Region III.

[FR Doc. E7–534 Filed 1–17–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 433, 447, and 457

[CMS–2258–P]

RIN 0938–A057

Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would: Clarify that entities involved in the financing of the non-Federal share of Medicaid payments must be a unit of government; clarify the documentation required to support a certified public expenditure; limit reimbursement for health care providers that are operated by units of government to an amount that does not exceed the provider's cost; require providers to receive and retain the full amount of total computable payments for services furnished under the approved State plan; and make conforming changes to provisions governing the State Child Health Insurance Program (SCHIP). The provisions of this regulation apply to all providers of Medicaid and SCHIP services, except that Medicaid managed care organizations and SCHIP providers are not subject to the cost limit provision of this regulation. Except as noted above, all Medicaid payments (including disproportionate share hospital payments) made under the authority of the State plan and under Medicaid waiver and demonstration authorities are subject to all provisions of this regulation.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 19, 2007.

ADDRESSES: In commenting, please refer to file code CMS–2258–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments

should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

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–2258–P, P.O. Box 8017, Baltimore, MD 21244–8017.

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–2258–P, 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 one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(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.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Aaron Blight, (410) 786–9560.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2258–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

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.cms.hhs.gov/eRulemaking.* Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will be also 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.

I. Background

The Medicaid program is a cooperative Federal-State program established in 1965 for the purpose of providing Federal financial participation (FFP) to States that choose to reimburse certain costs of medical treatment for needy persons. It is authorized under title XIX of the Social Security Act (the Act), and is administered by each State in accordance with an approved State plan. States have considerable flexibility in designing their programs, but must comply with Federal requirements specified in the Medicaid statute, regulations, and program guidance.

FFP is provided only when there is a corresponding State expenditure for a covered Medicaid service to a Medicaid recipient. Federal payment is based on statutorily-defined percentages of total computable State expenditures for medical assistance provided to recipients under the approved State plan, and of State expenditures related to the cost of administering the State plan.

Since the summer of 2003, we have reviewed and processed over 1,000 State plan amendments related to State payments to providers. Of these, approximately 10 percent have been disapproved by the Centers for Medicare & Medicaid Services (CMS) or withdrawn by the States. Through examination of these State plan amendments and their associated funding arrangements, we have developed a greater understanding of how to ensure that payment and financing arrangements comply with statutory intent. As recently articulated by the U.S. Court of Appeals for the Ninth Circuit, ''[t]he statutory text makes clear that the Secretary has the authority—indeed, the obligation—to ensure that each of the statutory prerequisites is satisfied before approving a Medicaid State plan amendment.'' We believe that this proposed rule strengthens accountability to ensure that statutory requirements within the Medicaid program are met in accordance with sections 1902, 1903, and 1905 of the Act.

Sections 1902(a)(2), 1903(a) and 1905(b) of the Act require States to share in the cost of medical assistance and in the cost of administering the State plan. Under section 1905(b) of the Act, the Federal medical assistance percentage (FMAP) is defined as ''100 per centum less the State percentage,'' and section 1903(a) of the Act requires Federal reimbursement to the State of the FMAP of expenditures for medical assistance under the plan (and 50 percent of expenditures necessary for the proper and efficient administration of the plan). Section 1902(a)(2) of the Act and implementing regulations at 42 CFR 433.50(a)(1) require States to share in the cost of medical assistance expenditures but permit the State to delegate some responsibility for the non-Federal share of medical assistance expenditures to units of local government under some circumstances.

Under Pub. L. 102–234, which inserted significant restrictions on States' use of provider related taxes and donations at section 1903(w) of the Act, the Congress again recognized the ability of units of government to participate in the funding of the non-Federal share of Medicaid payments through an exemption at section 1903(w)(6)(A) of the Act that reads:

> Notwithstanding the provisions of this subsection, the Secretary may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this title, regardless of whether the unit of government is also a health care provider, except as provided in section 1902(a)(2), unless the transferred funds are derived by the unit of government from donations or

taxes that would not otherwise be recognized as the non-Federal share under this section.

Subsequent regulations implementing Pub. L. 102–234 give effect to this statutory language. Amendments made to the regulations at 42 CFR. part 433, at 47 FR 55119 (November 24, 1992) explained:

Funds transferred from another unit of State or local government which are not restricted by the statute are not considered a provider-related donation or health care-related tax. Consequently, until the Secretary adopts regulations changing the treatment of intergovernmental transfer, States may continue to use, as the State share of medical assistance expenditures, transferred or certified funds derived from any governmental source (other than impermissible taxes or donations derived at various parts of the State government or at the local level).

The above statutory and regulatory authorities clearly specify that in order for an intergovernmental transfer (IGT) or certified public expenditure (CPE) from a health care provider or other entity to be exempt from analysis as a provider-related tax or donation, it must be from a unit of State or local government. Section 1903(w)(7)(G) of the Act identifies the four types of local entities that, in addition to the State itself, are considered a unit of government: A city, a county, a special purpose district, or other governmental units in the State. The provisions of this proposed rule conform our regulations to the aforementioned statutory language and further define the characteristics of a unit of government for purposes of Medicaid financing.

Intergovernmental Transfer (IGT)

The Medicaid statute does not define an IGT, but the plain meaning in the Medicaid context is a transfer of funding from a local governmental entity to the State. As we discuss below, this meaning would not include a transaction that does not in fact transfer funding but simply refunds Medicaid payments. IGTs from units of government that meet the conditions for protection under section 1903(w)(6)(A) of the Act, as described above, are a permissible source of State funding of Medicaid costs. Section 1903(w)(6)(A) of the Act is an exception to the very restrictive requirements governing provider-related donations. The IGT provision was meant to continue to allow units of local government, including government health care providers, to share in the cost of the State Medicaid program.

At section 1903(w)(6)(A) of the Act, the Medicaid statute provides that units of government within a State may transfer State and/or local tax revenue to the Medicaid agency for use as the non-Federal share of Medicaid payments. Because this provision does not override the definition of an expenditure as a net outlay, as discussed below, claimed expenditures must be net of any redirection or assignment from a health care provider to any State or local governmental entity that makes IGTs to the Medicaid agency. Generally, for the State to receive Federal matching on a claimed Medicaid payment where a governmentally operated health care provider has transferred the non-Federal share, the State must be able to demonstrate: (1) That the source of the transferred funds is State or local tax revenue (which must be supported by consistent treatment on the provider's financial records); and (2) that the provider retains the full Medicaid payment and is not required to repay, or in fact does not repay, all or any portion of the Medicaid payment to the State or local tax revenue account.

Under section 1903(a)(1) of the Act, the Federal government pays a share of State expenditures for medical assistance. Consistent with Office of Management and Budget (OMB) Circular A–87, an expenditure must be net of all ''applicable credits'' which include discounts, rebates, and refunds. Since the summer of 2003, we have examined Medicaid State financing arrangements across the country, and we have identified numerous instances in which health care providers did not retain the full amount of their Medicaid payments but were required to refund or return a portion of the payments received, either directly or indirectly. Failure by the provider to retain the full amount of reimbursement is inappropriate and inconsistent with statutory construction that the Federal government pay only its proportional cost for the delivery of Medicaid services. When a State claims Federal reimbursement in excess of net payments to providers, the FMAP rate has effectively been increased. To the extent that these State practices have come to light through the State plan amendment process, we have systematically required the States to eliminate these financing arrangements.

Therefore, we have concluded that requirements that a governmentally-operated health care provider transfer to the State more than the non-Federal share of a Medicaid payment creates an arrangement in which the net payment to the provider is necessarily reduced; the provider cannot retain the full Medicaid payment claimed by the State. This practice is not consistent with section 1902(a)(30)(A) of the Act.

We have found instances in which the State or local government has used the funds returned by the health care provider for costs outside the Medicaid program or to help draw additional Federal dollars for other Medicaid program costs. The Government Accountability Office (GAO) and the Department of Health and Human Services Office of Inspector General (OIG) have reviewed these practices and shared our concerns that they are not consistent with Medicaid financing requirements. The net effect of this re-direction of Medicaid payments is that the Federal government incurs a greater level of Medicaid program costs, which is inconsistent with the FMAP. This is because the claimed expenditure, which is matched by the Federal government according to the FMAP rate, is actually greater than the net expenditure, effectively producing an increase in the FMAP rate.

Some States and providers have defended the practices in question as means for financing the cost of providing services to non-Medicaid populations or financing public health activities or even justifying what they consider to be ''unfair'' FMAPs. Whether the Federal Medicaid program should participate in a general way in that financing, however, is an important decision that the Congress has not expressly addressed. As we discuss below, the Congress has expressly provided for certain kinds of limited Federal participation in the costs of providing services to non-Medicaid populations and public health activities.

Examples of limited congressional authorization of Federal financing for non-Medicaid populations and public health activities include the following. The Congress authorized disproportionate share hospital (DSH) payments to assist hospitals that serve a disproportionate share of low income patients which may include hospitals that furnish significant amounts of inpatient hospital services and outpatient hospital services to individuals with no source of third party coverage (that is, the uninsured). Under section 4723 of the Balanced Budget Act of 1997, the Congress also provided direct funding to the States to offset expenditures on behalf of aliens. Additional funding for payments to eligible providers for emergency health services to undocumented aliens was also provided by Congress under section 1011 of the Medicare Modernization Act. The Congress has periodically, and as recently as the Deficit Reduction Act of 2005 (DRA, Pub. L. 109–171, enacted on February 8, 2006), adjusted FMAPs for certain States and certain activities such as an enhanced FMAP to create incentives for States to assist individuals in institutions return to their homes. These examples are

provided to illustrate that the Congress has previously authorized limited Federal financing of non-Medicaid populations and public health activities, but has not to date authorized wider use of Federal Medicaid funding for these purposes.

Indeed, the Congress indicated that Medicaid funding was not to be used for non-Medicaid purposes when in the Balanced Budget Act of 1997 (BBA, Pub.L.105–33, enacted on August 5, 1997), it added section 1903(i)(17) to the Act to prohibit the use of FFP ''with respect to any amount expended for roads, bridges, stadiums, or any other item or service not covered under a State plan under this title.'' Non-Medicaid populations and non-Medicaid services simply are not eligible for Federal reimbursements except where expressly provided for by the Congress.

We believe the lack of transparency and accountability undermine public confidence in the integrity of the Medicaid program as it is extremely difficult to track the flow of taxpayer dollars. These arrangements, regardless of the merits, are hidden in archaic, nearly indecipherable language that may be further re-interpreted over time, placing Federal and State dollars at risk as well as creating tensions and conflicts among the States.

Certified Public Expenditure (CPE)

As we have worked with States to promote appropriate Medicaid financing, it has become apparent that an increasing number of States are choosing to use CPEs as a method of financing the non-Federal share. Therefore, we are taking this opportunity to review key provisions governing the use of CPEs.

A discussion about CPEs begins with the concept of an expenditure. The term ''expenditure'' is defined in timing rules at 45 CFR 95.13. According to 45 CFR 95.13(b), for expenditures for services under the Medicaid program, an expenditure is made ''in the quarter in which any State agency made a payment to the service provider.'' There is an alternate rule for administration or training expenditures at 45 CFR 95.13(d), under which the expenditure is made in the quarter to which the costs were allocated or, for non-cash expenditures, in the quarter in which ''the expenditure was recorded in the accounting records of any State agency in accordance with generally accepted accounting principles.'' In the State Medicaid Manual, at section 2560.4.G.1.a(1), we indicated that ''the expenditure is made when it is paid or recorded, whichever is earlier, by any State agency.'' In either case, there must be a record of an actual expenditure, either through cash or a transfer of funds in accounting records. It is clear from these authorities that an expenditure must involve a shift of funds (either by an actual transfer or a debit in the accounting records of the contributing unit of government and a credit in the records of a provider of medical care and services) and cannot merely be a refund or reduction in accounts receivable.

Furthermore, provisions at § 433.51 clearly state that the CPE must, itself, be ''eligible for FFP.'' In keeping with this language, there must be a provision in the State plan that would authorize the State to make the expenditure itself if the certifying governmental unit had not done so. In other words, a CPE must be an expenditure by another unit of government on behalf of the single State Medicaid agency.

A CPE equals 100 percent of a total computable Medicaid expenditure, and the Federal share of the expenditure is paid in accordance with the appropriate FMAP rate. In a State with a 60 percent FMAP rate, the CPE would be equal to $100 in order to draw down $60 in FFP.

The approach a unit of government can permissibly take to a CPE depends on whether or not the unit of government is the provider of the service. A governmental non-provider that pays for a covered Medicaid service furnished by a provider (whether governmental or not) can certify its actual expenditure, in an amount equal to the State plan rate (or the approved provisions of a waiver or demonstration, if applicable) for the service. In this case, the CPE would represent the expenditure by the governmental unit to the service provider (and would not necessarily be related to the actual cost to the provider for providing the service).

If the unit of government is the health care provider, then it may generate a CPE from its own costs if the State plan (or the approved provisions of a waiver or demonstration, if applicable) contains an actual cost reimbursement methodology. If this is the case, the governmental provider may certify the costs that it actually incurred that would be paid under the State plan. If the State plan does not contain an actual cost reimbursement methodology, then the governmental provider may not use a CPE because it would not be able to establish an expenditure under the plan, consistent with the requirements of 45 CFR 95.13, where there was no cost incurred that would be recognized under the State plan. A provider cannot establish an expenditure under the plan by asserting that it would pay itself.

As part of the review of proposed State plan amendments and focused financial reviews, we have examined CPE arrangements in many States that include various service categories within the Medicaid program. We note that currently there are a variety of practices used by State and local governments in submitting a CPE as the basis of matching FFP for the provision of Medicaid services. Different practices often make it difficult to (1) Align claimed expenditures with specific services covered under the State plan or identifiable administrative activities; (2) properly identify the actual cost to the governmental entity of providing services to Medicaid recipients or performing administrative activities; and (3) audit and review Medicaid claims to ensure that Medicaid payments are appropriately made. Further, we find that in many instances State Medicaid agencies do not currently review the CPE submitted by another unit of government to confirm that the CPE properly reflects the actual expenditure by the unit of government for providing Medicaid services or performing administrative activities. These circumstances do not serve to advance or promote the fiscal integrity of the Medicaid program. By establishing minimum standards for the documentation supporting CPEs, we anticipate that this proposed rule would serve to enhance the fiscal integrity of CPE practices within the Medicaid program.

State and Local Tax Revenue

As explained previously, the Medicaid statute recognizes State and/or local tax revenue as a permissible source of the non-Federal share of Medicaid expenditures. In order for State and/or local tax dollars to be eligible as the non-Federal share of Medicaid expenditures, that tax revenue cannot be committed or earmarked for non-Medicaid activities. Tax revenue that is contractually obligated between a unit of State or local government and health care providers to provide indigent care is not considered a permissible source of non-Federal share funding for purposes of Medicaid payments. Health care providers that forego generally applicable tax revenue that has been contractually obligated for the provision of health care services to the indigent or for any other non-Medicaid activity, which is then used by the State or local government as the non-Federal share of Medicaid payments, are making provider-related donations. Any Medicaid payment

linked to a provider-related donation renders that provider-related donation non-bona fide.

State Child Health Insurance Program (SCHIP)

Section 2107(e)(1)(C) of the Act stipulates that section 1903(w) applies to the SCHIP program as well as Medicaid. Accordingly, SCHIP regulations at 42 CFR 457.628 incorporate by reference the provisions at 42 CFR 433.51 through 433.74 concerning the source of the non-Federal share and donations and taxes. Moreover, SCHIP rules at 42 CFR 457.220 mirror the language in 42 CFR 433.51.

II. Provisions of the Proposed Rule

The background section conveys critical information about the statutory and regulatory context of this proposed rule. We are proposing this rule specifically to (1) Clarify that only units of government are able to participate in the financing of the non-Federal share; (2) establish minimum requirements for documenting cost when using a CPE; (3) limit providers operated by units of government to reimbursement that does not exceed the cost of providing covered services to eligible Medicaid recipients; (4) establish a new regulatory provision explicitly requiring that providers receive and retain the total computable amount of their Medicaid payments; and (5) make conforming changes to the SCHIP regulations.

The provisions of this regulation apply to all providers of Medicaid and SCHIP services, except that Medicaid managed care organizations and SCHIP providers are not subject to the cost limit provision of this regulation. Except as noted above, all Medicaid payments (including disproportionate share hospital payments) made under the authority of the State plan and under Medicaid waiver and demonstration authorities are subject to all provisions of this regulation.

Defining a Unit of Government (§ 433.50)

We are proposing to add new language to § 433.50 to define a unit of government to conform to the provisions of section 1903(w)(7)(G) of the Act. As discussed earlier, section 1903(w)(7)(G) of the Act identifies the five types of units of government that may participate in the non-Federal share of Medicaid payments: A State, a city, a county, a special purpose district, or other governmental units within the State. The proposed provisions at § 433.50 are modified to be consistent with this statutory reference. The newly proposed regulatory definition of unit of government includes:

- Any State or local government entity (including Indian tribes) that can demonstrate it has generally applicable taxing authority, and
- Any State-operated, city-operated, county-operated, or tribally-operated health care provider.

Under the proposed rule, health care providers that assert status to make IGTs or CPEs as a ''special purpose district'' or some form of ''other'' local government must demonstrate they are operated by a unit of government by showing that:

- The health care provider has generally applicable taxing authority; or
- The health care provider is able to access funding as an integral part of a governmental unit with taxing authority (that is legally obligated to fund the governmental health care provider's expenses, liabilities, and deficits), so that
- A contractual arrangement with the State or local government is not the primary or sole basis for the health care provider to receive tax revenues.

In some cases, evidence that a health care provider is operated by a unit of government must be assessed by examining the relationship of the unit of government to the health care provider. If the unit of government appropriates funding derived from taxes it collected to finance the health care providers general operating budget (which would not include special purpose grants, construction loans, or other similar funding arrangements), the provider would be considered governmentally operated. The inclusion of a health care provider as a component unit on the government's consolidated annual financial report indicates the governmentally operated status of the health care provider. If the unit of government merely uses its funds to reimburse the health care provider for the provision of Medicaid or other services, that alone is not sufficient to demonstrate that the entity is a unit of government. The unit of government must have a greater role in funding the entity's operations, including its expenses, liabilities, and deficits.

In recent reviews, we have found that health care providers asserting status as a ''special purpose district'' or ''other'' local government unit often do not meet this definition. Although the special purpose district or a unit of government with taxing authority may be required, either by law or contract, to provide limited support to the health care provider, the health care provider is an independent entity and not an integral part of the unit of government. Typically, the independent entity will have liability for the operation of the health care provider and will not have access to the unit of government's tax revenue without the express permission of the unit of government. Some of these types of health care providers are organized and operated under a not-for-profit status. Under these circumstances, the independently operated health care provider cannot participate in the financing of the non-Federal share of Medicaid payments, whether by IGT or CPE, because such arrangements would be considered provider-related donations.

The rule also includes language in § 433.50 referencing that units of government may participate in the financing of the non-Federal share of Medicaid expenditures.

Sources of State Share and Documentation of Certified Public Expenditures. (§ 433.51(b))

This rule proposes to amend the provisions of § 433.51 to conform the language to the provisions of sections 1903(w)(6)(A) and 1903(w)(7)(G) of the Act that are discussed above, and thus to clarify that the State share of Medicaid expenditures may be contributed only by units of government. This rule also proposes to include provisions requiring documentation of CPEs that are used as part of the State share of claimed expenditures.

The regulatory provisions of § 433.51 predate the statutory amendments found in section 1903(w) of the Act, which established a broad prohibition against provider-related donations and included provisions specifically identifying permissible IGTs and CPEs from units of government. Recently, some have expressed the view that the term ''public agency'' in § 433.51(b) suggests that an entity which is not governmental in nature but has a public-oriented mission (such as a not-for-profit hospital, for example) may participate in the financing of the non-Federal share by CPEs. This view is inconsistent with the plain meaning of the Act; however, to avoid any further confusion, we are proposing to amend the regulation to conform the regulatory language to the current statutory language in section 1903(w) of the Act. This amendment also makes clear that a broader reading would be inconsistent with section 1902(a)(2) of the Act and § 433.50(a)(1), which have historically stipulated that State and local governments are the entities eligible to finance the non-Federal share.

As discussed previously, the donations and taxes amendments

specifically allowed units of government to continue providing funding by IGT or CPE because of explicit statutory and regulatory provisions that allow units of government to share in the burden of financing the non-Federal share of Medicaid payments. To make regulatory language consistent with the statute and avoid confusion about whether there is a different regulatory standard, this rule proposes to modify § 433.51 by removing the terms ''public'' and ''public agency'' from § 433.51 and replacing these with references to units of government.

This rule also proposes to clarify that appropriate documentation is required whenever a CPE is used to fund the non-Federal share of expenditures in the Medicaid program. The governmental entity using a CPE must submit a certification statement to the State Medicaid agency attesting that the total computable amount of its claimed expenditures are eligible for FFP, in accordance with the Medicaid State plan and the revised provisions of § 433.51. That certification must be submitted and used as the basis for a State claim for FFP within 2 years from the date of the expenditure.

In this regard, the rule proposes to modify § 433.51(b) to require that a CPE must be supported by auditable documentation in a form approved by the Secretary that will minimally: (1) Identify the relevant category of expenditure under the State plan; (2) explain whether the contributing unit of government is within the scope of the exception to the statutory limitations on provider-related taxes and donations; (3) demonstrate the actual expenditures incurred by the contributing unit of government in providing services to Medicaid recipients or in administration of the State plan; and (4) be subject to periodic State audit and review.

To implement this rule, the Secretary would issue a form (or forms) that would be required for governments using a CPE for certain types of Medicaid services where we have found improper claims (for example, school-based services). These forms will be published in the **Federal Register** using procedures consistent with the Paperwork Reduction Act requirements. In preparing the way for these forms, this rule would serve to enhance fiscal integrity and improve accountability with respect to CPE practices in the Medicaid program.

Costs that are certified by units of government for purposes of CPE cannot include the costs of providing services to the non-Medicaid population or costs of services that are not covered by Medicaid, except that a hospital may certify costs for inpatient and outpatient hospital services that are not covered under the State plan but are the basis for a disproportionate share hospital payment consistent with the requirements of section 1923 of the Act.

It is important to note that the following conditions do not constitute compliance with the Federal statute and regulation governing CPEs:

1. A certification that funds are available at a State or local level. This certification is irrelevant to whether or not State or local dollars have actually been expended to provide health care services to Medicaid individuals.

2. An estimate of Medicaid costs derived from surveys of health care providers.

3. A certification that is higher than the actual cost or expenditure of the governmental unit that has generated the CPE based on its provision of services to Medicaid recipients.

4. A certification that presents costs as anything less than 100 percent of the total computable expenditure. Federal match is available only as a percentage of the total computable Medicaid expenditure documented through a CPE. A certification equal to the amount of the State share only is not acceptable.

The above list is not all-inclusive of arrangements that do not constitute compliance.

Cost Limit for Providers Operated by Units of Government (§ 447.206)

As we have examined Medicaid financing arrangements across the country, we have found that many States make supplemental payments to governmentally operated providers that are in excess of cost. These providers, in turn, use the excess of Medicaid revenue over cost to subsidize health care operations that are unrelated to Medicaid, or they may return a portion of the supplemental payments to the State as a source of revenue. In either case, we do not find that Medicaid payments in excess of cost to governmentally operated health care providers are consistent with the statutory principles of economy and efficiency as required by section 1902(a)(30)(A) of the Act. Consequently, this rule proposes to limit reimbursement for governmentally operated providers to amounts consistent with economy and efficiency by establishing a limit of reimbursement not to exceed cost.

The cost limit in § 447.206 specifies that the Secretary will determine a reasonable method for identifying allowable Medicaid costs that incorporates not only OMB Circular A–87 cost principles but also Medicare cost principles, as appropriate, and the statutory requirements of sections 1902, 1903, and 1905 of the Act. While OMB Circular A–87 provides a framework for cost analysis, not all cost principles under OMB Circular A–87 are consistent with Medicare cost principles or requirements found in the Act for economy and efficiency and the proper and efficient administration of the Medicaid State plan. Developing cost finding methodologies more directly to the Medicaid program will provide for a more accurate allocation of allowable costs to the Medicaid program.

For hospital and nursing facility services, we find that Medicaid costs are best documented when based upon a standard, auditable, nationally recognized cost report (for example, Medicare 2552–96 hospital cost report). Any hospital and nursing facility services that are not documented based on a standardized, nationally recognized cost report are generally not reimbursable Medicaid costs. We will address any exceptions to this on a case-by-case basis.

For non-hospital and non-nursing facility services in Medicaid, we note that a nationally recognized, standard cost report does not presently exist. Therefore, the proposed rule stipulates that Medicaid costs must be supported by auditable documentation in a form approved by the Secretary that, at a minimum, will: (1) Identify the relevant category of expenditure under the State plan; (2) explain whether the contributing unit of government is within the scope of the exception to the statutory limitations on provider-related taxes and donations; (3) demonstrate the actual expenditures incurred by the contributing unit of government in providing services to Medicaid recipients or in administration of the State plan; and (4) be subject to periodic State audit and review.

Each governmentally operated health care provider that is subject to cost reimbursement and using CPEs must file a cost report with the State Medicaid agency annually and retain records in accordance with 42 CFR 431.17 and 45 CFR 92.42.

Under a Medicaid cost reimbursement payment system funded by CPEs, States may utilize most recently filed cost reports to develop interim Medicaid payment rates and may trend these interim rates by an applicable health care-related index. Interim reconciliations must be performed by reconciling the interim Medicaid payment rates to the filed cost report for the spending year in which interim payment rates were made. Final

reconciliation must also be performed by reconciling the interim payments and interim adjustments to the finalized cost report for the spending year in which interim payment rates were made.

When States do not use CPEs to pay providers operated by units of government, the new provisions would require the State Medicaid agency to review annual cost reports to verify that actual payments to each governmentally operated provider did not exceed the provider's cost.

Under this provision, if it is determined that a governmentally-operated health care provider received an overpayment, amounts related to the overpayment would be properly credited to the Federal government, in accordance with part 433, subpart F.

Retention of Payments (§ 447.207)

In order to strengthen efforts to remove any potential for abuse involving the re-direction of Medicaid payments by IGTs in the future, this rule proposes a new regulatory provision at § 447.207 requiring that providers receive and retain the full amount of the total computable payment provided to them for services furnished under the approved State plan (or the approved provisions of a waiver or demonstration, if applicable). Compliance with this provision will be determined by examining any transactions that are associated with the provider's Medicaid payments to ensure that expenditures have been appropriately claimed and the non-Federal share has been satisfied.

Compliance may be demonstrated by showing that the funding source of an IGT is clearly separated from the Medicaid payment that a health care provider received. Generally, an IGT that takes place before the Medicaid payment, which originates from an account funded by taxes that is separate from the account in which the health care provider receives Medicaid payments, is usually acceptable.

Elimination of Payment Flexibility To Pay Public Providers in Excess of Cost (§ 447.271(b))

We are proposing to eliminate § 447.271(b), as this provision is no longer relevant due to the new cost limit for units of government proposed in this rule.

Conforming Changes To Reflect Upper Payment Limits for Governmental Providers (§ 447.272 and § 447.321)

We are proposing a corresponding modification to the Medicaid upper payment limit (UPL) rules found at § 447.272 for inpatient hospital and nursing facility services, as well as the UPL rules at § 447.321 for outpatient hospital and clinic services, to incorporate by reference the new cost limit for providers operated by units of government and to make the defined UPL facility groups consistent with the new provisions of § 433.50.

With respect to the UPL regulations at § 447.272 and § 447.321, this rule proposes to limit Medicaid reimbursement for State government operated and non-State government operated facilities to the individual provider's cost, whereas the current UPL regulations provide an aggregate limit based on the UPL facility group. Formerly established UPL transition periods remain unchanged; therefore, any States that are still in transition periods under § 447.272(e) or § 447.321(e) when this rule becomes effective will be permitted to make additional payments above the cost UPL to governmentally operated providers throughout the duration of their transition periods. The UPL rules at § 447.272 and § 447.321 for privately operated facilities and Indian Health Service and tribal facilities remain unchanged.

It is important to note that the provisions of this proposed rule are consistent with the regulatory provisions concerning Medicaid DSH payments. Medicaid DSH payments are limited to the uncompensated care costs of providing inpatient hospital and outpatient hospital services to Medicaid beneficiaries and individuals with no source of third party coverage for the services they receive. To the extent any governmentally operated hospital is reimbursed by Medicaid at the level of cost, there will be no Medicaid shortfall factored into the facility's calculation of uncompensated care for purposes of DSH. This is true whether the Medicaid cost reimbursement is funded by CPEs or any other means.

Conforming Changes to Public Funds as the State Share of Financial Participation (§ 457.220)

Current provisions on the financing of the SCHIP at § 457.220 mirror the provisions at § 433.51. Because the changes we are making to § 433.51 apply equally to SCHIP programs, we are proposing to make conforming changes to § 457.220 so that this provision continues to mirror § 433.51.

Conforming Changes to Other Applicable Federal Regulations (§ 457.628)

Current provisions on the financing of the SCHIP at § 457.628 incorporate by reference the provisions at § 433.51 through § 433.74. Because the changes we are making to § 433.50, which implement section 1903(w) of the Act, apply equally to SCHIP programs, we propose to make conforming changes to § 457.628 to incorporate § 433.50. In addition, the new provision at § 447.207 requiring retention of payments is also incorporated by reference in § 457.628 because this provision applies to SCHIP providers as well as Medicaid providers.

Tool To Evaluate the Governmental Status of Providers

With the issuance of this proposed rule, we recognize the need to evaluate individual health care providers to determine whether or not they are units of government as prescribed by the rule. States will need to identify each health care provider purportedly operated by a unit of government to CMS and provide information needed for CMS to make a determination as to whether or not the provider is a unit of government. We have developed a form questionnaire to collect information necessary to make that determination. The questionnaire will be published in connection with this proposed rule. For new State plan amendments that will reimburse governmentally operated providers or rely on the participation of health care providers for the financing of the non-Federal share, States will be required to complete this questionnaire regarding each provider that is said to be governmentally operated. For any existing arrangement that involves payment to governmentally operated providers or relies on the participation of health care providers for the non-Federal share, States will be required to provide the information requested on this form questionnaire relative to each applicable provider within three (3) months of the effective date of the final rule following this proposed rule.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Public Funds as the State Share of Financial Participation (§ 433.51)

Section 433.51 requires that a certified public expenditure (CPE) be supported by auditable documentation in a form(s) approved by the Secretary that, at a minimum, identifies the relevant category of expenditures under the Medicaid State Plan, demonstrates the cost of providing services to Medicaid recipients, and is subject to periodic State audit and review.

The burden associated with this requirement is the time and effort put forth by a provider to complete the approved form(s) to be submitted with a CPE. Depending upon provider size, we believe that it could take approximately 10–60 hours to fill out the form(s) that would be required for an annual certified public expenditure. We estimate that providers in 50 States will be affected by this requirement, but we are unable to identify the total number of providers affected or the estimated total aggregate hours of paperwork burden for all providers, as such figures will be a direct result of the number of providers that are determined to be governmentally operated.

Cost Limit for Providers Operated by Units of Government (§ 447.206)

Section 447.206(e) states that each provider must submit annually a cost report to the Medicaid agency which reflects the individual providers cost of serving Medicaid recipients during the year. The Medicaid Agency must review the cost report to determine that costs on the report were properly allocated to Medicaid and verify that Medicaid payments to the provider during the year did not exceed the providers cost.

The burden associated with this requirement is the time and effort for the provider to report the cost information annually to the Medicaid Agency and the time and effort involved in the review and verification of the report by the Medicaid Agency. We estimate that it will take a provider 10 to 60 hours to prepare and submit the report annually to the Medicaid Agency. We estimate it will take the Medicaid Agency 1 to 10 hours to review and verify the information provided. We are unable to identify the total number of providers affected or the estimated total aggregate hours of paperwork burden for all providers, as such figures will be a direct result of the number of providers that are determined to be governmentally operated.

In the preamble of this proposed regulation, under the section titled ''*Tool to Evaluate Governmental Status of Providers*'', we discuss a form questionnaire that we have developed to assist us in making a determination as to whether or not the provider is a unit of government. We have submitted this proposed information collection to OMB for its review and approval. To view the ''Governmental Status of Health Care Provider'' form and obtain additional supporting information, please access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995* or e-mail your request and include CMS–10176 as the document identifier to *Paperwork@cms.hhs.gov.*

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attn.: Melissa Musotto, CMS–2258–P, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Katherine T. Astrich, CMS Desk Officer, CMS–2258–P, *Katherine_T._Astrich@omb.eop.gov.* Fax (202) 395–6974.

IV. 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.

V. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. For the reasons cited below, we have determined that this rule may have a significant impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. We have determined that the rule will have an effect on State and local governments in an amount greater than $120 million. We have explained this assessment in

the section entitled ''Anticipated Effects'' below.

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. For purposes of Executive Order 13132, we also find that this rule will have a substantial effect on State or local governments.

B. Costs and Benefits

This rule is a major rule because it is estimated to result in $120 million in savings during the first year and $3.87 billion in savings over five years.

As CMS has examined Medicaid State financing arrangements across the country, we have identified numerous instances in which State financing practices do not comport with the Medicaid statute. As explained in the preamble, Section 1903(w) of the Act permits units of government to participate in the financing of the non-Federal share; however, in some instances States rely on funding from non-governmental entities for the non-Federal share. Because such practices are expressly prohibited by the donations and taxes amendments at Section 1903(w), we are issuing this rule to clarify the requirements of entities and health care providers that are able to finance the non-Federal share.

Furthermore, CMS has found several arrangements in which providers did not retain the full amount of their Medicaid payments but were required to refund or return a portion of the payments received, either directly or indirectly. Failure by the provider to retain the full amount of reimbursement is inappropriate and inconsistent with statutory construction that the Federal government pays only its proportional cost for the delivery of Medicaid services. When a State claims Federal reimbursement in excess of net payments to providers, the FMAP rate has effectively been increased, and federal Medicaid funds are redirected toward non-Medicaid services. When a State chooses to recycle FFP in this manner, the Federal taxpayers in other States disproportionately finance the Medicaid program in the State that is recycling FFP. This rule is designed to eliminate such practices.

The rule should also have a beneficial distributive impact on governmental providers because in many States there are a few selected governmental providers receiving payments in excess of cost, while other governmental providers receive a lower rate of reimbursement. This rule will reduce inflated payments to those few governmental providers and promote a more even distribution of funds among all governmental providers. This is because all governmental providers will be limited to a level of reimbursement that does not exceed the individual provider's cost.

We have observed that there are a variety of practices used by State and local governments in identifying costs and submitting a CPE as the basis of matching FFP for the provision of Medicaid services. These different cost methods and CPE practices make it difficult to (1) Align claimed expenditures with specific services covered under the State plan or identifiable administrative activities; (2) properly identify the actual cost to the governmental entity of providing services to Medicaid recipients or performing administrative activities; and (3) audit and review Medicaid claims to ensure that Medicaid payments are appropriately made. Such circumstances present risks of inflationary costs being certified and excessive claims of FFP. This rule will facilitate a more consistent methodology in Medicaid cost identification and allocation across the country, thereby improving the fiscal integrity of the program.

Because the RFA includes small governmental jurisdictions in its definition of small entities, we expect this rule to have a significant economic impact on a substantial number of small entities, specifically health care providers that are operated by units of government, including governmentally operated small rural hospitals, as they will be subject to the new cost limit imposed by this rule. We have reviewed CMS's Online Survey and Certification and Reporting System (OSCAR) data for information about select provider types that may be impacted by this rule. According to the OSCAR data, there are:

- 1,153 hospitals that have identified themselves as operated by local governments or hospital districts/authorities;
- 822 nursing facilities that have identified themselves as operated by counties, cities, or governmental hospital districts;
- 113 intermediate care facilities for the mentally retarded (ICF/MR) that have identified themselves as operated by cities, towns, or counties.

We have not counted State operated facilities in the above numbers because for purposes of the RFA, States are not included in the definition of a small entity. Note further that OSCAR data is self-reported, so the figures provided above do not necessarily reflect the number of providers CMS recognizes as governmentally operated according to the provisions of this rule.

Some of the governmental providers identified as small entities for RFA purposes may have been receiving Medicaid payments in excess of cost, but as a result of this rule, payments will not be permitted to exceed cost. Governmentally operated providers will also be required under this rule to receive and retain the full amount of their Medicaid payments, which would result in a net increase in revenue to the extent such providers were returning a portion of their Medicaid payments to the State and payment rates remain the same following the effective date of this rule. On the other hand, if States reduce payment rates to such providers after this rule is effective, these providers may experience a decrease in net revenue. Finally, there are health care providers that are considered under the RFA as small entities (including small rural hospitals) but are not governmentally operated; to the extent these providers have been involved in financing the non-Federal share of Medicaid payments, this rule will clarify whether or not such practices may continue. However, for the most part, private health care providers are not affected by this rule. As stated earlier, for purposes of the RFA, the small entities principally affected by this rule are governmentally operated health care providers. In light of the specific universe of small entities impacted by the rule, the fact that this rule requires States to allow governmentally operated health care providers to receive and retain their Medicaid payments, and the allowance for governmentally operated health care providers to receive a Medicaid rate up to cost, we have not identified a need for regulatory relief under the RFA.

Ultimately, this rule is designed to ensure that Medicaid payments to governmentally operated health care providers are based on actual costs and that the financing arrangements supporting those payments are consistent with the statute. While some health care providers may lose revenues in light of this rule, those revenues were likely in excess of cost or may have been financed using methods that did not permit the provider to retain payments received. Other health care providers that were adversely affected by questionable reimbursement and financing arrangements may now, under this rule, benefit from a more equitable distribution of funds. Private providers

are generally unaffected by this rule, except for limited situations where the clarification provided by the rule may require a change to current financing arrangements.

With respect to clinical care, we anticipate that this rule's effect on actual patient services to be minimal. The rule presents no changes to coverage or eligibility requirements under Medicaid. The rule clarifies statutory financing requirements and allows governmentally operated providers to be reimbursed at levels up to cost. Federal matching funds will continue to be made available based on expenditures for appropriately covered and financed services. While States may need to change reimbursement or financing methods, we do not anticipate that services delivered by governmentally operated providers or private providers will change.

C. Anticipated Effects

The following chart summarizes our estimate of the anticipated effects of this rule.

ESTIMATED REDUCTION IN FEDERAL MEDICAID OUTLAYS RESULTING FROM THE PROVIDER PAYMENT REFORM PROPOSAL BEING IMPLEMENTED BY CMS–2258–P

[amounts in millions]

	Fiscal Year				
	2007	2008	2009	2010	2011
Payment Reform	−120	−530	−840	−1,170	−1,210

These estimates are based on recent reviews of state Medicaid spending. Payment reform addresses both spending through intergovernmental transfers (IGT) and limiting payments to government providers to cost. For IGT spending, recent reports on spending on Disproportionate Share Hospitals (DSH) and Upper Payment Limit (UPL) spending were reviewed. From these reports, an estimate of the total spending that would be subject to the net expenditure policy was developed and then projected forward using assumptions consistent with the most recent President's Budget projections. The estimate of the savings in federal Medicaid spending as a result of this policy factors in the current authority and efforts of CMS and the impact of recent waivers; the estimate also accounts for the potential effectiveness of future efforts. There is uncertainty in this estimate to the extent that the projections of IGT spending may not match actual future spending and to the extent that the effectiveness of this policy is greater than or less than assumed.

Reports on UPL spending following the most recent legislation concerning UPL were reviewed to develop a projection for total enhanced payments in Medicaid spending. The estimate of savings from this policy reflects both estimates of the amount of UPL spending that exceeds cost and the effectiveness of this policy in limiting payments to cost. The estimate also accounts for transitional UPL payments, which are unchanged under this policy, and for the impact of recent waivers. There is uncertainty in this estimate to the extent that the projections of UPL spending may not match actual future spending, to the extent that the amount of UPL spending above cost differs from the estimated amount, and to the extent that the effectiveness of this policy is greater than or less than assumed.

D. Alternatives Considered

There is an option to implement policies surrounding retention of payments, certain elements of certified public expenditures, and the definition of a unit of government under existing statutory and regulatory authority. However, the proposed rule is a more effective method of implementation because it promotes statutory intent, strengthens accountability for financing the non-Federal share of Medicaid payments, and clarifies existing regulations based on issues we have identified. Similarly, an option exists to continue to allow governmental providers to be reimbursed at current rates; however, given the information CMS has gathered regarding the use of Medicaid payments to governmental providers, we find that the proposal to limit governmental providers to cost offers a way to reasonably reimburse providers while ensuring that Federal matching funds are used for their intended purpose, which is to pay for a covered Medicaid service to a Medicaid beneficiary and not something else.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the table below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the proposed decrease in Federal Medicaid outlays resulting from the provider payment reform proposal being implemented by CMS–2258–P (Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Financial Partnerships). The sum total of these expenditures is classified as savings in Federal Medicaid spending.

ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FISCAL YEAR 2007 TO FISCAL YEAR 2011

[In Millions]

Category	Transfers
Annualized Monetized Transfers	Negative Transfer—Estimated decrease in expenditures: $774.
From Whom To Whom?	Federal Government to States.

F. Conclusion

We expect that this rule will promote the fiscal integrity of the Medicaid program. The proposed rule will enhance accountability for States to properly finance the non-Federal share of Medicaid expenditures and allow them to pay reasonable rates to governmental providers. To the extent prior payments to governmentally operated providers were inflated, the rule will reduce such payments to levels that more accurately reflect the actual cost of Medicaid services and ensure that the non-Federal share of Medicaid payments has been satisfied in a manner consistent with the statute. Private providers are predominately unaffected by the rule, and the effect on actual patient services should be minimal.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure Drugs, Grant programs-health, Health facilities, Health professions, Medicaid Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Amend § 433.50 by revising paragraph (a)(1) to read as follows:

§ 433.50 Basis, scope, and applicability.

(a) * * *

(1) Section 1902(a)(2) and section 1903(w)(7)(G) of the Act, which require States to share in the cost of medical assistance expenditures and permits State and local units of government to participate in the financing of the non-Federal portion of medical assistance expenditures.

(i) A unit of government is a State, a city, a county, a special purpose district, or other governmental unit in the State (including Indian tribes) that has generally applicable taxing authority.

(ii) A health care provider may be considered a unit of government only when it is operated by a unit of government as demonstrated by a showing of the following:

(A) The health care provider has generally applicable taxing authority; or

(B) The health care provider is able to access funding as an integral part of a unit of government with taxing authority which is legally obligated to fund the health care provider's expenses, liabilities, and deficits, so that a contractual arrangement with the State or local government is not the primary or sole basis for the health care provider to receive tax revenues.

* * * * *

3. Section 433.51 is revised to read as follows:

§ 433.51 Funds from units of government as the State share of financial participation.

(a) Funds from units of government may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The funds from units of government are appropriated directly to the State or local Medicaid agency, or are transferred from other units of government (including Indian tribes) to the State or local agency and are under its administrative control, or are certified by the contributing unit of government as representing expenditures eligible for FFP under this section. Certified public expenditures must be expenditures within the meaning of 45 CFR 95.13 that are supported by auditable documentation in a form approved by the Secretary that, at a minimum —

(1) Identifies the relevant category of expenditures under the State plan;

(2) Explains whether the contributing unit of government is within the scope of the exception to limitations on provider-related taxes and donations;

(3) Demonstrates the actual expenditures incurred by the contributing unit of government in providing services to eligible individuals receiving medical assistance or in administration of the State plan; and

(4) Is subject to periodic State audit and review.

(c) The funds from units of government are not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 447.206 is added to read as follows:

§ 447.206 Cost limit for providers operated by units of government.

(a) *Scope.* This section applies to payments made to health care providers that are operated by units of government as defined in § 433.50(a)(1) of this chapter.

(b) *Exceptions.* Indian Health Services and tribal facilities. The limitation in paragraph (c) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638).

(c) *General rules.* (1) All health care providers that are operated by units of government are limited to reimbursement not in excess of the individual provider's cost of providing covered Medicaid services to eligible Medicaid recipients.

(2) Reasonable methods of identifying and allocating costs to Medicaid will be determined by the Secretary in accordance with sections 1902, 1903, and 1905 of the Act, as well as 45 CFR 92.22 and Medicare cost principles when applicable.

(3) For hospital and nursing facility services, Medicaid costs must be supported using information based on the Medicare cost report for hospitals or nursing homes, as applicable.

(4) For non-hospital and non-nursing facility services, Medicaid costs must be supported by auditable documentation in a form approved by the Secretary that is consistent with § 433.51(b)(1) through (b)(4) of this chapter.

(d) *Use of certified public expenditures.* This paragraph applies when States use a cost reimbursement methodology funded by certified public expenditures.

(1) In accordance with paragraph (c) of this section, each provider must submit annually a cost report to the Medicaid agency that reflects the individual provider's cost of serving Medicaid recipients during the year.

(2) States may utilize most recently filed cost reports to develop interim rates and may trend those interim rates by an applicable health care-related index. Interim reconciliations must be

performed by reconciling the interim Medicaid payment rates to the filed cost report for the spending year in which interim payment rates were made.

(3) Final reconciliation must be performed annually by reconciling any interim payments to the finalized cost report for the spending year in which any interim payment rates were made.

(e) *Payments not funded by certified public expenditures.* This paragraph applies to payments made to providers operated by units of government that are not funded by certified public expenditures. In accordance with paragraph (c) of this section, each provider must submit annually a cost report to the Medicaid agency that reflects the individual provider's cost of serving Medicaid recipients during the year. The Medicaid agency must review the cost report to determine that costs on the report were properly allocated to Medicaid and verify that Medicaid payments to the provider during the year did not exceed the provider's cost.

(f) *Overpayments.* If, under paragraph (d) or (e) of this section, it is determined that a governmentally-operated health care provider received an overpayment, amounts related to the overpayment will be properly credited to the Federal government, in accordance with part 433, subpart F of this chapter.

(g) *Compliance dates.* A State must comply with the cost limit described in paragraph (c) of this section for services furnished after September 1, 2007.

3. Section 447.207 is added to read as follows:

§ 447.207 Retention of payments.

(a) All providers are required to receive and retain the full amount of the total computable payment provided to them for services furnished under the approved State plan (or the approved provisions of a waiver or demonstration, if applicable). The Secretary will determine compliance with this provision by examining any associated transactions that are related to the provider's total computable payment to ensure that the State's claimed expenditure, which serves as the basis for Federal Financial Participation, is equal to the State's net expenditure, and that the full amount of the non-Federal share of the payment has been satisfied.

(b) [Reserved]

4. Section § 447.271 is revised to read as follows:

§ 447.271 Upper limits based on customary charges.

(a) The agency may not pay a provider more for inpatient hospital services under Medicaid than the provider's customary charges to the general public for the services.

(b) [Reserved]

5. Section 447.272 is amended by revising paragraphs (a) through (d) to read as follows:

§ 447.272 Inpatient services: Application of upper payment limits.

(a) *Scope.* This section applies to rates set by the agency to pay for inpatient services furnished by hospitals, NFs, and ICFs/MR within one of the following categories:

(1) State government operated facilities (that is, all facilities that are operated by the State) as defined at § 433.50(a) of this chapter.

(2) Non-State government operated facilities (that is, all governmentally operated facilities that are not operated by the State) as defined at § 433.50(a) of this chapter.

(3) Privately operated facilities (that is, all facilities that are not operated by a unit of government) as defined at § 433.50(a) of this chapter.

(b) *General rules.* (1) For privately operated facilities, upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) For State government operated facilities and for non-State government operated facilities, upper payment limit refers to the individual provider's cost as defined at § 447.206.

(3) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to the group of privately operated facilities described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(4) Except as provided in paragraph (c) of this section, Medicaid payments to State government operated facilities and non-State government operated facilities must not exceed the individual provider's cost as documented in accordance with § 447.206.

(c) *Exceptions. (1) Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638).

(2) *Disproportionate share hospitals.* The limitation in paragraph (b) of this section does not apply to payment adjustments made under section 1923 of the Act that are made under a State plan to hospitals found to serve a disproportionate number of low-income patients with special needs as provided in section 1902(a)(13)(A)(iv) of the Act. Disproportionate share hospital (DSH) payments are subject to the following limits:

(i) The aggregate DSH limit using the Federal share of the DSH limit under section 1923(f) of the Act.

(ii) The hospital-specific DSH limit in section 1923(g) of the Act.

(iii) The aggregate DSH limit for institutions for mental disease (IMDs) under section 1923(h) of the Act.

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b) of this section by one of the following dates:

(1) For State government operated and non-State government operated hospitals—September 1, 2007.

(2) For all other facilities—March 13, 2001.

* * * * *

Section 447.321 is amended by revising paragraphs (a) through (d) to read as follows:

§ 447.321 Outpatient hospital and clinic services: Application of upper payment limits.

(a) *Scope.* This section applies to rates set by the agency to pay for outpatient services furnished by hospitals and clinics within one of the following categories:

(1) State government operated facilities (that is, all facilities that are operated by the State) as defined at § 433.50(a) of this chapter.

(2) Non-State government operated facilities (that is, all governmentally operated facilities that are not operated by the State) as defined at § 433.50(a) of this chapter.

(3) Privately operated facilities that is, all facilities that are not operated by a unit of government as defined at § 433.50(a) of this chapter.

(b) *General rules.* (1) For privately operated facilities, upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) For State government operated facilities and for non-State government operated facilities, upper payment limit refers to the individual provider's cost as defined at § 447.206.

(3) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to the group of privately operated facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(4) Except as provided in paragraph (c) of this section, Medicaid payments to State government operated facilities and non-State government operated facilities must not exceed the individual provider's cost as documented in accordance with § 447.206.

(c) *Exception. Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638).

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b) of this section by one of the following dates:

(1) For State government operated and non-State government operated hospitals—September 1, 2007.

(2) For all other facilities—March 13, 2001.

* * * * *

PART 457—ALLOTMENTS AND GRANTS TO STATES

1. The authority for part 457 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302)

2. Section 457.220 is revised to read as follows:

§ 457.220 Funds from units of government as the State share of financial participation.

(a) Funds from units of government may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The funds from units of government are appropriated directly to the State or local Medicaid agency, or are transferred from other units of government (including Indian tribes) to the State or local agency and are under its administrative control, or are certified by the contributing unit of government as representing expenditures eligible for FFP under this section. Certified public expenditures must be expenditures within the meaning of 45 CFR 95.13 that are supported by auditable documentation in a form approved by the Secretary that, at a minimum—

(1) Identifies the relevant category of expenditures under the State plan;

(2) Explains whether the contributing unit of government is within the scope of the exception to limitations on provider-related taxes and donations;

(3) Demonstrates the actual expenditures incurred by the contributing unit of government in providing services to eligible individuals receiving medical assistance or in administration of the State plan; and

(4) Is subject to periodic State audit and review.

(c) The funds from units of government are not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

3. Amend § 457.628 by—

A. Republishing the introductory text to the section.

B. Revising paragraph (a).

The republication and revision read as follows:

§ 457.628 Other applicable Federal regulations.

Other regulations applicable to SCHIP programs include the following:

(a) HHS regulations in § 433.50 through § 433.74 of this chapter (sources of non-Federal share and Health Care-Related Taxes and Provider-Related Donations) and § 447.207 of this chapter (Retention of payments) apply to States' SCHIPs in the same manner as they apply to States' Medicaid programs.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 16, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 12, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–195 Filed 1–12–07; 4:21 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 01–92; DA 06–2548]

Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, reopening of reply comment period.

SUMMARY: This document grants a request for an extension of time to file reply comments on a proposed process to address phantom traffic issues and a related proposal for the creation and exchange of call detail records filed by the Supporters of the Missoula Plan, an intercarrier compensation reform plan filed July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation (the NARUC Task Force). The Order modifies the pleading cycle by reopening the comment period in order to facilitate the development of a more substantive and complete record in this proceeding.

DATES: Submit reply comments on or before January 5, 2007.

ADDRESSES: You may submit comments, identified by CC Docket No. 01–92, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission Web Site: http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) /*http://www.fcc.gov/cgb/ecfs/*.
- *E-mail:* To *randy.clarke@fcc.gov.* Include CC Docket 01–92 in the subject line of the message.
- *Fax:* To the attention of Randy Clarke at 202–418–1567. Include CC Docket 01–92 on the cover page.
- *Mail:* Parties should send a copy of their filings to Randy Clarke, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A360, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.

—All hand deliveries must be held together with rubber bands or fasteners.

—Any envelopes must be disposed of before entering the building.

—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting

comments and additional information on the rulemaking process, see the Public Notice requesting comment on the Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal. 71 FR 67509, November 22, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or Randy Clarke, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1587.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order [DA 06–2548] released December 20, 2006. The complete text of the Order is available for inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The complete text may also be downloaded at: *http://www.fcc.gov.* By the Order, the Wireline Competition Bureau (WCB) grants a request for an extension of time to file reply comments on a proposed process to address phantom traffic issues and a related proposal for the creation and exchange of call detail records filed by the Supporters of the ''Missoula Plan.'' The Missoula Plan was filed on July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation. 71 FR 45510, August 9, 2006; 71 FR 54008, September 13, 2006; 71 FR 70709, December 6, 2006. Among other things, the Missoula Plan contained a Comprehensive Solution for Phantom Traffic, which called ''for the filing of an industry proposal for a uniform process for the creation and exchange of call detail records.'' On November 6, 2006, the Supporters of the Missoula Plan filed a written *ex arte* proposing an interim process to address phantom traffic issues and a related proposal for the creation and exchange of call detail records. On November 8, 2006, the WCB released a Public Notice requesting comment on the proposed phantom traffic interim process and call detail record proposal. 71 FR 67509, November 22, 2006. Thirty-nine (39) comments on this proposal were filed on December 7, 2006 and reply comments are due December 22, 2006. On December 18, 2006, the Supporters of the Missoula Plan filed a request for additional time to file reply comments on the phantom traffic proposal.

The WCB determined that providing additional time to file reply comments will facilitate the development of a more substantive and complete record in this proceeding. Although it is the policy of the Commission that extensions of time shall not be routinely granted, the WCB determined that given the number of comments filed, the complexity of the issues raised in the proposal, and the importance of the phantom traffic issue to the industry, we find that good cause exists to provide parties an extension of time, from December 22, 2006 to January 5, 2007 for filing reply comments in this proceeding.

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act, 47 U.S.C. 154(i), 154(j), 155(c), and §§ 0.91, 0.291, and 1.46 of the Commission's rules, 47 CFR 0.91, 0.291, 1.46, the pleading cycle established in this matter shall be modified as follows:

Reply Comments Due: January 5, 2007.

All other filing procedures remain unchanged from those previously established in this proceeding.

It is further ordered that the request of the Supporters of the Missoula Plan for an Extension of Time is *granted*, as set forth herein.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E7–622 Filed 1–17–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 01–92; DA 06–2577]

Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, reopening of reply comment period.

SUMMARY: This document grants a motion requesting additional time to file reply comments on an intercarrier compensation reform plan, the ''Missoula Plan.'' The Order modifies the pleading cycle by reopening the comment period in order to facilitate the development of a more accurate and complete record in this proceeding.

DATES: Submit reply comments on or before February 1, 2007.

ADDRESSES: You may submit comments, identified by CC Docket No. 01–92, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission Web Site: http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) *http://www.fcc.gov/cgb/ecfs/.*
- *E-mail:* To *victoria.goldberg@fcc.gov.* Include CC Docket 01–92 in the subject line of the message.
- *Fax:* To the attention of Victoria Goldberg at 202–418–1567. Include CC Docket 01–92 on the cover page.
- *Mail:* Parties should send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.
—All hand deliveries must be held together with rubber bands or fasteners.
—Any envelopes must be disposed of before entering the building.
—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Notice requesting comment on the Missoula Plan. 71 FR 45510, August 9, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520, or Victoria Goldberg, Wireline Competition Bureau, Pricing Policy Division, (202) 418–7353.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order [DA 06–2577] released December 22, 2006. The complete text of the Order is available for inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The complete text may also be downloaded at: *http://www.fcc.gov.* By the Order, the Wireline Competition Bureau (WCB) grants a motion requesting an additional extension of the date for filing reply comments on an intercarrier compensation plan called the ''Missoula Plan.'' The Missoula Plan was filed on July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation. On July 25, 2006, the WCB released a Public Notice requesting that comments on the Missoula Plan be filed by September 25, 2006, and reply comments by November 9, 2006. 71 FR 45510, August 9, 2006. On August 29, 2006, WCB released an order granting extensions of the comment and reply comment filing dates to October 25, 2006 and December 11, 2006. 71 FR 54008, September 13, 2006. Over 110 parties filed initial comments on or before October 25, 2006. On November 17, 2006, NARUC filed a motion requesting a further extension of the reply comment date to January 11, 2007, which was granted. 71 FR 70709, December 6, 2006. On December 20, 2006, the Indiana Utility Regulatory Commission, the Maine Public Utilities Commission, the Montana Public Service Commission, the Nebraska Public Service Commission, the Vermont Department of Public Service, the Vermont Public Service Board, and the Wyoming Public Service Commission (the ''Early Adopter Regulatory Commissions'') filed a Motion for Extension of Time requesting an additional extension for all reply comments to February 1, 2007.

The WCB determined that providing additional time to file reply comments will facilitate the development of a more accurate and complete record in this proceeding. Although it is the policy of the Commission that extensions of time shall not be routinely granted, the WCB determined that given the extensive nature of the record and the potential effects of the Missoula Plan, good cause exists to provide parties an additional extension of time, from January 11, 2007 to February 1, 2007, for filing reply comments in this proceeding.

Accordingly, it is ordered that, pursuant to §§ 4(i), 4(j), and 5(c) of the Communications Act, 47 U.S.C. 154(i), 154(j), 155(c), and §§ 0.91, 0.291, and 1.46 of the Commission's rules, 47 CFR 0.91, 0.291, 1.46, the pleading cycle established in this matter shall be modified as follows:

Reply Comments Due: February 1, 2007.

All other filing procedures remain unchanged from those previously established in this proceeding.

It is further ordered that the Motion of the Early Adopter Regulatory Commissions for Extension of Time is *granted*, as set forth herein.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. E7–621 Filed 1–17–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Part 5234

[No. USN–2006–0069]

Department of the Navy Acquisition Regulations: Continuous Process Improvements (CPI)

AGENCY: Department of the Navy, DoD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Deputy for Acquisition Management, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) is issuing this advance notice of proposed rulemaking (ANPR) to solicit comments that can be used to assist the Department of the Navy (DON) in drafting a proposed Navy Marine Corps Acquisition Regulation Supplement contract clause or statement of work requirements that will incentivize contractors to pursue and implement CPI on DON major defense contracts. In particular, the primary focus will be to incentivize proactive business process improvement activities that identify increased efficiencies, cost avoidance, and cost savings, and provide the greatest motivation for contractors to share related savings with the DON to the maximum extent practicable.

DATES: *Comment Date:* Interested parties should submit comments on or before March 19, 2007, to be considered in the formulation of any proposed rule.

The DON invites interested parties from both the private and public sector to provide comments on the effective use of incentives to encourage and reward contractor CPI initiatives aimed toward exceeding key objectives or performance parameters on DON major defense contracts. Comments are especially welcomed on the specific issues discussed in the **SUPPLEMENTARY INFORMATION** section of this notice. See, in particular, the questions posed under ''Solicitation of Public Comment.''

ADDRESSES: Interested parties may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Please cite ''Continuous Process Improvements'' in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Department of the Navy, Office of the Assistant Secretary of the Navy (Research, Development & Acquisition), Deputy for Acquisition Management, Attn: Mr. Clarence Belton, Policy, 1000 Navy Pentagon, Room BF992, Washington, DC 20350–1000, telephone number 703–693–4006.

SUPPLEMENTARY INFORMATION:

A. Background

Companies that have implemented CPI methods and tools have significantly reduced waste and non-value added activities, improved cycle time, produced repeatable processes, reduced variation, and improved customer satisfaction.

This process has led to improved products and services at a reduced cost. The Navy and Marine Corps, as customers of goods and services, should receive a fair share of the reduced costs. A contract clause should benefit companies that are aggressive in implementing CPI tools and methods with quantifiable improved output. The purpose of this ANPR is to solicit comments and suggestions on contract requirements aimed at motivating and

rewarding contractors for implementing CPI. After consideration of the comments submitted in writing, the DON may publish a draft proposed rule for additional public comments.

B. Solicitation of Public Comment

The DON seeks to better understand how to incentivize contractors to incorporate best business practices related to CPI and how such contract requirements are used commercially and when their use would be in the best interest of the Government. The DON has developed questions to obtain this information as part of this ANPR.

Accordingly, the DON invites the public to provide comments addressing the appropriate use of specific contract provisions to incentivize contractors to aggressively pursue and initiate CPI that identify increased efficiencies, cost avoidance, and cost savings. Comments are also requested on the use of solicitation provisions, source selection criteria, and performance incentives that will provide contractors with the greatest motivation to share related savings with the Government to the maximum extent practicable. The DON especially welcomes feedback to the following questions:

1. What contractual mechanisms can the Government use to incentivize contractors to implement CPI?

2. What are some of the contract provisions currently being used in supplier and other subcontracts to incentivize CPI?

3. How can the Government motivate contractors who implement CPI to share in related savings to the maximum extent practicable?

4. Are cost reimbursement or flexibly priced contracts more suitable for providing incentives for contractors to implement CPI that identify increased efficiencies, cost avoidance, and cost savings, and for providing the highest motivation to share in those related savings to the maximum extent practicable? Why or why not? What about firm fixed-priced contracts?

Dated: January 11, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–612 Filed 1–17–07; 8:45 am]

BILLING CODE 3810–FF–P

Notices

Federal Register
Vol. 72, No. 11
Thursday, January 18, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renewal of the Advisory Committee on Voluntary Foreign Aid

AGENCY: United States Agency for International Development.

ACTION: Notice of renewal of advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Administrator has determined that renewal of the Advisory Committee on Voluntary Foreign Aid for a two-year period beginning January 29, 2007 is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Jocelyn Rowe, 202–712–4002.

Dated: January 3, 2007.

Jocelyn M. Rowe,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. 07–124 Filed 1–17–07; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 12, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance telecommunications, electric, and water and waste facilities in rural areas with a loan portfolio that totals nearly $42 billion. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et. seq.* as amended, (RE Act). Section 201 of the RE Act authorizes the Administrator to make loans to qualified telephone companies for the purpose of providing telephone service to the widest practicable number of rural subscribers.

Need and Use of the Information: RUS will collect information using several forms to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. The information is also used to determine that the Government's security for loans made by RUS are reasonably adequate and that the loans will be repaid within the time agreed. Without the information, RUS could not effectively monitor each borrower's compliance with the loan terms and conditions to properly ensure continued loan security.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,589.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–635 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV–06–378]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Agricultural Marketing Service (AMS) is requesting approval from the Office of Management and Budget of a new information collection: the USDA Food and Commodity Connection Web site.

DATES: Comments received by March 19, 2007 will be considered.

Additional Information or Comments: Contact Lynne E. Yedinak, Food Quality Assurance Staff, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0243, 1400 Independence Avenue, SW., Washington, DC 20250–0243, telephone: (202) 720–9939 and Fax: (202) 690–0102.

SUPPLEMENTARY INFORMATION:

Title: USDA Food and Commodity Connection Web site.

OMB Number: 0581–0224.

Expiration Date of Approval: October 31, 2007.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: The information collection requirements in this request are needed for the operation of the U.S. Department of Agriculture (USDA) Food and Commodity Connection Web site, which operates pursuant to the authority of Section 32 of Public Law 320. The USDA Food and Commodity Connection Web site supports the U.S. Department of Agriculture, Agricultural Marketing Service mission of facilitating the efficient, fair marketing of U.S. agricultural products. Registering to participate on or use the USDA Food and Commodity Connection Web site is voluntary.

The National School Lunch Program is a federally assisted meal program operating in over 100,000 public and non-profit private schools and residential childcare institutions. It provides nutritionally balanced, low-cost or free lunches to more than 29 million children each school day. In 1998, Congress expanded the National School Lunch Program to include reimbursement for snacks served to children in after-school educational and enrichment programs to include children through 18 years of age. The USDA Food and Commodity Connection Web site was developed to assist schools and other feeding groups to find the most nutritious value-added foods made from the vast diversity of agricultural products purchased by the Federal Government for the National School Lunch Program and other feeding programs that utilize these commodities such as Native American facilities, health care facilities, colleges and universities, prisons, and needy families. The USDA Food and Commodity Connection Web site identifies processors who can further process USDA supplies commodities and the brokers, distributors, and food associations that offer information and support to purchase the value-added products.

Institutional food service professionals (public and private schools, the military, Veterans Administration facilities, Native American facilities, health care facilities, colleges and universities, prisons, child care facilities and facilities for needy families) who choose to register on the USDA Food and Commodity Connection Web site provide the following information: The registrant's name, position, e-mail address, telephone number, school/organization name, and address. Processors who choose to register on the USDA Food and Commodity Connection Web site provide the following information: Confirmation that the company is eligible to participate in Federal procurement, the registrant's name, position, e-mail address, telephone number, company name, address, country, and whether they are a national or regional processor. Distributors who choose to register on the USDA Food and Commodity Connection Web site provide the following information: The registrant's name, position, e-mail address, telephone number, company name, address, country, and whether they are a national or regional distributor. Brokers who choose to register on the USDA Food and Commodity Connection Web site provide the following information: The registrant's name, position, e-mail address, telephone number, brokerage company name, address, country, and the States they serve. Food related associations who choose to register on the USDA Food and Commodity Connection Web site provide the following information: The association name, address, city, state, zip code, country, e-mail address, telephone number, and a description of association services. Information provided by institutional food service professionals assist processors, distributors, and brokers to view meal-serving information of a school or organization. Processor and distributor food products and contact information are available to the institutional food service professionals to assist them in locating processors and distributors that handle the food products that they want to use. The information provided by brokers enables institutional food service professionals to know which manufacturers the broker represents, which States the broker serves, and contacts at the brokerage firm. All registrants on the USDA Food and Commodity Connection Web site will be redirected to the USDA eAuthentication Web site to register their Level 1 Access (OMB No. 0503–0014). Each new user must create their own login ID and password, meeting the eAuthentication requirements.

The USDA Food and Commodity Connection Web site has under gone numerous changes since this information collection was approved October 31, 2004. Prior to launching the USDA Food and Commodity Connection Web site in 2004, the food manufacturers requested changes to streamline the data entry process. These changes were made and the Web site was redeployed September 2006. The changes to the Web site provide processors and distributors with three methods to load product data to the USDA Food and Commodity Connection Web site. The new methods of entering data have dramatically reduced our estimate of the number of responses and burden hours: Total estimated responses reduced from 15,200 to 1,845; total burden estimated hours reduced from 3,948 hours to 292 hours annually. These estimates are based on current processor registrations and our Web site testing. Previous estimates were based on a single product input process versus a new multiple products input process. Processors and distributors may continue to enter products one product at a time, but now have the opportunity to download their product information from existing product databases and use a template which they complete and download to the USDA Food and Commodity Connection Web site.

Estimating Burden

The estimated total burden for revision of a currently approved information collection for the USDA Food and Commodity Connection Web site once USDA eAuthentication Web site registration is completed as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Institutional food service professionals (public and private schools, the military, Veterans Administration facilities, Native American facilities, health care facilities, colleges and universities, prisons, child care facilities, and facilities for needy families), processors, distributors, brokers, and associations.

Estimated Number of Respondents: 850 (300 institutional food service professionals, 300 processors, 100 distributors, 100 brokers, and 50 associations).

Estimated Number of Responses: 1,845.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 292 hours.

Specific information for respondents listed above is given. For each new registration submission, for the proposed request for revision of a currently approved information collections on the USDA Food and Commodity Connection Web site, is completed as follows:

(1) *Institutional Food Service Professional registration submission.* Institutional food service professionals (public and private schools, the military, Veterans Administration facilities, Native American facilities,

health care facilities, colleges and universities, prisons, child care facilities and facilities for needy families) use this registration submission to create their user profile on the USDA Food and Commodity Connection Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Institutional food service professionals (public and private schools, the military, Veterans Administration facilities, Native American facilities, health care facilities, colleges and universities, prisons, child care facilities and facilities for needy families).

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Estimated Number of Responses per Respondent: Respondents only complete the registration once.

Estimated Total Annual Burden on Respondents: 33 hours.

(2) *Processors registration submission.* Processors use this registration submission to register their companies on the USDA Food and Commodity Connection Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 minutes per response.

Respondents: Processors.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Estimated Number of Responses per Respondent: Respondents only complete the registration once.

Estimated Total Annual Burden on Respondents: 45 hours.

(3) *Processors Add a Plant and Request an Audit registration submission.* Processors use this submission to register the plants in which they manufacture their products on the USDA Food and Commodity Connection Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Processors.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Estimated Number of Responses per Respondent: Each respondent completes this submission once for each plant they register.

Estimated Total Annual Burden on Respondents: 41 hours.

(4) *Processors Add a New Product registration submission (A Single Product).* Processors use this registration submission to register their products manufactured from USDA supplied commodities and their commercial food products, on the USDA Food and Commodity Connection Web site using this method. Processors may include additional product information including but not limited to: Ingredients, product description, preparation and cooking instructions, nutrients, packaging data, and product fact sheet link.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 16 minutes per response.

Respondents: Processors.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 200.

Estimated Number of Responses per Respondent: 10. Each respondent completes this submission once for each product they register.

Estimated Total Annual Burden on Respondents: 54 hours.

(5) *Processors Add a New Product registration submission (Sales Partners Systems Upload).* Processors use this registration submission to register their products manufactured from USDA supplied commodities and their commercial food products, on the USDA Food and Commodity Connection Web site using this method. Processors may include additional product information including but not limited to: Ingredients, product description, preparation and cooking instructions, nutrients, packaging data, and product fact sheet link.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 minutes per response.

Respondents: Processors.

Estimated Number of Respondents: 60.

Estimated Number of Responses: 60.

Estimated Number of Responses per Respondent: 1. Each respondent that uses the Sales Partners Systems to register their products completes this submission once.

Estimated Total Annual Burden on Respondents: 2 hours.

(6) *Processors Add a New Product registration submission (Excel spreadsheet).* Processors use this registration submission to register their products manufactured from USDA supplied commodities and their commercial food products, on the USDA Food and Commodity Connection Web site using this method. Processors may include additional product information including but not limited to: Ingredients, product description, preparation and cooking instructions, nutrients, packaging data, and product fact sheet link.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Processors.

Estimated Number of Respondents: 220.

Estimated Number of Responses: 220.

Estimated Number of Responses per Respondent: 1. Each respondent that uses the Excel spreadsheet to register their products completes this submission once.

Estimated Total Annual Burden on Respondents: 35 hours.

(7) *Distributors registration submission.* Distributors use this registration submission to register their food service distribution companies on the USDA Food and Commodity Connection Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 minutes per response.

Respondents: Distributors.

Estimated Number of Respondents: 100.

Estimated Number of Responses: 100.

Estimated Number of Responses per Respondent: Respondents only complete the registration once.

Estimated Total Annual Burden on Respondents: 15 hours.

(8) *Distributors Add a Warehouse and Request an Audit registration submission.* Distributors use this submission to register the warehouses in which they store the products they list on the USDA Food and Commodity Connection Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Distributors.

Estimated Number of Respondents: 100.

Estimated Number of Responses: 100.

Estimated Number of Responses per Respondent: Each respondent completes this submission once for each warehouse they register.

Estimated Total Annual Burden on Respondents: 14 hours.

(9) *Distributors Add a New Product registration submission (A Single Product).* Distributors use this registration submission to register their branded commercial food products on the USDA Food and Commodity Connection Web site using this method. Distributors may include additional product information including but not limited to: Ingredients, product description, preparation and cooking instructions, nutrients, package and

packaging data, and product fact sheet link.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 16 minutes per response.

Respondents: Distributors.

Estimated Number of Respondents: 5.

Estimated Number of Responses: 10.

Estimated Number of Responses per Respondent: 10. Each respondent completes this submission once for each product they register.

Estimated Total Annual Burden on Respondents: 14 hours.

(10) *Distributors Add a New Product registration submission (Sales Partners Systems Upload).* Distributors use this registration submission to register their branded commercial food products on the USDA Food and Commodity Connection Web site using this method. Distributors may include additional product information including but not limited to: Ingredients, product description, preparation and cooking instructions, nutrients, package and packaging data, and product fact sheet link.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 minutes per response.

Respondents: Distributors.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 1.

Estimated Number of Responses per Respondent: 1. Each respondent that uses the Sales Partners Systems to register their products completes this submission once.

Estimated Total Annual Burden on Respondents: 1 hour.

(11) *Distributors Add a New Product registration submission (Excel spreadsheet).* Distributors use this registration submission to register their branded commercial food products on the USDA Food and Commodity Connection Web site using this method. Distributors may include additional product information including but not limited to: Ingredients, product description, preparation and cooking instructions, nutrients, package and packaging data, and product fact sheet link.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Distributors.

Estimated Number of Respondents: 25.

Estimated Number of Responses: 1.

Estimated Number of Responses per Respondent: 1. Each respondent that uses the Excel spreadsheet to register their products completes this submission once.

Estimated Total Annual Burden on Respondents: 4 hours.

(12) *Brokers registration submission.* Brokers use this registration submission to register the brokerage and the companies they represent on the USDA Food and Commodity Connection Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 16 minutes per response.

Respondents: Brokers.

Estimated Number of Respondents: 100.

Estimated Number of Responses: 100.

Estimated Number of Responses per Respondent: 1. Respondents only complete the registration once.

Estimated Total Annual Burden on Respondents: 27 hours.

(13) *Brokers Add a Branch registration submission.* Brokers use this submission to register any branches for the brokerage on the USDA Food and Commodity Connection Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 minutes per response.

Respondents: Brokers.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Number of Responses per Respondent: 1. Respondents only complete this submission when they have branch offices and than they complete one for each branch office.

Estimated Total Annual Burden on Respondents: 3 hours.

(14) *Association registration submission.* Associations in the food service arena use this registration submission to create their user profile on the USDA Food and Commodity Connection Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Associations.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Estimated Number of Responses per Respondent: 1. Respondents only complete the registration once.

Estimated Total Annual Burden on Respondents: 6 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection 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 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 Lynne E. Yedinak, Food Quality Assurance Staff, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0243, 1400 Independence Avenue, SW., Washington, DC 20250–0243, telephone: (202) 720–9939 and Fax: (202) 690–0102. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: January 12, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–624 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. LS–07–04]

Beef Promotion and Research; Certification of Nominating Organizations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations, as well as cattle or beef importer organizations, who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply.

DATES: Applications for certification must be received by close of business February 20, 2007.

ADDRESSES: Certification form may be requested form Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251 or e-mail *Kenneth.Payne@usda.gov.* The form may also be found on the Internet at *http://www.ams.usda.gov/lsg/mpb/beef/ls25.pdf.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251 or e-mail *Kenneth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 96 cattle producers and 8 importers appointed by the Secretary of Agriculture (Secretary). The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that USDA shall either certify or otherwise determine the eligibility of State cattle producer organizations or associations and general farm organizations, as well as any importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Persons who are individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of USDA that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR 1260.500 through 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the upcoming vacancies.

Uncertified eligible producer organization and general farm organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official ''Application of Certification of Organization or Association,'' which must be received by close of business (20-days after publication in the **Federal Register**). Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form by should provide the requested information by letter as provided for in CFR § 1260.540(b).

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR 1260.530 are eligible for certification.

For State organizations or associations those criteria are:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit,

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit,

(3) There must be a history of stability and permanency, and

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

For organizations or associations representing importers, the determination by USDA as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (*i.e.*, beef or cattle importers, etc.),

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle,

(3) The stability and permanency of the importer organization or association,

(4) The number of years in existence, and

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those that were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to USDA for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: January 12, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–648 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection; Operating Loans; Policies, Procedures, Authorizations and Closings

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request renewal of the information collection currently approved and used in support of the FSA Farm Loan Programs (FLP). The collection of information from FLP applicants and commercial lenders is used to determine eligibility; financial feasibility and security positions when the applicant applies for direct loan assistance.

DATES: Comments on this notice must be received on or before March 19, 2007 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Cathy Quayle, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington,

DC 20250–0522; Telephone (202) 690–4018; Electronic mail: *cathyquayle@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Operating Loans; Policies, Procedures, Authorizations and Closings.

OMB Control Number: 0560–0162.

Expiration Date of Approval: July 31, 2007.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number is 0560–0162 is necessary to effectively administer the operating loan program in accordance with the requirements in 7 CFR part 1941 as authorized by the Consolidated Farm and Rural Development Act. Specifically, the Agency uses the information to evaluate loan making or loan servicing proposals, and to process loan closings. The information is needed to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and if the security offered in support of the loan is adequate.

Estimate of Annual Respondent Burden: Public reporting burden for this collection of information is estimated to average .12 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 51,466.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,176.

Comments are invited on the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Cathy Quayle, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522.

Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC on January 10, 2007.

Thomas B. Hofeller,

Acting Administrator, Farm Service Agency.

[FR Doc. E7–599 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0040E]

Product Labeling: Definition of the Term ''Natural''

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of petition and public meeting; extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is re-opening and extending the comment period on a petition submitted by Hormel Foods on the voluntary labeling claim ''natural'' and on the broader question of how to define this claim. The original comment period closed on January 11, 2007. The Agency is taking this action in response to requests that were made at and after a public meeting that the Agency held on December 12, 2006, to discuss both the Hormel petition and issues associated with the claim ''natural'' in general.

DATES: Comments are due by March 5, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regu1ations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, and then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2005–0040 to submit or view public comments and to view supporting and related material available electronically. This docket can be viewed using the ''Advanced Search'' function in Regulations.gov.

Mail, including floppy disks or CD–ROM's, and hand or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

Electronic mail: FSIS.regulations comments@fsis.usda.gov.

All submissions received by mail and electronic mail must include the Agency name and docket number FSIS–2006–0040. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted to the regulations.gov Web site and on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Director, Labeling and Consumer Protection Staff, Office of Policy, Program, and Employee Development, USDA, FSIS, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 205–3625, e-mail: *Robert.Post@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION: On December 5, 2006, FSIS published a notice in the **Federal Register** that announced the receipt of a petition submitted by Hormel Foods requesting that the Agency amend the meat inspection and poultry products inspection regulations to establish a definition for the voluntary claim ''natural'' and to delineate the conditions under which the claim can be used on the labels of meat and poultry products (71 FR 70503). In the notice, FSIS gave the public until January 11, 2007, to submit comments on the petition and on issues associated with the claim ''natural'' in general. The notice also announced that, to facilitate the comment process, the Agency would hold a public meeting to discuss the petition. The public meeting was held on December 12, 2006. In the December 5, 2006, **Federal Register** notice, FSIS also announced that after the comment period for the petition closes, the Agency will initiate rulemaking on the ''natural'' claim.

At, as well as after, the December 12, 2006, public meeting, FSIS received several comments requesting that the Agency extend the comment period provided in the December 5, 2006, **Federal Register** notice by an additional 60 days from the initial closing date of January 11, 2007. The comments were submitted by a representative of a food ingredient manufacturer, a trade association that represents flavor manufacturers and others with an

interest in the U.S. flavor industry, and a group of trade associations that represent the meat, poultry, and food processing industries.

All of the comments stated that because the issues surrounding the claim ''natural'' are complex, interested parties need additional time than what was provided in the December 5, 2006, **Federal Register** notice to prepare thoughtful comments. The comments also argued that, to properly consider issues associated with the petition and the claim ''natural,'' stakeholders must have access to the information presented by both FSIS and the public at the December 12, 2006, public meeting. One comment stated that it is important that stakeholders have the opportunity to thoroughly evaluate possible changes to the definition or criteria for labeling a meat or poultry product ''natural'' to ensure that the industry is able to continue to market products that bear the ''natural'' claim and to ensure that these products meet consumer expectations.

In addition to the reasons discussed above, the comments also argued that because the comment period includes the upcoming holidays, trade associations may have a difficult time collecting meaningful input from their members before the January 11, 2007, closing date. The comments also stated that the comment period falls during what is typically the busiest time of year for meat and poultry companies. One comment stated that FSIS gave little notice before the December 12, 2006, public meeting, and that interested parties lost time preparing comments for the public meeting and rearranging their schedules to attend the public meeting.

FSIS agrees that the issues surrounding the labeling claim ''natural'' are complex, and that interested parties should have additional time to consider information presented at the December 12, 2006, public meeting. Therefore, to facilitate the comment process, the Agency has decided to re-open and extend the comment period until March 5, 2007. The transcript of the December 12, 2006, public meeting is now available on the FSIS Web site at *http://www.fsis.usda.gov/News_&_Events/2006_events/index.asp* for viewing by the public. Therefore, this notice announces that the Agency is re-opening and extending the comment period for the Hormel petition until March 5, 2007.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposal, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.*

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done in Washington, DC: January 12, 2007.

Barbara J. Masters,

Administrator.

[FR Doc. 07–192 Filed 1–12–07; 3:10 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lolo National Forest—Butte Lookout Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for timber harvesting, prescribed burning, road access changes, and watershed rehabilitation in a 12,000-acre drainage area near Missoula, Montana.

DATES: Comments concerning the scope of the analysis should be received in writing within 30 days following publication of this notice. Comments received during the initial scoping in December 2005, will be considered in the analysis and do not need to be resubmitted during this comment time period.

ADDRESSES: Send written comments to Maggie Pittman, District Ranger, Missoula Ranger District, Building 24 Fort Missoula, Missoula, MT 59804.

FOR FURTHER INFORMATION CONTACT: Don Stadler, Interdisciplinary Team Leader, Missoula Ranger District, as above, or phone: (406) 329–3731.

SUPPLEMENTARY INFORMATION: The responsible official who will make decisions based on this EIS is Deborah L. R. Austin, Lolo National Forest, Building 24 Fort Missoula, Missoula, MT 59804. She will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

In 1996, Missoula District completed an ''ecosystem analysis at the watershed scale'' for the South Fork of Lolo Creek watershed. Ecosystem analysis takes a look at the big picture and integrate projects to achieve long-term Lolo National Forest management goals and desired future conditions. This ecosystem analysis provided the basis for this proposed action.

The proposed management action is to harvest and/or burn about 70 units totaling about 1,455 acres using one to five commercial timber sale(s), and to decommission around 27.9 miles of system and non-system roads. Of that 1,455 acre total, about 1,180 acres would be regeneration harvested and/or burned and about 275 acres would be commercially thinned. Less than one

mile of permanent new roads would be constructed. About 1.1 miles of short-term road would be built to Forest Service standards, used for harvest, and reclaimed to their original contour after use. A combination of Best Management Practices (BMPs) measures, such as check dams in ditches, sediment basins, additional ditch relief pipes, lined ditches, and other surface drainage devices, would be installed on about 41 miles of system roads that access the units. Treatment areas and distances may change slightly as the alternatives are developed and more accurately mapped.

The Butte Lookout Project is needed at this time because:

1. The transportation analysis indicates that, due in part to the evolution of logging systems; we have more miles of roads than are needed to manage forest resources in the West Fork Butte Creek (WFBC) drainage. In the absence of a regular program of forest management activities, road maintenance dollars are inadequate to maintain the entire road system, and therefore, some of the roads are producing sediment that reaches WFBC. WFBC has elevated instream sediment levels that are above referencedconditions (S. Fk. of Lolo Creek Watershed Analysis). The lowest reaches of WFBC were harvested with high density jammer roads in the 1950s and 1960s (primarily in Marshall Creek). The jammer roads have mostly grown closed but some may still contribute sediment to the creek. From the middle 1960s through the 1970s, the majority of the south-facing private lands in lower WFBC were roaded and harvested. In the 1970s and 1980s, an extensive road system was constructed on federal and private lands within the drainage for timber management. This road system now provides administrative motorized access throughout the watershed. Roads constructed prior to the 1980s generally were not surfaced and did not employ as many erosion devices or rolling grades to control surface drainage as we now use. As the Forest re-entered the drainage in the 1980s and 1990s, the roads used for that timber harvest generally had some drainage control added, although more is still needed to meet today's standards to reduce sediment delivery. There are about 85 miles of Forest Service road in the WFBC drainage. This includes about three miles of road that are open year-long, 46 miles of road closed to public travel year-long, and 13 miles of road with seasonal restrictions. In addition there are about 11 miles of historic road and 12 miles of jammer road which are not drivable and not considered forest system roads. The high road densities which are characteristic of jammer road development are inappropriate for current yarding technology and land management philosophy. Many of the roads were abandoned without consideration for long-term erosion control and hydrological requirements within the drainage. The culverts which remain are at risk of failure over the long-term since they are not being maintained and generally have inadequate flow capacity if a significant runoff event occurs. The historic roads are those which are no longer functioning as roads but which have not been officially disposed of. These roads typically have only partially revegetated and have a road prism which is intact. Like the jammer roads, these roads may have inadequate road drainage control and undersized culverts. The system roads are primarily used for fire protection, administrative use, minimal road and culvert maintenance, motorized recreation, and walk in recreation. Some of the roads have been identified as no longer needed for management of the area. This road system not contributes sediment to the creek and its tributaries. Some of the roads have undersized culverts (some are fish barriers) or design features which need to be improved or replaced.

2. Aquatic habitat in WFBC is in poor overall condition because of the 1910 fire and management activities since 1950. Raised sediment levels are affecting spawning success and reducing available rearing habitat for native fish species, including the federally listed bull trout. There is a low amount of good pool habitat and a lack of large woody debris in the stream, and as a result, over-winter areas are lacking in the WFBC. Native species must move into the extreme lower reaches of the stream or into the South Fork Lolo Creek to find high quality, complex pool habitat capable of sustaining them through the winter. Seven undersized or perched culverts are barriers to aquatic organism passage, making about 12 miles of streams unavailable as fish habitat. There are some valley bottom roads along stream banks and in riparian zones which negatively affect aquatic habitat, channelize streams, and reduce overall stream sinuosity. This has resulted in increased gradients and hydraulic forces in the channel, causing bank erosion and bedload movement. Direct sediment routing to stream channels also occurs via streambank and riparian roads. These roads are also reducing the amount of large woody debris that enters and stays in the stream. The overall result of valley bottom roads is a reduction on aquatic habitat amount and complexity.

3. Landscape components (structure, composition, and function) have been adversely affected by dire suppression since 1910 by preventing the occurrence of moderate and low severity fires as well as any high severity stand replacing fires. There is a widespread infestation of bark beetles within the large area of high risk forests under drought stressed conditions. This equates to a high likelihood of significant continued tree mortality. The land within the project area is predominately allocated for timber management to provide sawlogs as a byproduct of achieving ecological objectives. The effect of fire suppression and the beetle epidemic is to change the composition of the forest away from the desired future conditions and objectives disclosed in forest plans, and in national, regional, and forest strategies.

4. Fire suppression has also reduced ecological resiliency to disturbances and has created a homogenization of the landscape. Fuels are now much more continuous than was thought to exist under more natural fire regimes. The primary missing fire effects are those realized by localized occurrences of low and mixed severity wildfires or emulated by prescribed fires. Periodic low-to-moderate severity fire favors Douglas-fir and lodgepole pine by setting back invasion by the more tolerant subalpine fir and spruce which, in the absence of fire, form dense understories and eventually take over the site. Further, these periodic fires would reduce ladder fuels and crown density thus lowering the risk of stand replacement fires via sustained crown fire. Large-scale bark beetle mortality and fuel accumulation has created a scenario where fires that burn in this landscape can reach thousands of acres very quickly.

5. Cumulative changes in vegetative structure, species composition, and distribution on the landscape from fire exclusion and past timber harvest on federal and private lands directly relate to wildlife habitat. Some wildlife species have benefited from these changes while others have been affected negatively. A goal of this proposal is restore forest stands and associated wildlife habitat to a condition that represents what occurred historically with emphasis on habitat factors that are limited or degraded at the project and landscape scales. Vegetative stands within the project area are primarily in Fire Group 6 (Fischer and Bradley 1987). These stands are typically comprised of ponderosa pine, larch, Douglas fir (and in some cases lodgepole

pine), in a multistoried arrangement. Existing canopy closures and stem densities are very high and these conditions do not favor the regeneration of shade intolerant species such as larch and ponderosa pine. Historically, wildfires at roughly 15–40 year intervals created conditions in which these low-to-moderate severity burned forests were generally more open but also more spatially diverse at the stand, watershed and landscape scales. In addition, these fires resulted in site preparation for larch and ponderosa pine regeneration, created fire killed patches of wildlife habitat, and also scarred large diameter trees, resulting in long standing snags. Species dependant on large diameter snags, old forests with open understory and a heterogeneous distribution of habitat conditions across the landscape benefit under these conditions. Such species include Flammulated owls, northern goshawks and pileated woodpeckers.

The decision to be made is to what extent, if at all, the Forest Service should conduct timber harvest, prescribed burning, road construction or reconstruction, road reclamation, and road closures in the Lolo Creek drainage, given the above purpose and need. This is a site-specific project decision, not a general management plan nor a programmatic analysis.

Public scoping has been conducted on most elements of this proposal both with this proposal and an earlier version of this proposal.

While quite a number of issues have been identified for environmental effects analysis, the following issues have been found significant enough to guide alternative development and provide focus for the EIS:

(1) Water quality and fisheries habitat effects resulting from timber harvest and road construction and rehabilitation activities;

(2) Wildlife habitat effects resulting from timber harvest and road construction and rehabilitation activities;

(3) Effects of treatments on site productivity, forest health, vegetative condition, and species composition, individually and cumulatively,

(4) Effects of treatment on area scenic values, and

(5) Economic effects on local communities resulting from different intensities of restoration treatments and resulting timber values.

The Lolo Forest Plan provides the overall guidance for management activities in the project area through its Goals, Objectives, Standards and Guidelines, and Management Area direction.

The proposed action could have both beneficial and adverse effects on forest resources. In addition to the proposed action, a range of alternatives will be developed in response to issues identified during scoping. One of these will be the ''no-action'' alternative, which would not allow vegetation manipulation through harvest or any road decommissioning under this analysis. Other alternatives may examine various combinations of treatment areas. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will include site specific mitigation measures and discussions about their effectiveness.

Public participation is important to the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. No formal scoping meetings are planned. However, two periods are specifically designated for comments on the analysis:

(1) During this scoping process and

(2) During the draft EIS comment period.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. A scoping document will be mailed to parties known to be interested in the proposed action. The agency invites written comments and suggestions on this action, particularly in terms of issues and alternatives. Persons who provided comments in the past on this project do not have to resubmit them. Those previously stated concerns will be incorporated into this analysis.

The Forest Service will continue to involve the public and will inform interested and affected parties as to how they may participate and contribute to the final decision. Another formal opportunity for public response will be provided following completion of a draft EIS.

The draft EIS should be available for review in June 2007. The final EIS is scheduled for completion in September of 2007.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important, at this early, to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts the agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the council on Environmental quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Lolo National Forest, Building 24, Fort Missoula, MT 59804.

Dated: January 11, 2007.

Deborah L. R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 07–158 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board Public Meeting Dates Announced

AGENCY: Forest Service, USDA.

ACTION: Notice of Meetings.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) has

announced its meeting dates for 2007. These meetings are open to the public, and public comment is accepted at any time in writing and during the last 15 minutes of each meeting for spoken comments. Persons wishing to speak are given three minutes to address the Board.

Meeting dates are the third Wednesday of each month unless otherwise indicated: January 3 (Previously announced), February 21, March 21, April 18, May 16, June 20, July 18, August 15 (Summer Field Trip—TBA), September 19, October 17, November 21. No meeting in December, January 2, 2007 (Tentative).

ADDRESSES: Meetings will begin at 1 p.m. and end no later than 5 p.m. at the Forest Service Center, 8221 S. Highway 16, Rapid City, SD 57702.

Agendas: The Board will consider a variety of issues related to national forest management. Agendas will be announced in advance in the news media but principally concern implementing phase two of the forest land and resource management plan, travel planning, and key issues related to the Chief of the Forest Service's Four Threats; fire and fuels, off highway vehicle management, open space, and invasive species control. The Board will consider such topics as biomass and Bioenergy, recreation use fees, facility master planning, and an integrated lands programs, among others.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Committee Management Officer, or Twila Morris, Executive Assistant, Black Hills National Forest, 1019 N. 5th Street, Custer, SD 57730, (605) 673–9200.

Dated: January 10, 2007.

Craig Bobzien,

Forest Supervisor.

[FR Doc. 07–157 Filed 1–17–07; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

DATE AND TIME: Friday, January 26, 2007, 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda.
II. Approval of Minutes of December 14, Meeting.
III. Announcements.
IV. Adjourn.

Briefing Agenda

No Child Left Behind and Supplemental Educational Services.
- Introductory Remarks by Chairman.
- Speakers' Presentation.
- Questions by Commissioners and Staff Director.

CONTACT PERSON FOR FURTHER INFORMATION: Manuel Alba, Press and Communications, (202) 376–8582.

Kenneth L. Marcus,

Staff Director.

[FR Doc. 07–215 Filed 1–16–07; 3:03 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–412–801

Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Richard Rimlinger, AD/CVD Operations Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the period May 1, 2005, through April 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 37892 (July 3, 2006). On October 16, 2006, we rescinded in part the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Japan, and the United Kingdom. See *Ball Bearings and Parts Thereof from France, et al.: Notice of Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 60688 (October 16, 2006). The preliminary results of the reviews still underway are currently due no later than January 31, 2007.

Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limit because of the number of respondents in these reviews, plans to verify certain respondents' information, and the complexity of the issues under analysis, such as further–manufacturing operations in the United States and the ''collapsing'' of companies. Therefore, we are extending the time period for issuing the preliminary results of these reviews by 45 days until March 19, 2007.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: January 11, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–657 Filed 1–17–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–401–806)

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from Sweden

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW,

Washington, D.C., 20230; telephone: (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel wire rod from Sweden, covering the period September 1, 2004, through August 31, 2005. *See Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 59082 (October 6, 2006). The current deadline for the final results in this review is February 3, 2007.[1]

Extension of Time Limits for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of the review of an antidumping duty order within 120 days after the date on which the preliminary results is published in the **Federal Register**. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

The Department finds that it is not practicable to complete the final results of the administrative review of stainless steel wire rod from the Sweden within the current time frame due to the fact that the Department requires more time to fully analyze the arguments and comments received from the parties participating in this review with respect to the model matching criteria currently being used in this case.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the final results of this review until April 4, 2007, which is 180 days after the date on which notice of the preliminary results was published in the **Federal Register**.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

Dated: January 11, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–658 Filed 1–17–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] Since February 3, 2007, is a Saturday, the final results are due on the next business day, February 5, 2007.

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Wooden Bedroom Furniture from the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC''). Based on a request filed by Tradewinds Furniture Ltd. (''Tradewinds Furniture'') and Tradewinds International Enterprise Ltd. (''Tradewinds International''), the Department is initiating a changed circumstances review to determine whether Tradewinds Furniture and Tradewinds International are successors–in-interest to Nanhai Jiantai Woodwork Co. (''Nanhai Jiantai'') and its affiliated exporter, Fortune Glory Industrial Limited Co. (''Fortune Glory''), respondents in the original investigation.

EFFECTIVE DATE: January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Robert A. Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–1904 or 202–482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department published in the **Federal Register** the antidumping duty order on WBF from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China*, 70 FR 329 (January 4, 2005). As part of the antidumping duty order on WBF from the PRC, Nanhai Jiantai and Fortune Glory received a separate rate of 6.65 percent. *Id.* at 70 FR at 331.

On November 22, 2006, Tradewinds Furniture and Tradewinds International filed a joint submission requesting that the Department conduct a changed circumstances review of the antidumping duty order on WBF from the PRC to confirm that Tradewinds Furniture and Tradewinds International are the successors–in-interest to Nanhai Jiantai and Fortune Glory. On November 30, 2006, Tradewinds Furniture and Tradewinds International filed a submission providing a public version of a chart included in their November 22, 2006 request. In their submissions, Tradewinds Furniture and Tradewinds International provided information on the events leading to the transition from Nanhai Jiantai and Fortune Glory to Tradewinds Furniture and Tradewinds International. Tradewinds Furniture and Tradewinds International also provided documentation relating to the change in name of Nanhai Jiantai to Foshian Jiantai and, thereafter, the purchase of Foshian Jiantai and establishment of Tradewinds Furniture to carry on the business of Foshian Jiantai, as well as documentation relating to the ownership structure and management, organizational structure, production facilities and equipment, supplier relationships, customer base, and production quantity, products and pricing. As part of their November 22, 2006, submission, Tradewinds Furniture and Tradewinds International also requested that the Department conduct an expedited review.

Scope of Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type

cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests–on-chests[1], highboys[2], lowboys[3], chests of drawers[4], chests[5], door chests[6], chiffoniers[7], hutches[8], and armoires[9]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate[10]; (9) jewelry armories[11]; (10) cheval mirrors[12]; (11) certain metal parts[13] ; and (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set.

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as ''wooden . . . beds'' and under subheading 9403.50.9080 of the HTSUS as ''other . . . wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors . . . framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24″ in width, 18″ in depth, and 49″ in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door lined with felt or felt-like material, with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, 71 FR 38621 (July 7, 2006).

[12] Cheval mirrors are, *i.e.*, any framed, tiltable mirror with a height in excess of 50″ that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth.

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9403.90.7000.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''Act''), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order, which shows changed circumstances sufficient to warrant a review of the order. Additionally, section 751(b)(4) of the Act states that the Department shall not conduct a review less than 24 months after the date of publication of the determination, in the absence of good cause.

As noted above, Tradewinds Furniture and Tradewinds International filed their request for a changed circumstances review on November 22, 2006, a little over 22 months after the publication of the amended final determination and order. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China*, 70 FR 329 (January 4, 2005). However, Tradewinds Furniture and Tradewinds International argue that the request is timely because it was filed more than 24 months after the date of publication of the Department's original final determination. *See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004). Tradewinds Furniture and Tradewinds International also argue that, even if the Department were to consider the request in relation to the amended final determination, the Department has previously found that a change in corporate structure is sufficient as ''good cause'' to conduct a review less than 24 months after the date of publication of the determination. *Citing Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 68 FR 14947, 14948 (March 27, 2003); *Bulk Aspirin From the People's Republic of China; Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 67 FR 39344, 39345 (June 7, 2002). In this instance, the Department agrees with Tradewinds Furniture and Tradewinds International that we have previously found a change in corporate structure request for a successor–in-interest determination sufficient to warrant the initiation of a changed circumstances review. *See id.*

Based on the information submitted by Tradewinds Furniture and Tradewinds International regarding the change in name and status of Nanhai Jiantai and Fortune Glory, the Department determines that sufficient good cause exists to conduct a changed circumstances review.

In a changed circumstances review involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Certain Cut–to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See*, *e.g.*, *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006). Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See*, *e.g.*, *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Based on the information provided in their submissions, Tradewinds Furniture and Tradewinds International have provided sufficient evidence to warrant a review to determine if they are the successors–in-interest to Nanhai Jiantai and Fortune Glory. Therefore, pursuant to section 751(b)(1) of the Act and 19 C.F.R. 351.216(b), we are initiating a changed circumstances review. However, although Tradewinds Furniture and Tradewinds International submitted documentation relating to their name and status change from Nanhai Jiantai and Fortune Glory, they did not provide certain supporting documentation for the elements listed above. Accordingly, the Department does not consider the information sufficient to make a preliminary finding and has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 C.F.R. 351.221(c)(3)(ii). As a result, the Department is not issuing preliminary results for this changed circumstances review at this time.

Public Comment

Interested parties may submit comments that the Department will take into account in the preliminary results of this changed circumstances review. The due date for filing any such comments is no later than 15 days from publication of this notice. Responses to those comments may be submitted no later than seven days from submission of the comments. All written comments must be submitted in accordance with 19 C.F.R. 351.303. The Department will issue questionnaires requesting factual information for this changed circumstances review, and will publish in the **Federal Register** a notice of preliminary results of the changed circumstances review, in accordance with 19 C.F.R. 351.221(b)(4) and 351.221(c)(3)(i). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results.

Pursuant to 19 C.F.R. 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of this changed circumstances review in accordance with the time limits set forth in 19 C.F.R. 351.216(e). This notice is published in accordance with section 751(b)(1) of the Act and 19 C.F.R. 351.221(b).

Dated: January 10, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–643 Filed 1–17–07; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Consumer Focus Groups

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed collection of information from persons who may participate in Consumer Focus Groups. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than March 19, 2007.

ADDRESSES: Written comments should be captioned ''Consumer Focus Groups'' and e-mailed to *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; (301) 504–7671.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is authorized under section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), to collect information, conduct research, and perform studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

In order to better identify and evaluate the risks of product-related incidents, the Commission staff seeks to solicit and obtain direct feedback from consumers on issues related to product safety such as recall effectiveness, product use, and perceptions regarding safety issues. Through participation in certain focus groups, consumers will be able to answer questions and provide information regarding their actual experiences, opinions and/or perceptions on the use or pattern of use of a specific product or type of product, including recalled products.

The information collected from the Consumer Focus Groups will help inform the Commission's evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information may also assist the Commission in its efforts to support voluntary standards activities, and help the staff identify areas

regarding consumer safety issues that need additional research. In addition, based on the information obtained, the staff may be able to provide safety information to the public that is easier to read and is more easily understood by a wider range of consumers. The Consumer Focus Groups also may be used to solicit consumer opinions and feedback regarding the effectiveness of product recall communications and in determining what action is being taken by consumers in response to such communications and why. This may aid in tailoring future recall activities to increase the success of those activities. If this information is not collected, the Commission may not have available certain useful information regarding consumer experiences, opinions, and perceptions related to specific product use, on which the Commission uses, in part, in its ongoing efforts to improve the safety of consumer products on behalf of consumers.

B. Estimated Burden

The Commission staff currently estimates that there may be up to 48 participants annually in the Consumer Focus Groups. The Commission staff estimates that the burden hours for each participant will not exceed 4 hours total. Thus, the Commission staff estimates that the annual burden could total approximately 192 hours per year.

The Commission staff estimates the value of the time of respondents to this collection of information at $26.86 an hour. This is based on the 2006 U.S. Department of Labor Employer Costs for Employee Compensation. At this valuation, the estimated annual cost to the public of this information collection will be about $5,517 per year.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: January 10, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–579 Filed 1–17–07; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps (ROTC) Program Subcommittee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., App. 2), announcement is made of the following Committee meeting:

Name of Committee: Reserve Officers' Training Corps (ROTC) Program Subcommittee.

Dates of Meeting: February 13–14, 2007.

Location: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Time: 0730–1700 hours, February 13, 2007; 0730–1100 hours February 14, 2007.

Proposed Agenda: Review and discuss the Army's philosophy on training and education as it applies to and impacts the Reserve Officers' Training Corps program.

FOR FURTHER INFORMATION CONTACT: Mr. Pierre Blackwell, U.S. Army Cadet Command (ATCC–TR), Fort Monroe, VA 23651 at (757) 788–4326.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–142 Filed 1–17–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Publication of Changes to Freight Carrier Registration Program and the MTMC Freight Rules Publication 1C on Intransit Visibility of Motor Shipments Through Electronic Data Interchange

AGENCY: Department of the Army, DOD.

SUMMARY: Surface Deployment and Distribution Command (SDDC) will implement standard procurement requirement for domestic motor Transportation Service Providers (TSP) to provide Electronic Data Interchange (EDI) data feeds to track domestic shipments to improve ITV of all DOD shipments from origin to destination. SDDC intends to implement this requirement 90 (ninety) days from the date of the publication of this notice in the **Federal Register.** Requirements are: (1) All **domestic motor** TSP will electronically interface with DOD's Global Transportation Network (GTN) to provide ITV tracking and tracing information. (2) All **domestic motor** TSP will access the Freight Carrier Registration Program (FCRP) and identify within 90 days the ITV method it will use to feed tracking data to GTN (e.g. GFM ITV to GTN or by a service provider to GTN).

DATES: SDDC requires that the TSP determine the ITV method option it will use within 90 (ninety) days of this publication date.

ADDRESSES: Submit comments to Ms. Lu Ann Bernard, 661 Sheppard Place, ATTN: SDDC–OPM–CA, Fort Eustis, VA 23604–1644. Request for additional information may be sent by e-mail to *bernard@sddc.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Lu Ann Bernard, (757) 878–7481.

SUPPLEMENTARY INFORMATION:

Military Surface Deployment & Distribution Command (SDDC)

Reference: Defense Transportation Regulation (DTR) 4500.9–R, Part II, Chapter 201, paragraph M.2.a (Procurement), USTRANSCOM Instruction 20–2 Tactics, Techniques, and Procedures for In-Transit Visibility (ITV), paragraph 3.1.4.1 and MTMC Freight Traffic Rules Publication #1C, Item 1 Freight Carrier Registraion Program (FCRP).

Requirement: The United States Transportation Command (USTRANSCOM), on behalf of DOD, is responsible for collecting logistical data to support the in-transit visibility of all DOD shipments from origin to destination. This visibility is for peacetime, contingencies, and exercises, and includes tracking movements of freight. All domestic motor TSPs shall electronically interface with DOD's Global Transportation Network (GTN) to provide ITV tracking and tracing information. The TSP shall provide GTN with an electronic data transaction set meeting American National Standards Institute (ANSI) X.12 EDI standards. The TSP will provide an

ANSI ASC X.12 transaction set (TS) 214, Motor Carrier shipment Status Message, version 4010 (using the COC Implementation Convention). The minimum data set (events) to be provided to GTN are:

1. TSP departed pick-up location with Shipment (Date and exact time)
2. Arrived at Terminal Location (if it happens).
3. Departed Terminal Location (if it happens).
4. En-route to Delivery Location (every 24 hours, send this status and the current location).
5. Completed Unloading at Delivery (Location Date and exact time).

Service Elements & Standard Events 1, 2, 3,and 5 status will be reported as follows:

—Expected Service status within 4 hours of the event occurring.
—Normal service within 12 hours of the event occurring.

Performance Standard: TSP compliance shall be measured based on the timeliness and accuracy of the information based on the time stamp of transmission of the informatiom and actual occurrence and date and event.

Failing to comply with this requirement may result in being deemed as non responsive, incapable of performing the requirement or a performance failure; thereby making a TSP subject to possible administrative actions to include disqualification or placement in nonuse status.

Exemptions:

—Shipments other than monitor.
—Shipments requiring satellite monitoring.

System

GFM to FTN or;
Carrier/Service Provider to GTN.

Miscellaneous

—Each TSP will be required to access the Freight Carrier Registration Program and identify within 90 days the ITV method they will use (*e.g.* GFM ITV to ITN or Carrier Service Provider to GTN).
—TSP electing the ''Carrier/Service Provider to GTN'' method must complete a trading partner agreement (TPA). The TPA information can be accessed via SDDC Web page at *http:///www.sddc.army.mil/sddc/Content/Pub249/TP/pdf.*
—Reporting shipment status through DTTS, meets the ITV requirement stated herein.
—ITV information for multiple truckload shipments documented on a single bill of lading shall be provided as follows; pick-up date equals the departure date of the first vehicle; delivery date equals the original date of the last vehicle. These procedures shall remain in effect until such time as DOD systems are capable of distinguishing individual truckload event status information.
—*Implementation Phase:* The TSP shall be compliant within 90 days of this notification.

Regulatory Flexibily Act

—This action is not considered rulemaking within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601–612

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 405 *et seq.,* does not apply because no information collection or record keeping requirements are imposed on contractors, offerors or members of the public.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–144 Filed 1–17–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Advanced Video Controller System

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Patent Application No. 11/313,050 entitled ''Advanced Video Controller System,'' filed on December 20, 2005. Foreign rights are also available. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Research Development and Engineering Command, ATTN: AMSRD–AMR–AS–PT–TR, Bldg 5400, Redstone Arsenal, AL 358989–5000.

FOR FURTHER INFORMATION CONTACT: For patent issues, Mr. George Winborne, Patent Attorney, (256) 955–8118. For licensing issues, Dr. Russ Alexander, Office of Research & Technology Applications, (256) 955–6018.

SUPPLEMENTARY INFORMATION: The present invention pertains to a video game control system where the actual physical motion and orientation of a player is automatically replicated and appreciated in a video environment.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–143 Filed 1–17–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the TransAlta Pit 7 Mine Completion Project at Centralia, WA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent; withdrawal.

SUMMARY: The permit applicant, TransAlta Centralia Mining LLC (TCM) has greatly reduced the scope of its proposed coal mining project at Centralia, Washington. Therefore, the U.S. Army Corps of Engineers (Corps) is withdrawing its Notice of Intent to prepare an environmental impact statement (EIS).

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Smith at the U.S. Army Corps of Engineers, Seattle Regulatory Branch, 4735 E. Marginal Way South, Seattle, Washington 98134, (206) 764–6910, or e-mail *Jonathan.Smith@nws02.usace.army.mil.* Mr. Mark Cline, at the Washington Department of Ecology, 300 Desmond Drive, SE., Lacey, Washington 98503, or e-mail *mcli461@ecy.wa.gov*

SUPPLEMENTARY INFORMATION: The Corps and Washington State Department of Ecology (Ecology) published a notice of intent in the April 7, 2006, issue of the **Federal Register** (71 FR 17840) to prepare an EIS on TCM's proposed Pit 7 Mining Project. Since that time, TCM's proposed project has evolved from a coal mining project, affecting over 100 acres of wetlands and streams, to a railroad upgrade project for importing coal from existing, already permitted mines in Montana and Wyoming. This modified proposal appears likely to affect less than three acres of wetlands. Therefore, the Corps and Ecology plan to conduct an environmental assessment of the proposed rail upgrade project during the first half of year 2007. An EIS would be prepared only if results of the environmental assessment indicate potentially significant, adverse environmental impacts.

Dated: January 5, 2007.

Michelle Walker,

Chief, Regulatory Branch, Seattle District.

[FR Doc. E7–632 Filed 1–17–07; 8:45 am]

BILLING CODE 3710–ER–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 20, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 11, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: FFEL/Direct Loan/Perkins Military Deferment Request.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 16,000.

Burden Hours: 8,000.

Abstract: This loan deferment request form is the means by which a FFEL, Direct Loan, or Perkins Loan program borrower will submit a request for a deferment of his or her eligible student loans while the borrower is performing qualifying military or National Guard service.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3259. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–611 Filed 1–17–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.129C and L.

DATES: *Applications Available:* January 18, 2007.

Deadline for Transmittal of Applications: February 20, 2007.

Deadline for Intergovernmental Review: April 18, 2007.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Estimated Available Funds: The Administration has requested $38,438,000 for the Rehabilitation Training program for FY 2007, of which we intend to use an estimated $800,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $75,000–$100,000.

Estimated Average Size of Awards: $87,500.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for Rehabilitation Administration (84.129C) and a budget exceeding $75,000 for Undergraduate Education (84.129L) for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 386.1).

Absolute Priorities: For FY 2007 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that propose to provide training in the priority areas of

personnel shortages listed in the following chart.

CFDA No.	Priority Area (Maximum number of awards in parentheses)
84.129C	Rehabilitation Administration (2)
84.129L	Rehabilitation Undergraduate Education (8)

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimate Available Funds: The Administration has requested $38,438,000 for the Rehabilitation Training program for FY 2007, of which we intend to use an estimated $800,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $75,000–$100,000.

Estimated Average Size of Awards: $87,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for Rehabilitation Administration (84.129C) and a budget exceeding $75,000 for Undergraduate Education (84.129L) for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training program (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129C and L.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times: Applications Available:* January 18, 2007.

Deadline for Transmittal of Applications: February 20, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: April 18, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training program, CFDA Number 84.129C and 84.129L must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Rehabilitation Training: Rehabilitation Long-Term Training program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.129, not 84.129C and L).

Please note the following:

- When you enter the Grants.gov site, you will find information about

submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed

statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Beverly Steburg, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza, Washington, DC 20202–2550. FAX: (202) 245–6824.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129C and L), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.129C and L), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129C and L), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are selected from 34 CFR 75.210 of EDGAR. The selection criteria to be used in this competition will be provided in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The Rehabilitation Training: Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages.

The goal of the Rehabilitation Services Administration's (RSA) Rehabilitation Training: Rehabilitation Long-Term Training program is to increase the number of qualified vocational rehabilitation personnel working in State vocational rehabilitation agencies or related agencies. At least 75 percent of all grant funds must be used for direct payment of student scholarships. Each grantee is required to track students receiving scholarships and must maintain information on the cumulative support granted to RSA scholars, scholar-debt in years, program completion data for each scholar, dates each scholar's work begins and is completed to meet his or her payback agreement, current home address, and the place of employment of individual scholars.

Grantees are required to report annually to RSA on these data using the RSA Grantee Reporting Form, OMB# 1820–0617, an electronic reporting system. The RSA Grantee Reporting Form collects specific data regarding the number of RSA scholars entering the rehabilitation workforce, in what rehabilitation field, and in what type of employment (e.g., State agency, nonprofit service provider, or practice group). This form allows RSA to measure results against the goal of increasing the number of qualified vocational rehabilitation personnel working in State vocational rehabilitation agencies or related agencies.

VII. Agency Contact

For Further Information Contact: Beverly Steburg, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5027, Potomac Center Plaza, Washington, DC 20202–2550.

Telephone: (202) 245–7607 or by e-mail: *Beverly.Steburg@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 8, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 07–90 Filed 1–17–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of Title X claims for reimbursement in fiscal year (FY) 2008.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims in FY 2007 from eligible active uranium and thorium processing sites for reimbursement under Title X of the Energy Policy Act of 1992. For FY 2007, DOE requested Congress to appropriate $20 million for reimbursement of certain costs of remedial action at these sites. As of the date of this notice, a final appropriation has not been received for FY 2007. Therefore, the total amount of funds for reimbursing Title X claims in FY 2007 is not known. The approved amount of claims submitted during FY 2006 and unpaid approved balances for claims submitted in prior years will be paid by April 30, 2007, subject to the availability of funds. If the available funds are less than the total approved claims, these payments will be prorated, if necessary, based on the amount of available FY 2007 appropriations, unpaid approved claim balances (approximately $2.8 million), and claims received in May 2006 (approximately $25 million).

DATES: The closing date for the submission of claims in FY 2007 is May 1, 2007. These new claims will be processed for payment by April 30, 2008, together with unpaid approved claim balances from prior years, based on the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to Mr. David Alan Hicks, Title X Program Manager, U.S. Department of Energy/EMCBC, @ Denver Federal Center, P.O. Box 25547, Denver, Colorado 80225–0547. Three copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Contact David Mathes at (301) 903–7222 of the U.S. Department of Energy, Office of Environmental Management, Office of Disposal Operations.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR Part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (e.g., statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR Part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington DC on this 11th day of January, 2007.

David E. Mathes,

Office of Disposal Operations, Office of Regulatory Compliance.

[FR Doc. E7–609 Filed 1–17–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–319]

Application To Export Electric Energy; Fortis Energy Marketing & Trading GP

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Fortis Energy Marketing & Trading GP (FEMT) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before February 20, 2007.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (Fax 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On October 24, 2006, the Department of Energy received an application from FEMT for authority to transmit electric energy from the United States to Canada as a power marketer. FEMT is a Delaware limited partnership with its principal place of business in Houston, TX. FEMT has requested an electricity export authorization with a 5-year term. FEMT does not own or control any generation, transmission, or distribution assets, nor does it have a franchised service area. The electric energy which FEMT proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the U.S.

FEMT will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by FEMT has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

At the conclusion of this proceeding, should DOE issue an order in OE Docket No. EA–319, FEMT has requested that the authorization issued to CMT in Order No. EA–319, be rescinded.

Procedural Matters

Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the dates listed above.

Comments on the FEMT application to export electric energy to Canada should be clearly marked with Docket No. EA–319. Additional copies are to be filed directly with JannaLyn Allen, Counsel, Fortis Energy Marketing & Trading GP, 1100 Louisiana Street, Suite 4900, Houston, TX 77002.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above and at *http://www.oe.energy.gov/304.htm.*

Issued in Washington, DC, on January 11, 2007.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E7–605 Filed 1–17–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–320]

Application To Export Electric Energy; S.A.C. Energy Investments, L.P.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: S.A.C. Energy Investments, L.P. (SEI) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before February 20, 2007.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 13, 2006, the Department of Energy received an application from SEI for authority to transmit electric energy from the United States to Canada as a power marketer. SEI is a Delaware limited partnership with its principal place of business in Stamford, Connecticut. SEI has requested an electricity export authorization with a 5-year term. SEI does not own or control any generation, transmission, or distribution assets, nor does it have a franchised service area. The electric energy which SEI proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the U.S.

SEI will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by SEI has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the dates listed above.

Comments on the SEI application to export electric energy to Canada should be clearly marked with Docket No. EA–320. Additional copies are to be filed directly with Peter Nussbaum, Authorized Person, S.A.C. Energy Investments, L.P., 72 Cummings Point Road, Stamford, CT AND David J. Levine, Robin J. Bowen and Catherine M. Krupka, McDermott Will & Emergy LLP, 600 13th Street, NW., Washington, DC 20005–3096.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above and at *http://www.doe.energy.gov/304.htm*.

Issued in Washington, DC, on January 11, 2007.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E7–608 Filed 1–17–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–15–001]

Central New York Oil and Gas Company, LLC; Notice of Compliance Filing

January 10, 2007.

Take notice that, on December 29, 2006, Central New York Oil And Gas Company, LLC (CNYOG), tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following revised tariff sheets, to become effective February 1, 2007:

Third Revised Sheet No. 2
Second Revised Sheet No. 4
Second Revised Sheet No. 5
Second Revised Sheet No. 12
Original Sheet No. 12A
Second Revised Sheet No. 13
Second Revised Sheet No. 22
Second Revised Sheet No. 26
Second Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 33
Second Revised Sheet No. 73
Second Revised Sheet No. 74
Second Revised Sheet No. 76
Third Revised Sheet No. 122
Third Revised Sheet No. 134
First Revised Sheet No. 140

CNYOG states that the filing is being made to comply with the terms of the Commission's order of December 21, 2006 in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 26, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–576 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–98–002]

Indicated Shippers v. Columbia Gulf Transmission Company; Notice of Compliance Filing

January 10, 2007.

Take notice that on January 5, 2007, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following pro forma tariff sheets:

Second Revised Sheet No. 235
First Revised Sheet No. 236
Original Sheet No. 237

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–570 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–023]

Dauphin Island Gathering Partners; Notice of Negotiated Rates

January 10, 2007.

Take notice that on January 8, 2007, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Ninth Revised Tariff Sheet No. 9, to become effective February 8, 2007.

Dauphin Island states that this tariff sheet reflects changes to its statement of negotiated rates tariff sheets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–569 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–312–000]

Dogwood Energy, LLC.; Notice Shortening Comment Period

January 10, 2007.

On January 8, 2007, the Commission issued a Notice of Issuance in the above-docketed proceeding. The notice established a period for filing protests or motions to intervene in response to Dogwood Energy, LLC's requests for blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Dogwood.

By this notice, the date for filing motions to intervene or protests is shortened to and including January 24, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–565 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–121–000]

Iroquois Gas Transmission System, L.P.; Notice of Filing

January 10, 2007.

Take notice that on December 28, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its schedules which reflect revised calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period July 1, 2006 through December 31, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time January 17, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–575 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–122]

Natural Gas Pipeline Company of America; Notice of Filing

January 10, 2007.

Take notice that on January 8, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sub Third Revised Sheet No. 414A.01, to be effective January 1, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–561 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–72–005]

Northern Border Pipeline Company; Notice of Refund Report

January 10, 2007.

Take notice that on January 8, 2007, Northern Border Pipeline Company (Northern Border) tendered for filing a refund report showing the computation of refunds that were made to Northern Border's customers pursuant to Articles X–XII of the Stipulation and Agreement dated September 18, 2006, filed in Docket No. RP06–72–000 (Stipulation and Agreement) and approved by the Commission in a Letter Order on November 21, 2006 (117 FERC ¶ 61,217).

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 17, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–573 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–394–002]

Northwest Pipeline Corporation; Notice of Compliance Filing

January 10, 2007.

Take notice that on January 5, 2007, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective December 26, 2006.

Tenth Revised Sheet No. 19–A
Fourth Revised Sheet No. 302–C

Northwest states that the purpose of this filing is to comply with the Commission's December 26, 2006 order in Docket No. RP06–394 to bring Northwest's tariff into conformance with Commission policy.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–572 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–919–000]

Southern Company Services, Inc.; Notice of Non-Decisional Status

January 10, 2007.

Take notice that, for purposes of the above-captioned docket (and all subdockets in those dockets), Scott P. Molony, Chief, Regulatory Accounting Branch, and Steven D. Hunt, Auditor, in the Division of Financial Regulation, Office of Enforcement are non-decisional authorities and non-decisional employees. *Cf.* 18 CFR 385.102(a) (2006) (definition of decisional authority); 18 CFR 385.2201(c)(3) (2006) (definition of decisional employee).

Magalie R. Salas,

Secretary.

[FR Doc. E7–563 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–120–001]

Stingray Pipeline Company, L.L.C.; Notice of Compliance Filing

January 10, 2007.

Take notice that on January 8, 2007, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eleventh Revised Sheet No. 2, to become effective January 21, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–574 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–146–000, ER07–146–001]

Wabash Valley Energy Marketing, Inc.; Notice of Issuance of Order

January 10, 2007.

Wabash Valley Energy Marketing, Inc. (Wabash Marketing) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Wabash Marketing also requested waivers of various Commission regulations. In particular, Wabash Marketing requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Wabash Marketing.

On January 8, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Wabash Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests is February 7, 2007.

Absent a request to be heard in opposition by the deadline above, Wabash Marketing is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Wabash Marketing, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Wabash Marketing's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E7–564 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–147–004]

Wyoming Interstate Company; Notice of Compliance Filing

January 10, 2007.

Take notice that on January 5, 2007, Wyoming Interstate Company (WIC) submitted a compliance filing pursuant to the Commission's November 2, 2006 order issued in Docket Nos. RP06–147–002 and 003.

WIC states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–571 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–6–000]

ConocoPhillips Company, Complainant v. SFPP, L.P, Respondent; Notice of Complaint

January 10, 2007.

Take notice that on January 9, 2007, ConocoPhillips Company (ConocoPhillips) filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, and the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 341(a). The complaint alleges that SFPP, L.P. (SFPP) has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App. § 1, *et*

seq., by charging unjust and unreasonable rates for SFPP's jurisdictional interstate service associated with its North Line.

ConocoPhillips requests that the Commission order SFPP: (1) To rescind the 2005 indexed increase in SFPP's North Line rates implemented in Tariff No. 117, (2) to rescind a portion of the 2006 increase in SFPP's North Line rates implemented in Tariff No. 127; and (3) to pay refunds or reparations, with interest, for the amounts collected from ConocoPhillips under the rescinded rates.

ConocoPhillips certifies that copies of the complaint were served on the contacts for SFPP as shown on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 29, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–567 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–5–000]

ExxonMobil Oil Corporation, Complainant v. Calnev Pipe Line LLC, Kinder Morgan GP Inc., Kinder Morgan Inc., Respondents; Notice of Complaint

January 10, 2007.

Take notice that on January 8, 2007, ExxonMobil Oil Corporation (ExxonMobil) tendered for filing its First Original Complaint against Calnev Pipe Line LLC, Kinder Morgan GP, Inc., and Kinder Morgan Inc. ExxonMobil alleges that Calnev's rates for transportation and terminalling are unjust and unreasonable. ExxonMobil requests that the Commission review and investigate Calnev's rates, including Calnev's index rate increases; set the proceeding for an evidentiary hearing to determine just and reasonable rates for Calnev; require Calnev to pay reparations starting two years before the date of complaint for all rates; and award such other relief as is necessary and appropriate under the Interstate Commerce Act.

ExxonMobil states that copies of the complaint were served on all respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 7, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–566 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–41–00]

CenterPoint Energy Gas Transmission Company, Notice of Intent To Prepare an Environmental Assessment for the Proposed; Carthage to Perryville Project—Phase III and Request for Comments on Environmental Issues

January 10, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Carthage to Perryville Project—Phase III involving construction and operation of facilities by CenterPoint Energy Gas Transmission Company (CenterPoint) in Red River Parish, Louisiana and Panola County, Texas (Project).[1] This EA will be used by the Commission in its decision-making process to determine whether the Project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need

[1] CenterPoint Energy Gas Transmission Company's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

To Know?'' addresses a number of typically asked questions, including how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site *(http://www.ferc.gov*).

Summary of the Proposed Project

CenterPoint seeks authorization to construct and operate:

(1) At the existing Panola Compressor Station in Panola County, Texas:

(a) One additional natural gas-fired compressor unit identified as a Solar Mars 100 turbine rated at 15,000 horsepower (hp);

(b) One 1,200 gallon condensate storage tank;

(c) One 237 hp standby generator engine;

(d) One filter separator;

(e) Piping and piping systems;

(f) One air compressor; One compressor skid; one control enclosure; and one office.

(2) At the proposed Westdale Compressor Station site near Westdale in Red River Parish, Louisiana:

(a) Compressor station buildings and related infrastructure;

(b) One natural gas-fired Solar Mars 100 turbine compressor unit rated at 15,000 horsepower (hp);

(c) One 1,200 gallon condensate storage tank;

(d) One 237 hp standby generator engine;

(e) One filter separator;

(f) Piping and piping systems;

(g) One air compressor; one compressor skid; one control enclosure; and one office.

The general location of the Project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

The Project would require a total of approximately 12.2 acres for construction of the proposed Westdale Compressor Station. The Westdale Compressor Station would encompass approximately 11 acres plus a permanent access road. Acreage on the existing Panola Compressor Station property grounds, and an existing access road, would also be utilized for the construction and operation of the proposed additional Panola Compressor Station facilities.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that would occur as a result of the construction and operation of the Project under these general headings:

- Air quality and noise.
- Cultural resources.
- Fisheries.
- Geology and soils.
- Land use.
- Public safety.
- Water resources.
- Wetlands.
- Wildlife.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CenterPoint. This preliminary list of issues may be changed based on your comments and our analysis.

- Air quality and noise.
- Geology and soils.
- Cultural resources.
- Land use.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP07–41–000.
- Mail your comments so that they will be received in Washington, DC on or before February 12, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should

send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. This includes all landowners who are potential right-of-way grantors or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E7–562 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

January 10, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Change in Land Rights.

b. *Project No:* 2113–189.

c. *Date Filed:* October 17, 2006.

d. *Applicant:* Wisconsin Valley Improvement Company (WVIC).

e. *Name of Project:* Wisconsin Valley (Reservoirs) Hydroelectric Project.

f. *Location:* The project is located on the Wisconsin River and Headwater Tributaries in Gogebic County, Michigan and Vilas, Forest, Oneida, Lincoln, and Marathon Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert W. Gall, President, Wisconsin Valley Improvement Company, 2301 North Third Street, Wausau, Wisconsin 54403, (715) 848–2976, ext. 308.

i. *FERC Contact:* Any questions on this notice should be addressed to Hillary Berlin at (202) 502–8915, or by e-mail: *hillary.berlin@ferc.gov.*

j. *Deadline for filing comments and/or motions:* February 9, 2007.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Proposal:* WVIC, licensee for the Wisconsin Valley (Reservoirs) Project proposes the following at the Rainbow and Pickerel developments: (1) Transfer 3,868.4 acres of flooded project land to the Wisconsin Department of Natural Resources (WDNR); (2) transfer 2,414.5 acres of non-flooded land to WDNR; (3) transfer 290.4 acres operational project land to WDNR with WVIC retaining conservation easement; (4) transfer 3.9 acre parcel, 0.2 acre parcel, and 0.1 acre parcel from WVIC to Glenn Schiffmann (and out of project boundary); (5) transfer 9.0 acres to licensee from G. Schiffmann (and into project boundary); and (6) add 40 acres within the high water mark in sections 7 & 8, Town 39N, Range 9E to the project boundary. The licensee will retain areas owned in fee that contain land critical to project operation, flowage rights necessary for reservoir operation, and responsibility for Cultural Resource management of project lands.

l. A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (p–2113) excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'',

''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–568 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

January 11, 2007.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 18, 2007, 1 p.m.

PLACE: Room 2C, Commission Meeting Room, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Litigation Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Kelliher and Commissioners Kelly, Spitzer, Moeller, and Wellinghoff voted to hold a closed meeting on January 18, 2007. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of his staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. E7–577 Filed 1–17–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8270–2]

Clean Water Act Section 303(d): Availability of San Gabriel River Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This action announces the availability of EPA proposed total maximum daily loads (TMDLs) in San Gabriel River watershed to address water quality limited segments and elevated metals and selenium levels pursuant to Clean Water Act Section 303(d)(1), and requests public comment. Section 303(d)(1) requires that states submit water quality planning documents called total maximum daily loads for impaired waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. EPA must approve or disapprove the State's submitted TMDLs.

Today, EPA is providing the public the opportunity to review proposed TMDLs for San Gabriel River metals. EPA is establishing these TMDLs in lieu of California because of deadlines associated with the consent decree described below. EPA will prepare a responsiveness summary that demonstrates how public comments were considered in the final TMDL decisions. The responsiveness document will be available when the TMDLs are established.

DATES: Comments must be submitted to EPA on or before February 15, 2007.

ADDRESSES: Comments on the proposed decisions should be sent to Terrence Fleming, Water Division (WTR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3462, facsimile (415) 947–3537, e-mail *fleming.terrence@epa.gov.* Oral comments will not be considered. Copies of the proposed TMDLs for San Gabriel River watershed will be available on EPA Region 9's Web site at *http://www.epa.gov/region9/water/tmdl/303d.html* or by writing or calling Mr. Fleming at the above address. Underlying documentation comprising the record for these TMDLs is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Terrence Fleming at (415) 972–3462 or *fleming.terrence@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act requires states to identify water bodies that do not meet water quality standards and then to establish TMDLs for each water body for each pollutant of concern. TMDLs identify the maximum amount of pollutants that can be discharged to water bodies without causing violations of water quality standards. Several reaches or tributaries of the San Gabriel River are included on the State of California's Section 303(d) list of polluted waters due to water quality impacts associated with discharges of metals and selenium. EPA will establish TMDLs for metals and selenium for waters in the watershed by March 26, 2007 because of deadlines under a consent decree (Heal the Bay Inc., et al. v. Browner C 98–4825 SBA, entered March 24, 1999).

The Los Angeles Regional Water Quality Control Board is in the process of developing TMDLs for metals and selenium for the San Gabriel River watershed. However, because the State is not expected to adopt and submit these metals and selenium TMDLs by March 26, 2007, EPA is establishing these metals and selenium pollutant TMDLs.

Dated: January 8, 2007.

Nancy Woo,

Acting Director, Water Division, Region IX.

[FR Doc. E7–636 Filed 1–17–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

Summary: The Sub-Saharan Africa Advisory Committee was established by

Public Law 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: February 7, 2007 at 9:30 to 12 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting will include updates on Africa outreach specifically including Ex-Im Bank Chairman James Lambright's February 1st and 2nd participation in the GTR/Standard Chartered ''Africa Trade & Investment 2007'' conference in Cape Town; a general discussion on the restrictions within which Ex-Im Bank must operate in any given country; the Bank's specialized U.S. outreach initiative relative to Nigeria; a presentation of the Bank's on-line Business Application Project; the Africa focus at Ex-Im Bank's April 12th and 13th annual meeting; and an ethics presentation for the new sub-Saharan Africa Advisory Committee members.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to February 7, 2007, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

Further Information: For further information, contact Barbara Ransom, Room 707, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Kamil Cook,

Deputy General Counsel.

[FR Doc. 07–145 Filed 1–17–06; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices; Cancellation of Previously Announced Meeting: Thursday, January 11, 2007, Meeting Open to the Public. Special Executive Session: Thursday, January 11, 2007. This Meeting Was Closed to the Public Pursuant to 11 CFR 2.4(b)(1) and 2.4(b)(2)

DATE AND TIME: Tuesday, January 23, 2007, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–216 Filed 1–16–07; 3:03 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov.*)

Agreement No.: 011275–022.

Title: Australia/United States Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; Hamburg-Süd Safmarine Container Lines NV; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment expands the geographic scope to include New Zealand, and renames and restates the agreement. It also adds authority to discuss rationalization of services; to discuss and agree on liability, bill of lading, equipment, and various other matters; to agree with forwarders and brokers on compensation; to discuss the costs of service and related matters; and to discuss the Australia and New Zealand trade together or separately.

Agreement No.: 011733–019.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S; CMA CGM; Hamburg-Süd; Hapag-Lloyd AG; Mediterranean Shipping Company S.A.; and United Arab Shipping Company (S.A.G.) as shareholder parties, and Alianca Navegacao e Logistica Ltda.; Kawasaki Kisen Kaisha Ltd.; MISC Berhad; Mitsui O.S.K. lines Ltd.; Nippon Yusen Kaisha; Safmarine Container Lines N.V.; Senator Lines GmbH; Compania Sud Americana de Vapores, S.A.; Companhia Libra Navegacao; Norasia Container Lines Limited; MISC Berhad; and Tasman Orient Line C.V. as non-shareholder parties.

Filing Party: Mark J. Fink, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds Hyundai Merchant Marine, Co., Ltd. as a party.

Agreement No.: 011756–003.

Title: New World Alliance/Evergreen Slot Exchange Agreement.

Parties: APL Co. Pte. Ltd. and American President Lines, Ltd.; Mitsui O.S.K. Lines, Ltd.; Hyundai Merchant Marine Co., Ltd.; and Evergreen Marine Corp. (Taiwan) Ltd.

Filing Party: Eliot J. Halperin, Esq.; Manelli, Denison & Selter PLLC; 2000 M Street, NW.; 7th Floor; Washington, DC 20036.

Synopsis: The amendment updates the agreement to accommodate changes in the services of the New World Alliance and the newly executed New World Alliance Agreement.

Agreement No.: 011942–001.

Title: CMA–CGM/CSCL Cross Space Charter, Sailing and Cooperative Working Agreement—Far East/US Gulf Loop, PEX2/PEX3/AAE2 Service.

Parties: CMA–CGM, S.A.; China Shipping Container Lines Co., Ltd.; and China Shipping Container Lines (Hong Kong) Co., Ltd.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment deletes the U.S. Atlantic Coast from the geographic scope, adds a CMA service string to the agreement, and renames and restates the agreement.

Agreement No.: 011969–001.

Title: Zim/Italia Marittima Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Italia Marittima S.p.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adjusts the space allocations in the agreement.

By Order of the Federal Maritime Commission.

Dated: January 12, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–627 Filed 1–17–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Valu Freight Consolidators, 1325 NW., 21 Street, Miami, FL 33142, Officers: Barry Ferguson, President (Qualifying Individual).

ATL Global USA Inc., 230–59 Int'l Airport Ctr. Blvd., Ste. 190, Springfield Gardens, NY 11423, Officers: Kwok Keung Wong, President (Qualifying Individual), Chem Fong Lim, Vice President.

SJT Trading Corp., 6500 NW. 72 Avenue, Miami, FL 33166, Officers: Diego Leandro Camarotta, Corporate Officer (Qualifying Individual), Marlangeles Setzes, Vice President.

Global Relogistics, Inc., 16499 NE. 19th Ave., Ste. 102, North Miami Beach, FL 33162, Officers: John C. Pardo, Sales Manager (Qualifying Individual), Alon Erra, President.

American N.V.O. Corp., 11017 NW 122 Street, Ste. 17, Medley, FL 33327, Julio Andres Osorio, Vice President (Qualifing Individual), Julio Osorio, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Quest Cargo, Inc., 1530 NE. 191 Street, Unit 307, Miami, FL 33179, Officer: Celso Cipolla, President (Qualifying Individual).

GTI International Logistics LLC, dba GTI Container Line, 74 Washington Street, Topsfield, MA 01983, Officer: Guido Voss, Manager (Qualifying Individual).

Mainfreight International, Inc., 600 Anton Blvd., 11th Floor, Costa Mesa, CA 92626, Officers: Thomas P. Onahue, President (Qualifying Individual), John Hepworth, Vice President.

Macro Transsport Services, LLC, 285 Clyde Morris Blvd., Ste. 300, Ormond Beach, FL 32174, Officers: Benjamin Dale Fricke, Vice President (Qualifying Individual), Charles Casey, President.

Alliance Shipping Group, Inc., 1047 Tupelo Way, Weston, FL 33327, Officer: Ived Grullon, President (Qualifying Individual).

ACON Logistics Services (USA) Inc., 110 S. Rosemead Bldq., #J, Pasadena, CA 91107, Officers: Eric Ta Chen, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Sefco Export Management Company, Inc.. One Ascan Avenue PH–74, Forest Hills, NY 11375, Officer: Joseph T. Quinn, President (Qualifying Individual).

Dulce Auto Import & Export, Inc., 15316 SW. 16th Terrace, Miami, FL 33185, Officers: Dulce Guzman, President (Qualifying Individual), Alfredo Montalvo, Secretary.

Dated: January 12, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–628 Filed 1–17–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Robert D. Weerts and Jennifer L. Weerts, Winnebago, Minnesota; to acquire voting shares of Northern Star Financial, Inc., and thereby indirectly acquire voting shares of Northern Star Bank both in Mankato, Minnesota.

Board of Governors of the Federal Reserve System, January 11, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–581 Filed 1–17–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Budget, Technology and Finance; Office of the Assistant Secretary for Administration and Management; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended as follows: Chapter AM, ''Office of Resources and Technology (ORT),'' as last amended at 68 FR 36808–36812, dated June 19, 2003 and 71 FR 38884–38888, dated July 10, 2006;'' and Chapter AMM, ''Office of the Chief Information Officer,'' as last amended at 70 FR 42321–24, dated July 22, 2005; and Chapter AJ, ''Office of the Assistant Secretary for Administration and Management (OASAM),'' as last amended at 71 FR 27259–27262, dated May 10, 2006. The reorganization is to consolidate operational functions by transferring the informational technology functions from ORT to OASAM. The changes are as follows:

I. Under Section AM.20 Functions, Chapter AMM, ''Office of the Chief Information Officer,'' make the following changes:

A. Under Section AMM.10 Organization, delete in its entirety and replace with the following:

Section AMM.10 Organization. The Office of the Chief Information Officer (OCIO) is headed by the Deputy Assistant Secretary for Information Technology/HHS CIO, who reports to the Secretary and the Assistant Secretary for Budget, Technology and Finance. The HHS CIO serves as the primary IT leader for the Department, and the OCIO consists of the following:

○ Immediate Office (AMM).

○ Office of Resources Management (AMM2).

○ Office of Enterprise Architecture (AMM4).

○ Office of Enterprise Project Management (AMM5).

B. Under Section AM.20 Functions, delete Paragraph 3, ''Office of Information Technology Operations (AMM3), in its entirety, and renumber the remaining paragraph in sequential order.

II. Under Chapter AJ, ''Office of the Assistant Secretary for Administration and Management,'' make the following changes:

A. Under Chapter AJ.10, Organization, delete in its entirety and replace with the following:

Section AJ.10 Organization: The Office of the Assistant Secretary for Administration and Management is under the direction of the Assistant Secretary for Administration and Management, who report to the Secretary and consists of the following components:

○ Immediate Office (AJ).

○ Office of Human Resources (AJA).

○ OS Executive Office (AJC).

○ Office for Facilities Management and Policy (AJE).

○ Office of Acquisition Management and Policy (AJG).

○ Office of Small and Disadvantaged Business Utilization (AJH).

○ Office of Diversity Management & Equal Employment Opportunity (AJI).

○ Office of Business Transformation (AJJ).

○ Office of Information Technology Operations (AJK).

○ Program Support Center (P).

B. At the end of Section AJ.20 Functions, add Paragraph K, the Office of Information Technology Operations (AJK):

K. Office of Information and Technology Operations

Section AJK.00 Mission: The mission of the Office of Information Technology Operations is to provide infrastructure support services, using a shared services model, to a consortium of departmental customers.

Section AJK.10 Organization: The Office of Information Technology Operations (OITO) is headed by a Director who reports directly to the Assistant Secretary for Administration and Management.

Section AJK.20 Functions: The Office of Information Technology Operations (OITO) is directed by the Director of OITO. OITO is responsible for providing Network Services, Help Desk, Call Center, Desktop Support, Server Architectures, IT Security, Secretary's Command Center and Continuity of Operations Planning (COOP) support, and Outreach and Customer Relationship Management (CRM) for participating HHS organizations. OITO is responsible for the following:

a. Operating, maintaining, and enhancing the computer network and services, including services for participating HHS organizations.

b. Implementing and monitoring network policies and procedures, and developing plans and budgets for network support services.

c. Ensuring reliable, high-performance network services.

d. Implementing and operating electronic tools to enhance Secretarial communications with all HHS personnel.

e. Implementing policies and guidance on information resources management for acquisition and use of information technology, support of technical model, and coordination of implementation procedures.

f. Maintaining and operating the inventory of automated data processing equipment for ITSC participating agencies.

g. Operating and maintaining an information technology support service (Help Desk and Call Center) for participating HHS components.

h. Managing contracts for equipment and support services related to the provision of IT services in OITO participating agencies.

i. Representing the ASAM through participation on interagency and Departmental work groups and task forces, as appropriate.

j. Responsible for OITO compliance with and implementation of all applicable HHS policies and Federal Laws regarding IT Security.

k. Reviewing and facilitating acquisitions for activities related to and in support of the OS and OITO mission.

C. Under Section AJA.20 Functions, delete paragraph B, SW Complex Team (AJ1), in its entirety.

D. Under Section AJA 20 Functions, under Paragraph F, ''Office for Facilities Management and Policy AJE,'' make the following changes:

1. Under Paragraph F, Section AJE.10 Organization, delete in its entirety and replace with the following:

Section AJE.10 Organization. The Office for Facilities Management and Policy (OFMP) is headed by a Deputy Assistant Secretary, who reports directly to the Assistant Secretary for Administration and Management, and consists of the following components:

○ Division of Planning and Construction (AJE1).

○ Division of Operations and Maintenance (AJE2).

○ Division of Real Property (AJE3).

○ SW Complex Security Team (AJE4).

2. Under Paragraph F, Section AJE.20 Functions, add the following new paragraph:

4. *SW Complex Security Team (AJE4):* Provides physical security for employees and visitors protection in the Hubert H. Humphrey (HHH) Building and other SW Complex facilities; oversees the OS and Southwest complex occupational safety and health programs; oversees the fire prevention program; manages HHH Building parking facilities and HHS parking in other SW Complex lots; issues and controls employee identification badges; and manages the HHS Building visitor program and special events admittance support.

III. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office of Information and Resources Management heretofore issued and in effect prior to this reorganization are continued in full force and effect with respect to the Office of the Chief Information Officer.

IV. Delegation of Authority: All delegations and redelegations of authority previously made to officials and employees of the Office of Information Resources Management will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

V. Funds, Personnel, and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies, and other sources.

Dated: January 10, 2007.

Joe W. Ellis,

Assistant Secretary for Administration and Management.

[FR Doc. 07–155 Filed 1–17–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0016]

Sentinel Network To Promote Medical Product Safety; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to explore opportunities to link private sector and public sector postmarket safety efforts to create a virtual, integrated, electronic ''Sentinel Network.'' Such a network would integrate existing and planned efforts to collect, analyze, and disseminate medical product safety information to health care practitioners and patients at the point-of-care. It would be established through multiple, broad-based, public-private partnerships. We are seeking input on a number of specific questions regarding opportunities for collaboration, the efficient use of information technology, and the collection and analysis of medical product safety information.

Dates and Times: The public meeting will be held on March 7 and 8, 2007, from 8 a.m. to 5 p.m.

Location: The public meeting will be held at the University System of Maryland Shady Grove Center, 8630 Gudelsky Dr., Rockville, MD 20850.

ADDRESSES: Submit written registration and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic registration to *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*. Submit electronic comments to *http://www.accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm*. Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.fda.gov/ohrms/dockets* approximately 21 days after the meeting.

For Registration to Attend and/or to Participate in the Meeting: Seating at the meeting is limited. People interested in attending should register at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm* or submit written registration to the Division of Dockets Management (see **ADDRESSES**) by close of business on February 7, 2007. Registration is free and will be on a first-come, first-serve basis. Written or electronic comments will be accepted until April 5, 2007, at the Division of Dockets Management (see **ADDRESSES**).

If you wish to make an oral presentation during the open session of the meeting, you must state your intention on your registration submission (see **ADDRESSES**). To speak, submit your name, title, business affiliation, address, telephone number, fax number, and e-mail address. FDA has identified questions and subject matters of special interest in this notice. You should identify by number each question you intend to address in your presentation, although presentations do not have to be limited to those questions. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA may require joint presentations by persons with common interests. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

If you require special accommodations due to a disability, please inform Erik Mettler or Nancy Stanisic.

For Information On the Meeting Contact: Erik Mettler, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, rm. 14–101, Rockville, MD 20857, 301–827–3360, FAX: 301–594–6777, e-mail: *erik.mettler@fda.hhs.gov*; or Nancy Stanisic, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0149, e-mail: *nancy.stanisic@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Each year many Americans experience an adverse event due to the use or misuse of a medical product. Medical products, for purposes of this meeting, include human drugs, biological products, and medical devices. Sometimes it is an adverse event known to be associated with the product and sometimes it is not. Patients may experience an adverse event because of errors in the prescribing, selection, or use of a medical product, or because of the inherent properties of a medical product or a problem with the product's manufacture.

When medical products are not used optimally, the public health can be affected in many ways. First, there can be direct injuries to patients. Second, the public's trust in the health care system and in governmental oversight of medical products can be eroded. Finally, patients and health care professionals can become overly cautious in their use of treatments, thus diminishing the usefulness of effective therapies.

To make informed decisions about how to use the products safely and effectively, health care professionals need up-to-date and accurate information about the medical products they may be prescribing. Without this information, treatments, preventatives, and diagnostics may not be utilized optimally. Efforts now underway to develop and harmonize health information standards, such as for electronic health records, and to make use of available health information technologies, are giving the public and private sectors a new array of tools to help improve the safe and effective use of medical products.

Premarket clinical trials cannot identify all potential risks from a medical product. FDA and other Federal agencies conduct a variety of postmarket surveillance efforts to monitor the safety of medical products once they have been approved for marketing in the United States. These include adverse event reporting systems used to assess known risks and to identify potential previously unknown risks, and the use of population-based data sets to help assess whether such risks are related to specific medical products. However, the effectiveness of these postmarket safety activities has been constrained due to limitations in the quality, quantity, and timeliness of the available data as well as limitations in the existing capacity to rapidly conduct postmarket safety studies when needed. The development of new information technology tools and the growing interest of the private sector in creating the necessary capacity to conduct postmarket safety assessments provide an opportunity to address these limitations through better integration of the nation's postmarket medical product safety activities.

Therefore, FDA is exploring opportunities to link existing and planned private and public sector postmarket safety efforts to create a virtual, integrated, electronic network — a ''Sentinel Network''. The Network would foster the seamless, timely electronic flow of medical product safety information from electronic databases and surveillance reporting systems, through risk identification and analysis processes, to health care practitioners and patients at the point-

of-care while protecting patient privacy. The Network would use national and international standards adopted by the Department of Health and Human Services, but would not involve health information technology standards development. The Network would include three principal types of activities: (1) Data collection, (2) risk identification and analysis, and (3) risk communication.

As a first step in beginning a national dialogue regarding actions that can be taken to assemble the Sentinel Network, FDA will hold a 2-day public meeting to discuss the envisioned Network. At the meeting we will engage the private sector in a discussion of opportunities for public sector and private sector collaboration on activities to help develop the data collection and risk identification and analysis components of the Network. In particular, we would like to hear from those who have established or have access to large, electronic, population-based data sets that are, or could be, used for postmarket safety activities. We also want to hear from those with experience in risk identification and analysis.

The objectives of the Sentinel Network public meeting to be held in March are to:

- Evaluate current needs in postmarket medical product adverse event data collection and risk identification and analysis;
- Identify the obstacles to facilitators, and incentives for developing the data collection and risk identification and analysis components of the Sentinel Network; and
- Identify opportunities for public-private collaborations for building the data collection and risk identification and analysis components of the Network.

To help achieve these objectives, FDA would like to focus the meeting discussion on the following questions:

General

1. What are the obstacles to facilitators, and incentives for developing the Sentinel Network?
2. How can postmarket medical product safety data collection be integrated into the workflow of clinical practice at the point-of-care while avoiding the imposition of undue burdens on health care practitioners, patients, and health care institutions?
3. How can electronic health records serve as an effective data collection tool for medical product safety data without imposing undue burden on health care practitioners and patients at the point-of-care? What would be needed to facilitate this effort?
4. What steps should be taken to ensure the privacy of patient information used by the Network?

Current Needs

5. What are the current gaps in postmarket medical product safety data collection and risk identification and analysis?
6. What are the existing data collection systems and methodologies that could be used to fill these gaps in postmarket medical product safety data collection and risk identification and analysis? Please present a comprehensive description of the systems, including the types of questions that they have and have not been able to address and that they have the potential to address.
7. How readily can existing systems be used or be modified to serve as dynamic surveillance loops (e.g., constant integration of data collection from, analysis, and feedback of information to health care practitioners and patients at the point-of-care)?

Future Opportunities

8. What are the opportunities for public-private collaborations for building the data collection and risk identification and analysis components of the Sentinel Network?
9. Given that building the Network will be a complex undertaking, are there worthwhile small-scale projects that could be readily achievable? If appropriate, please address what your organization can contribute to these programs.
10. What types of opportunities are there for conducting prospective testing of existing systems (e.g., in real time) to determine their validity for medical product safety risk identification? What benchmarks, both inside and outside the health care environment, are optimal for comparison?

On the first day of the meeting, a panel of experts from Federal agencies will provide an overview of the vision of the Sentinel Network and the gaps they see that the Network might fill. Then a second panel of invited private sector experts will make presentations on the systems and programs they are involved in that are already in use or under development, and will address the questions presented in this notice. Afterwards, members of the public who registered to speak will make their presentations. On the second day of the meeting there will be a moderated discussion between the two panels about the questions presented in this notice. There also will be an opportunity for attendees to provide feedback on the presentations and any additional thoughts during a designated open session. While we are interested in learning about specific technologies being (or already) developed, specific proprietary commercial products are not the focus of this meeting. An opportunity to display such commercial products will be provided in a separate, adjacent area that will be open for viewing on both days of the meeting. Because of space limitations, any vendor wishing to display its product should register (see **ADDRESSES**) to reserve space. The display area will provide vendors an opportunity to fully explain their products to interested parties. Descriptions or materials regarding commercial products can be submitted in writing to the Division of Dockets Management. Vendors are also welcome to comment on the specific substantive questions raised at the meeting.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic notices of participation and comments for consideration. To permit time for all interested persons to submit data, information, or views on this subject, the docket for the meeting will open 14 days prior to the meeting and remain open for 30 days following the meeting. Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management (see **ADDRESSES**). You should annotate and organize your comments to identify the specific numbered questions in this notice to which they respond. 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 Divsion of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Transcripts of the meeting also will be available for review at the Division of Dockets Management.

Dated: January 11, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–141 Filed 1–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Proposed Collection; Comment Requested; Study to Improve Thyroid Doses From Fallout Exposure in Kazakhstan—Follow-up

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, 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: Study to improve thyroid doses from fallout exposure in Kazakhstan—Follow-up, Radiation Epidemiology Branch, Division of Cancer Epidemiology and Genetics, National Cancer Institute (NCI). The proposed work builds on an existing study conducted 1998 of radiation exposure and thyroid disease among individuals in Kazakhstan exposed during childhood to radioactive fallout from nuclear tests conducted at the Semipalatinsk Nuclear Test Site (SNTS) between 1949 and 1962. The 1998 study recruited 3000 participants who were 21 years of age or younger at fallout exposure, from eight villages. Analyses of preliminary dose estimates suggest that internal and external exposures independently and significantly contributed to the dose response for thyroid nodules. *Type of Information Collection Request:* NEW.

This study population in Kazakhstan is unique in several ways. This is only the fourth major population in which dose-response has been studied for thyroid disease associated with environmental releases of radioactive materials. The conditions of fallout exposure in Kazakhstan are directly relevant to conditions following a hypothetical nuclear accident or a terrorist attack involving high levels of local fallout. Among large study populations with high exposure following environmental releases of radioactive materials, this population is second in size only to those most heavily exposed to radioactive materials released during the 1986 Chornobyl reactor accident. However, unlike the Chornobyl population, the Kazakhstan population was exposed to high levels of radiation from external as well as internal sources. This allows us to evaluate the relative effectiveness of internal and external radiation exposures in terms of thyroid disease risk within a single population. *Need and Use of Information Collection:* NCI proposes a small-scale field study to acquire new data to improve our estimates of internal and external radiation dose and thereby refine the dose-response estimates. Retrospective information about factors influencing radiation dose to the thyroid gland in children of two distinct ethnic groups (Kazakh and Russian) will be collected using focus group interviews. These new collected data will address key weaknesses in the current dosimetry, including milk and milk product consumption, time typically spent outdoors, radiation shielding provided by dwellings and other buildings, and seasonal practices of pasturing and supplemental feeding of dairy animals at the time of the nuclear tests. Since the objective is to estimate group-specific mean values (and ranges) and not to collect individual data, focus groups are better suited than conventional in-depth individual interviews.

Focus group members for each village will consist of two sets of participants who (i) speak Russian or Kazakh and are able to participate in a 2 hour focus group session, and (ii) have verified history of residence in the village at the time of the nuclear tests will be recruited for the study.

Frequency of Response: Once;

Affected Public: Individual and household.

Type of Respondent: Women, Men age 65 or older

Estimated Number of Respondents: 128.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours per Response: 2.0. Annual Burden Hours Requested: 256.

- Women: In each village, three groups of 8 women ages 65 years and older who had children less than age 15 years or provided care to children in this age group (i.e., younger siblings, nieces and nephews) at the time of the nuclear tests.
- Men: In each village, 8 men ages 65 and older who were engaged in farming and care of dairy animals at the time of the nuclear tests.

Since the main exposure years (time of the tests) varies by village, specific eligibility requirements will be applied to each village. Verification of residence history will be based on regional records.

TABLE A.—TOTAL BURDEN ESTIMATES FOR DATA COLLECTION

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Focus Group	128	1	2 hours	256
Male	32	1	2 hours	64
Female	96	1	2 hours	192
Total	.....	.....	.....	256

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and 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 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 Charles Land, Project Officer, National Cancer Institute, EPS , 6120 Executive Boulevard MSC 7238, Bethesda, Maryland 20852, or call non-toll free number 301–594–7165 or FAX your request, including your address to 301–402–0207.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: January 8, 2007.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E7–625 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Benztropine Analogs for Treatment of Cocaine Abuse and Other Mental Disorders

Description of Technology: Dopamine is a neurotransmitter that exerts important effects on locomotor activity, motivation and reward, and cognition. The dopamine transporter (DAT) is expressed on the plasma membrane of dopamine synthesizing neurons, and is responsible for clearing dopamine released into the extra-cellular space, thereby regulating neurotransmission. The dopamine transporter plays a significant role in neurotoxicity and human diseases, such as Parkinson's disease, drug abuse (especially cocaine addiction), Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADD/ADHD), and a number of other CNS disorders. Therefore, the dopamine transporter is a strong target for research and the discovery of potential therapeutics for the treatment of these indications.

This invention discloses novel benztropine analogs and methods of using these analogs for treatment of mental and conduct disorders such as cocaine abuse, narcolepsy, ADHD, obesity and nicotine abuse. The disclosed analogs are highly selective and potent inhibitors of DAT, but without an apparent cocaine-like behavioral profile. In addition to their use as a treatment for cocaine abuse, these compounds have also shown efficacy in animal models of ADHD and nicotine abuse, and have also been shown to reduce food intake in animals. They may also be useful medications for other indications where dopamine-related behavior is compromised, such as alcohol addiction, tobacco addiction, and Parkinson's disease.

Applications: Drug leads for treatment of cocaine abuse, ADHD, nicotine abuse, obesity, and other dopamine-related disorders; Imaging probes for dopamine transporter binding sites.

Development Status: Pre-clinical data are available.

Inventors: Amy H. Newman, Mu-fa Zou, and Jonathan L. Katz (NIDA).

Patent Status: U.S. Provisional Application No. 60/710,956 filed 24 Aug 2005 (HHS Reference No. E–234–2005/0–US–01); PCT Application No. PCT/US2006/33103 filed 24 Aug 2006 (HHS Reference No. E–234–2005/1–PCT–01 and HHS Reference No. E–129–2006/0).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Tara Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov*.

Collaborative Research Opportunity: The Medicinal Chemistry and Psychobiology Sections, National Institute on Drug Abuse-Intramural Research Program, National Institutes of Health, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize medications to treat cocaine abuse and addiction. Please contact John D. Hewes, Ph.D. at 301/435–3121 or *hewesj@mail.nih.gov* for more information.

Protein Arginine N-methyltransferase 2 (PRMT–2), a Modulator of NFKB, E2F1, and STAT3 Activity

Description of Technology: Protein-arginine methyltransferases (PRMTs) contain methyltransferase domains that modify chromatin and regulate cellular transcription through the post-translational methylation of arginine residues on the guanidine group of target proteins. Members of this family have roles in RNA processing, transcriptional regulation, signal transduction, and DNA repair. Until recently, the functional significance of one member of this family, PRMT–2, was unknown.

Researchers at NHLBI, led by Dr. Elizabeth Nabel, have elucidated the role of PRMT–2. They have found that PRMT–2 modulates the activity of NFKB, E2F1, and STAT3. PRMT–2 inhibits NFKB dependent transcription, and therefore PRMT–2 has a role in modulating inflammation and the immune response. Also, PRMT–2 proteins can repress E2F1 transcriptional activity and cause cell cycle arrest, and thus may be used to treat or prevent cancer. PRMT–2 also methylates STAT3, and inhibition or loss of PRMT–2 function causes mammals to lose weight, eat less and become more sensitive to insulin.

The invention describes methods of modulating PRMT–2 activity or expression in cells. These methods can be used to inhibit the function of NF?B, E2F1 and STAT3 for treatment of a number of disorders, including inflammation, cancer, and diabetes.

Applications: Target for treatment and study of a number of disorders, including:

Diabetes, obesity and metabolic syndrome diseases; Inflammation and immune response-related disorders; Cancer.

Inventors: Elizabeth Nabel (NHLBI), Hiroaki Iwasaki (NHLBI), Takanobu Yoshimoto (NHLBI), and Gary Nabel (NIAID).

Patent Status: U.S. Provisional Application No. 60/466,751 filed 30 April 2003 (HHS Reference No. E–190–2003/0–US–01); PCT Application No. PCT2004/013375 filed 30 April 2004, which published as WO 2004/098634 on 18 Nov 2004 (HHS Reference No. E–190–2003/0–PCT–02); U.S. Application No. 11/263,657 filed 31 Oct 2005, which published as WO 2006/0239990 on 26

Oct 2006 (HHS Reference No. E–190–2003/0–US–04).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Tara Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov.*

Methods for Assaying Hair Follicle Growth and Development

Description of Technology: Methods of culturing functionally-intact hair follicles in a collagen matrix are useful for screening baldness treatments and the quantification and study of the effects of agents on hair follicle growth. This technology describes techniques for measuring cell proliferation or for measuring secretion of collagenolytic factors, incorporating a three-dimensional hair follicle culture system. Collagenolytic activity is essential for downgrowth of hair follicles during anagen. One described method measures the effects of a growth factor or pharmaceutical compound on cell proliferation, utilizing the incorporation of tritiated thymidine into DNA of cultured hair follicles. Also described is a method to measure the effect of growth factors on the release of collagenolytic factors, utilizing tritiated collagen or a fluorescent marker.

Applications: Assays for screening drugs or growth factors that may stimulate hair growth; Assays measuring the DNA synthesis and collagenase-secreting activity of hair follicles.

Market: An estimated 40 million men and 20 million women suffer from hair loss; The market size for hair restoration procedures in the United States is approximately $800 million.

Inventor: Stuart H. Yuspa (NCI).

Publications:

1. G Rogers, N Martinet, P Steinert, P Wynn, D Roop, A Kilkenny, D Morgan, SH Yuspa. Cultivation of murine hair follicles as organoids in a collagen matrix. J Invest Dermatol. 1987 Oct;89(4):369–379.

2. W Weinberg, P Brown, WG Stetler-Stevenson, SH Yuspa, Growth factors specifically alter hair follicle cell proliferation and collagenolytic activity alone or in combination. Differentiation. 1990 Dec;45(3):168–178.

Patent Status: U.S. Patent No. 5,616,471 issued 01 Apr 1997 (HHS Reference No. E–213–1987/1–US–01).

Licensing Status: Available for nonexclusive licensing.

Licensing Contact: Tara Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov.*

Dated: January 9, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–626 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: February 6–7, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

Contact Person: Sonya Roberson, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8109, Bethesda, MD 20892, 301–594–1182, *robersos@mail.nih.gov*.

(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: January 9, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–178 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed blow in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 14, 2007.

Open: 8 a.m. to 12 p.m.

Agenda: Discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Stephen Mockrin, PhD, Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a

government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 10, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–176 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 12–13, 2007.

Open: February 12, 2007, 8:30 a.m. to 3 p.m.

Agenda: Program documents.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 12, 2007, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 13, 2007, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531, *guyerm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 8, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–170 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: January 25, 2007, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20852.

Open: January 26, 2007, 8:30 a.m. to Adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20852.

Contact Person: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 10, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–168 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 21, 2007.

Open: 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: 4:30 p.m. to 5 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: February 21, 2007.

Closed: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: 2 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: February 21, 2007.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: February 21, 2007.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm*, where an agenda and any additional information for the meetinng will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 10, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–171 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: January 30—February 1, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Katrin Eichelberg, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–0818, *keichelberg@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 10, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–172 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 15–16, 2007.

Open: February 15, 2007, 10:30 a.m. to 4:30 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research; Overview of the NINDS Intramural Program, scientific presentation, and other administrative and program developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 15, 2007, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 16, 2007, 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 10, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–173 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

The 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 Advisory Neurological Disorders and Stroke Council, Council Training, Career Development, and Special Programs Subcommittee.

Date: February 14, 2007.

Open: 8 p.m. to 9:45 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 9:45 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stephen J. Korn, PhD., Training and Special Programs Officer, National Institute of Neurological, Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154, MSC 9527, Bethesda, Md 20892–9527, (301) 496–4188.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Council Basic and Preclinical Programs Subcommittee.

Date: February 15, 2007.

Closed: 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 8A–28, Bethesda, MD 20892.

Open: 8:30 a.m. to 10 a.m.

Agenda: To discuss basic and preclinical programs policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 8A–28, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological, Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Council Clinical Trials Subcommittee.

Date: February 15, 2007.

Open: 8 a.m. to 9:15 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 9:15 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: John Marler, MD, Associate Director for Clinical Trials, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2216, Bethesda, MD 20892, (301) 496–9135, *jm137f@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 10, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–174 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: February 27, 2007.

Open: 8:30 a.m. to 12 p.m.

Agenda: This meeting will be open to the public to discuss administrative details relation to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Madeline K. Turkeltaub, PhD, Deputy Director, Extramural Program, NIH/NIAMS, One Democracy Plaza, 6701 Democracy Blvd, Suite 800, MSC 4872, Bethesda, MD 20892–4872, 301–451–5888, *turkeltm@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 10, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–175 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Racial Difference in Stroke.

Date: January 25–26, 2007.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 2300 Woodcrest Place, Birmingham, AL 35209.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5980, *kw47o@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 5, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–177 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel,

Bioanalytical and Biophysical Technologies Special Emphasis Panel.

Date: February 1–2, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, Downtown, 299 Second Street, San Francisco, CA 94105.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1723, *nelsonja@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR06–293 Quick Trial on Imaging and Image-guided Intervention.

Date: February 2, 2007.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, 301–435–1179, *bradleye@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Arthritis, Connective Tissue and Skin Study Section.

Date: February 6–7, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–594–6376, *ansaria@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

Date: February 8–9, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health of the Population Integrated Review Group, Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: February 8–9, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Sandra L. Melnick, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7770, Bethesda, MD 20892, 301–435–1251, *melnicks@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Reveiw Special Emphasis Panel, SCD Initiative.

Date: February 8, 2007.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Madison Hotel, 15th and M Streets, NW., Washington, DC 20005.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Tissue Engineering Study Section, Musculoskeletal Tissue Engineering.

Date: February 9–10, 2007.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Regenerative Medicine Bioengineering Research Partnerships—PAR 06–459.

Date: February 10, 2007.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, *sipej@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Microenvironmental Study Section.

Date: February 12–13, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: February 12, 2007.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.

Date: February 12–13, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: February 15–16, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Brain Injury and Neurovascular Pathologies Study Section.

Date: February 15–16, 2007.

Time: 8:30 p.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Seetha Bhagavan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1121, *bhagavas@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology–B Study Section.
Date: February 15–16, 2007.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Cognition and Perception Study Section.
Date: February 15–16,j 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Helix, 1430 Rhode Island Avenue, Washington, DC 20005.
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Auditory and Vestibular Systems.
Date: February 16, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Anterior Eye Disease Study Section.
Date: February 19–20, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.
Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Progression and Metastasis Study Section.
Date: February 19–20, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.
Contact Person: Manzoor Zarger, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anterior Eye Disease.
Date: February 19, 2007.
Time: 1:30 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.
Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Virology.
Date: February 19–20, 2007.
Time: 7 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.
Contact Person: Joseph D. Mosca, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.
Date: February 20–21, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.
Date: February 20, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiac Contractility, Hypertrophy, and Failure Study Section.
Date: February 20–21, 2007.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 9, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–169 Filed 1–17–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS 2006–0077]

Privacy Act; Redress and Response System of Records

AGENCY: Privacy Office, Office of the Secretary, Department of Homeland Security

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) is giving notice that it proposes to add a new system of records to its inventory of record systems, the DHS Redress and Response Records System. This system maintains records for the DHS Traveler Redress Inquiry Program (TRIP), which is the traveler redress mechanism being established by DHS in connection with the Rice-Chertoff Initiative, as well as in accordance with other policy and law. As the manifestation of the one-stop redress for travelers objective stated in the Rice-Chertoff Initiative, DHS TRIP will facilitate the public's ability to provide appropriate information to DHS for redress requests when they believe they have been denied entry, refused boarding for transportation, or identified for additional screening by DHS components or programs at their operational locations, including airports, seaports, train stations and land borders that may have resulted in

the individual being delayed or inconvenienced. DHS TRIP will create a cohesive process to address these redress requests across DHS.

DATES: Written comments must be submitted on or before February 20, 2007.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2006–0077 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Facsimile:* 202–572–8727 (not a toll-free number).
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Please identify by Docket Number DHS–2006–0077 to request further information by one of the following methods:

- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Facsimile:* 866–466–5370.
- *E-Mail: privacy@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) is establishing a new system of records pursuant to the Privacy Act (5 U.S.C. 552a), entitled the Redress and Response Records System, DHS/ALL—005. The system serves as a DHS System of Records for the DHS Traveler Redress Inquiry Program (TRIP). On January 17, 2006, DHS Secretary Chertoff and Department of State Secretary Rice established the Rice-Chertoff Initiative. One objective of this initiative is to ''accelerate efforts to establish a government-wide traveler screening redress process to resolve questions if travelers are incorrectly selected for additional screening.'' DHS TRIP realizes this objective as the traveler redress program at DHS that will coordinate the redress processes for travelers among DHS components and other agencies and simplify the process for travelers.

For example, individuals who believe they have been denied entry, refused boarding for transportation, or identified for additional screening by DHS components or programs at their operational locations, including airports, seaports, train stations and land borders that may have resulted in the individual being denied access to transportation or entry into the United States or otherwise delayed or inconvenienced may submit information through DHS TRIP.

DHS TRIP collects and maintains information from the individual that DHS may use to make an appropriate determination to resolve, if possible, the underlying issue regarding the request for redress. The information collected will be used to determine which DHS component or other agency is most able to address the redress request.

DHS TRIP will serve as a mechanism to share redress-related information across DHS components, to facilitate efficient adjudication of redress requests, and to facilitate communication of redress results across DHS components. Once the information intake is complete, DHS TRIP will facilitate the transfer of or access to this information for the DHS components or other agencies redress process, which will address the redress request.

As part of addressing the redress request under DHS TRIP, each DHS component or other agency redress process may share information provided by individuals seeking redress with other DHS components or programs and other Federal agencies, such as the Department of State and the Department of Justice, including its Terrorist Screening Center, to work toward the possible resolution of the problem for the individual.

In addition, DHS TRIP will maintain a case management system of traveler redress requests. This case management function will be utilized to track case progress, to provide metrics of redress operations, to identify areas in need of additional support, and to develop lessons learned regarding the overall DHS traveler redress process.

During the course of an adjudication of a redress request submitted through DHS TRIP, records or information, exempt from specific requirements of the Privacy Act, as defined by regulation, from another system of records may become part of, merged with, or recompiled within this system. To the extent this occurs, DHS will claim the same exemptions as were claimed in the original system from which the recompiled records, material, or information were a part. Such exempt records or information are likely to include law enforcement or national security investigation records, intelligence-related records, law enforcement encounter records, or terrorist screening records. These could come from various DHS systems, such as the Treasury Enforcement Communications System (TECS) and the Transportation Security Information System (TSIS), or from other agency systems. DHS, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

Information that is maintained in this System of Records may need to be shared under certain circumstances to adjudicate an individual's redress request. This ordinarily will occur when, in an effort to verify an individual's identification to adjudicate a redress request, the redress program exchanges information with another governmental entity involved in an operational or informational process associated with the individual's redress request. Likewise, information may be shared with other Federal agencies where those agencies have information that can be used to distinguish the identity of the individual seeking redress from that of another individual included on a watch list.

Additionally, limited information may be shared with non-governmental entities where necessary for the sole purpose of effectuating an individual's redress request. For example, if an individual has been cleared and distinguished from a known or suspected threat to aviation security, that individual's name and appropriate associated information can be shared with the airlines to prevent future delays and disruptions for that individual while traveling.

Other types of information sharing that may result from the routine uses outlined in this notice include: (1) Disclosure to individuals who are not DHS employees but have an agency relationship with DHS to accomplish DHS responsibilities; (2) sharing when there appears to be a specific violation or potential violation of law, or identified threat or potential threat to national or international security, such as criminal or terrorist activities, based on individual records in this system; (3) sharing with the National Archives and Records Administration for proper handling of government records; (4) sharing when relevant to litigation associated with the Federal government; and (5) sharing to protect the individual who is the subject of the record from the harm of identity theft in the case of a data breach affecting this system.

DHS plans on publishing a Privacy Impact Assessment for DHS TRIP detailing the use and implementation of this System of Records in order to describe in detail specifics, including access procedures.

The Privacy Act embodies fair information principles in a statutory framework governing the means by

which the U.S. Government collects, maintains, uses, and discloses personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by a name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals about the use made of personally identifiable information, and to assist the individual to more easily find files within the agency.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and the Office of Management and Budget.

DOCKET NUMBER DHS–2006–0077

SYSTEM NAME:

DHS/ALL–005.

DHS Redress and Response Records System.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained by the Department of Homeland Security at the DHS Data Center in Washington, DC and at a limited number of remote locations where DHS components or programs maintain secure facilities and conduct DHS's mission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. All individuals who submit information through the DHS Traveler Redress Inquiry Program (TRIP).

B. All individuals whose records have been referred to a DHS component or program redress process by other components, programs, or agencies in connection with DHS TRIP.

C. Attorneys or other persons representing individuals submitting such requests and appeals and individuals who are the subjects of such requests.

D. DHS personnel or contractors assigned to handle such requests or appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

DHS Redress and Response Records System may contain:

A. Individual's name; date of birth; contact information; phone number; e-mail address; address; flight or travel information; application information, including the date of request and a description of the circumstances that led to the request of the redress form; passport number; appropriate immigration documents; documents used to support application for entry; correspondence from individuals regarding their redress requests; records of contacts made by or on behalf of individuals; documents submitted to verify identity or otherwise support the request for redress; and any other document relevant and appropriate to the particular redress program.

B. For those requesting redress as representatives of affected individuals, representative name, contact information, phone number, e-mail address, relationship to the affected individuals, and power of attorney.

C. The name of the DHS component, DHS program, or other Federal agency, which will be responsible for addressing the incoming redress request as well as supporting components or agencies.

D. Administrative and contact information concerning DHS employees, contractors, or other agency representatives associated with the processing and/or adjudication of requests submitted to the redress process.

E. Appropriate information to reflect the resolution of a particular redress request, information determined during adjudication of the case, and sensitive information relevant to the redress process for the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Privacy Act of 1974, 5 U.S.C. 552a, as amended; Intelligence Reform and Terrorism Prevention Act of 2004, section 4012, 49 U.S.C. 114(f); 19 U.S.C. 482, 1461, 1496, and 1581–1582; 8 U.S.C. 1357; Title VII of Public Law 104–208; 49 U.S.C. 44909; and others.

Purpose(s):

This system maintains records in support of DHS TRIP that: (1) Coordinates DHS traveler redress programs to create a more efficient, effective, and easier process for individuals who believe they have been denied entry, refused boarding for transportation, or identified for additional screening at DHS component or program operational locations, including airports, seaports, train stations and land borders that may result in the individual being delayed or inconvenienced; and (2) stores information submitted by and collected from the individual or an individual's representative and information recompiled from or created from information from other DHS components and program and other government agencies, in order to address the individual's redress request.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3):

A. To a Federal, State, territorial, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

B. To a Federal agency or entity that furnished a record or information for the purpose of permitting that agency or entity to make a decision regarding access to or correction of the record or information or to a Federal agency or entity that has information relevant to the redress request for purposes of obtaining guidance, additional information, or advice from such Federal agency or entity regarding the handling of this particular redress request.

C. To third parties lawfully authorized in connection with a Federal Government program, which is authorized by law, regulation, or rule, but only the information necessary and relevant to effectuate or to carry out a particular redress result for an individual and disclosure is appropriate to enable these third parties to carry out their responsibilities related to the Federal Government program, such as when the name and appropriate associated information about an individual who has been cleared and distinguished from a known or

suspected threat to aviation security, is shared with the airlines to prevent future delays and disruptions for that individual while traveling.

D. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or otherwise have an agency relationship with DHS, when the disclosure is necessary and relevant to the operation of the DHS TRIP program or the redress process of a DHS component or program in compliance with the Privacy Act, 5 U.S.C. 552a, as amended, including 5 U.S.C. 552a(m), in the case of the operation of all or a portion of this system of records on behalf of DHS.

E. To an appropriate Federal, State, territorial, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and disclosure is appropriate to the proper performance of the official duties of the person receiving the disclosure.

F. To an appropriate Federal, State, territorial, tribal, local, international, or foreign government intelligence entity, counterterrorism agency, or other appropriate authority charged with investigating threats or potential threats to national or international security or assisting in counterterrorism efforts, where a record, either on its face or in conjunction with other information, identifies a threat or potential threat to national or international security, which includes terrorist activities, and disclosure is appropriate to the proper performance of the official duties of the person receiving the disclosure.

G. To a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

H. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

I. To the United States Department of Justice (DOJ) (including United States Attorney offices) or another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) The United States, or any department or agency thereof; (2) any employee of DHS in his or her official capacity; or (3) any employee of DHS in his or her individual capacity where DOJ has agreed to represent said employee.

J. To appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the System of Records has been compromised; (2) DHS has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored electronically at the DHS Data Center in a secure facility. In addition, the records may be stored on a local system, magnetic disc, tape, CD–ROM, and other digital media, and may also be retained in hard copy format in secure file folders at the location of the DHS component or program for which the redress process exists.

Retrievability:

Data are retrievable by the individual's name or other identifier, such as case number, as well as non-identifying information.

Safeguards:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the DHS Information Technology Security Program Handbook. The Redress and Response Records System security protocols will meet applicable NIST Security Standards, from Authentication to Certification and Accreditation. Records in the system will be maintained in a secure, password-protected electronic system that will utilize security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component and program. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

Retention and disposal:

DHS TRIP handles both information collected directly from the individual and information collected from DHS components and other agencies. DHS is working on a retention schedule with its Senior Records Officer for information collected directly from the individual. It is anticipated that the retention period for these records will be up to seven years. To the extent information is collected from other systems, data is retained in accordance with the record retention requirements of those systems.

System manager(s) and address:

The System Manager is the Program Manager, DHS TRIP, U.S. Department of Homeland Security, Washington, DC 20528.

Notification procedure:

Any individual who wants to know whether this system of records contains a record about him or her may contact the System Manager, noted above. An e-mail address and fax number will be provided to the individual after the submission of the redress request that may also be used.

Record access procedures:

Requests for access should be submitted to the System Manager when an individual seeks to access his or her information. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances in accordance with various adjudication procedures related to the redress processing by DHS components or other agencies.

Contesting record procedures:

Requests for correction or amendment must identify the information to be changed and the corrective action sought. Requests must be submitted to the System Manager as provided above.

Record source categories:

Any person, including citizens and representatives of Federal, State or local governments; businesses; and industries. Any Federal system with

records appropriate and relevant to the redress process.

Exemptions claimed for the system:

No exemption shall be asserted with respect to information submitted by and collected from the individual or the individual's representative in the course of any redress process associated with this System of Records.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5), DHS will also claim the original exemption for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f); and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Such exempt records or information may be law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

These records could come from various DHS systems, such as the Treasury Enforcement Communications System (TECS) and the Transportation Security Information System (TSIS), or from third agency systems. DHS, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained. As required under the Privacy Act, DHS will issue a rule to describe more fully the needs and requirements for taking such exemptions on such information.

Dated: January 12, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. 07–190 Filed 1–12–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–04]

Notice of Submission of Proposed Information Collection to OMB; Reporting Requirements Associated With 24 CFR 235.1001 and 24 CFR 203.508(c)—Mortgagees Annual Notification to Mortgagors

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagees must inform mortgagors in a yearend statement, of paid interest and disbursed taxes from the escrow account. This information is for state and federal income tax filing purposes. The yearend statement must provide an interest accounting in such a way as to allow the mortgagor to easily identify the amount of any subsidy paid by HUD for FHA ''235'' loans.

DATES: *Comments Due Date:* February 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0235) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Reporting Requirements Associated with 24 CFR 235.1001 and 24 CFR 203.508(c)—Mortgagees Annual Notification to Mortgagors.

OMB Approval Number: 2502–0235.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Mortgagees must inform mortgagors in a yearend statement, of paid interest and disbursed taxes from the escrow account. This information is for state and federal income tax filing purposes. The yearend statement must provide an interest accounting in such a way as to allow the mortgagor to easily identify the amount of any subsidy paid by HUD for FHA ''235'' loans.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	438	9,141.2		0.00028		1,143

Total Estimated Burden Hours: 1,143.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 12, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–645 Filed 1–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–05]

Notice of Submission of Proposed Information Collection to OMB; 2007 American Housing Survey (AHS) Covering Both the National (AHS–N) and Metropolitan (AHS–MS) Samples

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The 2007 AHS is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for both the nation (AHS–N) and seven select metropolitan areas (AHS–MS). The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issues.

DATES: *Comments Due Date:* February 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0017) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: 2007 American Housing Survey (AHS) covering both the National(AHS–N) and Metropolitan (AHS–MS) Samples.

OMB Approval Number: 2528–0017.

Form Numbers: AHS–26/66, AHS–27, AHS–28/68, AHS–30.

Description of the Need for the Information and Its Proposed Use: The 2007 AHS is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for both the nation (AHS–N) and seven select metropolitan areas (AHS–MS). The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issues.

Frequency of Submission: Biannually, On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	75,704	0.85		0.621		40,099

Total Estimated Burden Hours: 40,099.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 12, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–646 Filed 1–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–06]

Notice of Submission of Proposed Information Collection to OMB; Public Housing, Contracting With Resident-Owned Businesses

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Eligible resident-owned businesses must submit application information to Housing Agencies (HAs) to be approved for noncompetitive contracting for work to be performed on public housing sites as an alternative to HUD's otherwise-required competitive procurement procedures.

DATES: *Comments Due Date:* February 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0161) and should be sent to: HUD Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing, Contracting with Resident-Owned Businesses.

OMB Approval Number: 2577–0161.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Eligible resident-owned businesses must submit application information to Housing Agencies (HAs) to be approved for noncompetitive contracting for work to be performed on public housing sites as an alternative to HUD's otherwise-required competitive procurement procedures.

Frequency of Submission: On occasion.

Reporting Burden: Number of Annual Hours per Burden

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	500	1		17		8,500

Total Estimated Burden Hours: 8,500.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 12, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–647 Filed 1–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–07]

Notice of Submission of Proposed Information Collection to OMB; Section 32 and Section 5(h) Public Housing Homeownership Program Evaluation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The study of the Section 5(H) and Section 32 programs will provide the answer to a number of important questions about the homeownership programs. Information will provide a detailed assessment of the homeownership programs, to identify their strengths and weaknesses.

DATES: *Comments Due Date:* February 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 32 and Section 5(h) Public Housing Homeownership Program Evaluation.

OMB Approval Number: 2577–NEW.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The study of the Section 5(H) and Section 32 programs will provide the answer to a number of important questions about the homeownership programs. Information will provide a detailed assessment of the homeownership programs, to identify their strengths and weaknesses.

Frequency of Submission: On occasion, Other one-time.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	590	1		0.88		520

Total Estimated Burden Hours: 520.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 12, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–649 Filed 1–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–08]

Notice of Submission of Proposed Information Collection to OMB; Family Report, MTW Family Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Tenant data is collected to understand demographic, family profile, income, and housing information for participants in the Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificated, Section 8 Moderate Rehabilitation, and Moving to Work Demonstration Programs. This data also allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs.

DATES: *Comments Due Date:* February 20, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0083) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Family Report, MTW Family Report.

OMB Approval Number: 2577–0083.

Form Numbers: HUD–50058; HUD–50058MTW.

Description of the Need for the Information and Its Proposed Use:

Tenant data is collected to understand demographic, family profile, income, and housing information for participants in the Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificated, Section 8 Moderate Rehabilitation, and Moving to Work Demonstration Programs. This data also allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs.

Frequency of Submission: Quarterly, Monthly, Annually.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	4,145	1049		0.534		2,325,589

Total Estimated Burden Hours: 2,325,589.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 12, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–650 Filed 1–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Revised Recovery Plan for the Rio Grande Silvery Minnow (Hybognathus amarus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft revised Recovery Plan for the Rio Grande Silvery Minnow (*Hybognathus amarus*). The Rio Grande silvery minnow currently inhabits the Rio Grande in New Mexico. The Service solicits review and comment from the public on this draft revised Recovery Plan.

DATES: The comment period for this draft revised Recovery Plan (Recovery Plan) closes April 18, 2007. Comments on the Recovery Plan must be received

by the closing date to ensure consideration.

ADDRESSES: Persons wishing to review the Recovery Plan can obtain a paper or CD copy from the Rio Grande Silvery Minnow Coordinator, Southwest Regional Office, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; telephone 505/248–6920, facsimile 505/248–6788, e-mail: *Jennifer_Parody@fws.gov.* The Recovery Plan may also be obtained from the Internet at *http://www.fws.gov/endangered* by selecting ''Species Search'' from the left-side menu bar and entering the species'' name in the ''Search Species'' text box. If you wish to comment on the Recovery Plan, you may submit your comments and materials to the Rio Grande Silvery Minnow Coordinator.

FOR FURTHER INFORMATION CONTACT: Jennifer Parody, Rio Grande Silvery Minnow Coordinator, at the Albuquerque address above.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S. C. 1531 et seq.) requires the development of recovery plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing recovery plans.

The document submitted for review is the Recovery Plan for the Rio Grande silvery minnow. Currently, the Rio Grande silvery minnow is believed to occur in a 280 km (174 mi) reach of the Rio Grande in New Mexico, from Cochiti Dam to the headwaters of Elephant Butte Reservoir. Its current habitat is limited to about 7 percent of its former range. The species was listed as federally endangered in 1994 (July 20, 1994, 59 FR 36988). Critical habitat was designated in 2003 (68 FR 8088). Throughout much of its historic range, the decline of the Rio Grande silvery minnow may be attributed in part to destruction and modification of its habitat due to dewatering and diversion of water, water impoundment, and modification of the river (channelization). Competition and predation by introduced non-native species, water quality degradation, and other factors may also have contributed to its decline.

The Recovery Plan includes scientific information about the species and provides criteria and actions needed to downlist and delist (recover) the species. Downlisting for the Rio Grande silvery minnow may be considered when three populations (including at least two that are self-sustaining) have been established within the historical range of the species and have been maintained for at least five years. Delisting of the species may be considered when three self-sustaining populations have been established within the historical range of the species and have been maintained for at least ten years. Recovery actions designed to achieve these criteria include: (1) Develop a thorough knowledge of the Rio Grande silvery minnow's life history, ecology, and behavior, and the current status of its habitat; (2) restore, protect, and alter habitats as necessary to alleviate threats to the Rio Grande silvery minnow; (3) ensure the survival of the Rio Grande silvery minnow in its current habitat and reestablish the species in suitable habitats within its historical range; (4) implement and maintain an adaptive management program so that appropriate research and management activities are implemented in a timely manner to achieve recovery of the Rio Grande silvery minnow; and (5) design and implement a public awareness and education program.

The original Rio Grande Silvery Minnow Recovery Plan was finalized in 1999. The draft revised Recovery Plan differs from the original plan by including: (1) A Tribal Perspectives document prepared by representatives of six Rio Grande Pueblos; (2) updated objective and measurable criteria for downlisting and delisting; and, (3) identification of how the plan's recovery criteria and recovery actions address the five listing factors and specific threats to the species.

The Recovery Plan is being submitted for review to all interested parties. Peer review will be conducted concurrent with public review. A peer review plan is posted on the Service's Southwest Region Web site, at: *http://www.fws.gov/southwest/science/peerreview.html.* After consideration of comments received during the public and peer review period, the Recovery Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the final Recovery Plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 9, 2006.

Christopher T. Jones,

Acting Regional Director, Region 2.

[FR Doc. E7–610 Filed 1–17–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004–0194

AGENCY: Bureau of Land Management, Interor.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for an extension of an approved information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by February 20, 2007 to receive maximum consideration.

ADDRESSES: Send comments to the OMB, Interior Department Desk Office (1004–0194), at OMB–OIRA via e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0194 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior,

Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshir to obtain copies and explanatory material on this information collection at (202) 452–5033. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a wek, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On March 6, 2006, the BLM published a notice in the **Federal Register** (71 FR 11224) requesting comments on the information collection. The comment period closed on May 5, 2006. The BLM did not receive any comments. We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

Title: Surface Management (43 CFR subpart 3809).

OMB Control Number: 1004–0194.

Abstract: Under the General Mining Law, a citizen may enter onto public domain lands that are subject to the law to prospect and explore for valuable mineral deposits. They may do so without seeking the government's permission beforehand. The rights to a deposit of a valuable mineral are granted through the act of discovering the mineral deposit. After making a discovery, a prospector may choose to locate and record a mining claim to protect investments in exploration and to have a secure tenure to discovered valuable mineral deposits. Locating a mining claim is not a prerequesite for conducting operations on the public lands, nor is it even a requirement for carrying out mining operations. The BLM uses the regulations at 43 CFR subpart 3809 to govern hardrock mineral exploration and development on the public lands and Federal interests in the lands. The hardrock minerals are subject to the provisions of the 1872 General Mining Law (30 U.S.C. 22, *et seq.*, as amended).

BLM collects form and nonform information on surface management activities from mining claimants and operators.

Burden Estimate Per Form: The following chart lists form and non-form information collection requirements that are submitted quarterly, monthly, on occasion, and annually to the BLM by the private sector.

43 CFR Citation	Subpart	Forms	Number of responses	Hours/$	Burden hours	Burden/($)
Non-Forms:						
3809.21/.301	Notice Level		386	32 hr @ 75	12,352	926,400
3809.330	Notice Level Modification.		108	32 hr @ 75	3,456	259,200
3809.333	Notice Extension		169	30 minutes @ 75	85	6,253
3809.11/.401	Plan of Operations		54	245 hr @ 90	13,230	1,190,700
	EIS		6	4960 hr @ 205	29,760	6,100,800
	EA–Standard		16	890 hr @ 90	14,240	1,281,600
	EA–Exploration/Simple		35	320 hr @ 70	11,200	784,000
3809.430	Plan Modificaton		96	245 hr @ 90	23,520	2,116,900
	EIS		2	4960 hr @ 205	9,920	2,033,600
	EA-Standard		29	890 hr @ 90	25,810	2,322,900
	EA-Exploration/Simple		62	320 hr @ 70	19,840	1,388,800
Forms:						
3809.500	Financial Guarantee	3809–1	67	8 hours @ 40	536	21,440
		3809–2	270	8 hours @ 40	2,160	86,400
		3809–4	13	8 hours @ 40	104	4,160
		3809–4a	10	8 hours @ 40	80	3,200
3809.116	Operator Change	3809–5	46	8 hours @ 40	368	14,720
Total			1,369		166,661	18,537,273

Annual Responses: 1,369.

Application Fee Per Response: 0.

Annual Burden Hours: 166,661.

Dated: January 11, 2007.

Ted R. Hudson,

Bureau of Land Management, Acting Division Chief Regulatory Affairs.

[FR Doc. 07–164 Filed 1–17–07; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1320–PB–24 1A]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004–0073

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for an extension of an approved information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by February 20, 2007, to receive maximum consideration.

ADDRESSES: Send comments to the OMB, Interior Department Desk Officer (1004–0073), at OMB–OIRA e-mail *OIRA_DOCKET@omb.eop.gov* or via

facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0073 in your Internet message to *comments__washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshir to obtain copies and explanatory material on this information collection at (202) 452–5033. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On March 6, 2006, the BLM published a notice in the **Federal Register** (71 FR 11221) requesting comments on the information collection. The comment period closed on May 5, 2006. The BLM did not receive any comments. We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

Title: Coal Management (43 CFR part 3400).

OMB Control Number: 1004–0073.

Abstract: The BLM manages the leasing and development of Federal coal under the regulations at 43 CFR Group 3400. These regulations implement numerous statutes including:

(1) The Mineral Leasing Act of 1920;

(2) The 1976 coal amendments (30 U.S.C. 181 *et seq.*);

(3) The Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359);

(4) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*);

(5) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*);

(6) The Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531);

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); and

(8) The Act of October 30, 1978 (92 Stat. 2073–2075).

BLM uses the information provided by the applicant(s) on BLM Forms 3400–12 and 3440–1 to determine if the applicant to lease or develop Federal coal is qualified to hold such a lease.

Burden Estimate Per Form: We estimate it takes 1 hour to complete Form 3400–12 and 21 hours for Form 3440–1 and is submitted quarterly, monthly, and annually to the BLM by the private sector.

The following chart lists non-form information collection requirements.

Public burden hours information collected	Number of actions per year	Public burden hours per action	Total annual public burden hours	Total annual public burden cost
a Coal Lease (Form 3400–12)	10	1	10	$378
b License to Mine (Form 3440–1)	1	1	1	38
c 43 CFR subpart 3410; Exploration License	21	24	504	19,051
d 43 CFR subpart 3420; Regional Coal Licensing	1	25	25	945
e 43 CFR subpart 3422; Coal Lease Sales	10	30	300	11,340
f 43 CFR subpart 3425; Leasing-On-Application	8	308	2,464	93,139
g 43 CFR subpart 3427; Surface Owner Consent	43	1	43	1,626
h 43 CFR subpart 3430; Preference Right Leasing	1	800	800	30,240
i 43 CFR subpart 3432; Lease Modifications	5	12	60	2,268
j 43 CFR subpart 3440; License to Mine	1	21	21	794
k 43 CFR subpart 3452; Relinquishments	4	18	72	2,722
l 43 CFR subpart 3453; Transfers, Assignments, and Subleases	9	10	90	3,402
m 43 CFR subpart 3471; Coal Management Provisions and Limitations	9	3	27	1,021
n 43 CFR subpart 3472; Special Leasing Qualifications	10	3	30	1,134
o 43 CFR subpart 3474; Bonds	141	8	1,128	42,639
p 43 CFR subpart 3481; General Provisions	1	1	1	38
q 43 CFR subpart 3482; Exploration and Resource Recovery and Protection Plans	460	21	9,660	365,148
r 43 CFR subpart 3483; Diligence Requirements	7	21	147	5,557
s 43 CFR subpart 3484; Performance Standards	19	1	19	718
t 43 CFR subpart 3485; Royalty Rate Reductions	10	24	240	9,072
u 43 CFR subpart 3485; Exploration and Production Reporting	457	16	7,312	276,394
v 43 CFR subpart 3486; Inspection, Enforcement, and Appeals	5	4	20	756
w 43 CFR subpart 3487; Logical Mining Unit	2	170	340	12,852
Total	1,235		23,314	881,272

Annual Responses: 1,235.

Application Fee Per Response: $275 for 43 CFR 3410, $10 for 43 CFR 3440, and $55 for 43 CFR 3453.

Annual Burden Hours: 23,314.

Dated: January 11, 2007.

Ted R. Hudson,

Bureau of Land Managment, Acting Division Chief Regulatory Affairs.

[FR Doc. 07–165 Filed 1–17–07; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1020–PB–24 1A]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004–0058

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for an extension of an approved information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by February 20, 2007 to receive maximum consideration.

ADDRESSES: Send comments to the OMB, Interior Department Desk Officer (1004–0058), at OMD–OIRA e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0058 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshire to obtain copies and explanatory material on this information collection at (202) 452–5033. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On March 6, 2006, the BLM published a notice in the **Federal Register** (71 FR 11222) requesting comments on the information collection. The comment period closed on May 5, 2006. The BLM did not receive any comments. We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility.

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

Title: Timber Export Reporting and Substitution Determination (43 CFR part 5420)

OMB Control Number: 1004–0058.

Abstract: The BLM manages and sells timber located on the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road Grant Lands under the authority of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181e). Under the Act of July 31, 1947, as amended (61 Stat. 681, 30 U.S.C. 601 et seq.), BLM also manages and sells timber located on other lands under our jurisdiction. The Department of the Interior and Related Agencies Appropriation Acts of 1975 and 1976 contained a requirement for the inclusion of provisions in timber sale contracts that will ensure that unprocessed timber sold from public lands under the jurisdiction of the BLM will not be exported or used by the purchasers as a substitute for timber they export or sell for export. The regulations at 43 CFR part 5400, Sales of Forest Products, General, cover these provisions.

Timber purchasers or their afiliates must submit the information listed at 43 CFR 5424.1(a) using Form 5460–17, Substitution Determination. We collect the purchaser's name, timber contract number, processing facility lcoation, total volume of Federal timber purchased on an annual basis, total volume of private timber exported on an annual basis, and method of measuring the volume. The regulation at 43 CFR 5424.1(b) requires that the purchasers or affiliates retain a record of Federal timber acquisitions and private timber exports for three years from the date the activity occurred. BLM uses this information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c).

Burden Estimate Per Form: We estimate it takes 1 hour to complete Form 5460–17 and is submitted on occasion to the BLM by the private sector.

Annual Responses: 1.

Application Fee Per Response: 0.

Annual Burden Hours: 1.

Dated: January 11, 2007.

Ted R. Hudson,

Bureau of Land Management, Acting Division Chief Regulatory Affairs.

[FR Doc. 07–166 Filed 1–17–07; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1020–PB–24 1A]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004–0001

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for an extension of an approved information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by February 20, 2007 to receive maximum consideration.

ADDRESSES: Send comments to the OMB, Interior Department Desk Officer (1004–0001), at OMB–OIRA via e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0001 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshir to obtain copies and explanatory material on this information collection at (202) 452–5033. Persons who use a

telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On March 6, 2006, the BLM published a notice in the **Federal Register** (71 FR 11223) requesting comments on the information collection. The comment period closed on May 5, 2006. The BLM did not receive any comments. We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

Title: Free Use Application and Permit (Vegetative or Mineral Materials) (43 CFR parts 3620 and 5510).

OMB Control Number: 1004–0001.

Abstract: The BLM uses Form 5510–1, Free Use Application and Permit (Vegetative or Mineral Material), under 43 CFR part 5510 to collect this information. The PL–167, Surface Resources Act of July 23, 1955, gives the Secretary the discretion to permit the free use of vegetative or mineral materials for use other than commercial or industrial purposes or resale. The Secretary of the Interior may also permit mining claimants the free use of vegetative or mineral materials.

BLM uses the information provided by the applicant(s) to:

(1) Maintain an inventory of vegetative and mineral information; and

(2) Adjudicate your rights to vegetative and mineral resources.

An applicant must file an application for a permit before removing any vegetative or mineral resources from the public lands.

Burden Estimate Per Form: We estimate it takes 5 minutes to complete Form 5510–1. Individuals (residents of states) submit the form on occasion to the BLM.

Annual Responses: 476.

Application Fee Per Response: 0.

Annual Burden Hours: 40.

Dated: January 11, 2007.

Ted R. Hudson,

Bureau of Land Management, Acting Division Chief Regulatory Affairs.

[FR Doc. 07–167 Filed 1–17–07; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–240–06–1770–PC–211A]

Notice of Re-Opening for a Notice of Call for Nominations for the Sonoran Desert National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Re-Opening of Call for Nomination.

SUMMARY: This notice was previously published in the **Federal Register** Vol. 71, No. 242, Monday, December 18, 2006. Additional nominations are being requested for positions on the Sonoran Desert National Monument Advisory Council (SDNMAC). There are fifteen positions on the SDNMAC. A primary and alternate person will be selected for each position. This **Federal Register** notice will extend the call for nominations for positions on the Advisory Council and requests the public to submit nominations for membership on the SDNMAC. Any individual or organization may nominate one or more persons to serve on the SDNMAC. Individuals may nominate themselves for SDNMAC membership. All nominees that previously submitted complete nomination packages will be considered for SDNMAC positions and do not need to resubmit their information.

DATES: Submit nomination packets for positions to the address listed below no later than 21 days after date of publication of this notice in the **Federal Register**.

ADDRESSES: Send completed nomination packets to: SDNM Advisory Council, c/o Karen Kelleher, Monument Manager, BLM, Phoenix District, 21605 North 7th Avenue, Phoenix, Arizona 85027; Fax 623–580–5580; *e-mail: AZ_SDNMAC@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Kelleher, Monument Manager, Phone 623–580–5500 or e-mail *AZ_SDNMAC@blm.gov.* Nomination packets are also available for download at the BLM Internet site: *http://www.blm.gov/az/sonoran/council.htm.*

Dated: January 5, 2007.

Karen Kelleher,

Sonoran Desert National Monument Manager, Phoenix District of the Bureau of Land Management.

[FR Doc. E7–590 Filed 1–17–07; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PI–020H; G–07–047]

Notice of Public Meetings for the Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Steens Mountain Cooperative Management and Protection Act of 2000, the Federal Land Policy and Management Act, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, Steens Mountain Advisory Council will meet as indicated below:

DATES: The Steens Mountain Advisory Council will meet at the Bureau of Land Management Burns District Office, 28910 Highway 20 West, Hines, Oregon, 97738, on February 1 and 2, 2007; March 8 and 9, 2007; and November 15 and 16, 2007.

A meeting in Bend, Oregon, at the Comfort Inn and Suites, 62065 SE 27th Street, will be held May 17 and 18, 2007 and a meeting August 16 and 17, 2007, will be held at the Frenchglen School, Frenchglen, Oregon. All meeting sessions will begin at 8 a.m., local time, and will end at approximately 4:30 p.m., local time.

SUPPLEMENTARY INFORMATION: The Steens Mountain Advisory Council was appointed by the Secretary of the Interior on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399) and re-chartered in August 2003 and again in August 2005. The Steens Mountain Advisory Council's purpose is to provide representative counsel and advice to the Bureau of Land Management regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area; cooperative programs and incentives for landscape management that meet human needs, maintain and improve the ecological and economic integrity of the area; and preparation and implementation of a management plan for the Steens Mountain

Cooperative Management and Protection Area.

Topics to be discussed by the Steens Mountain Advisory Council at these meetings include the Steens Mountain Cooperative Management and Protection Area Travel Management, Comprehensive Recreation, Implementation, and Monitoring Plans; North Steens Ecosystem Restoration Project Environmental Impact Statement and project implementation; Wildlands Juniper Management Area projects and partnerships; Steens Mountain Wilderness and Wild and Scenic Rivers Plan; categories of interest such as wildlife, special designated areas, partnerships/programs, cultural resources, education/interpretation, volunteer-based information, adaptive management, and socioeconomics; and other matters that may reasonably come before the Steens Mountain Advisory Council.

All meetings are open to the public in their entirety. Information to be distributed to the Steens Mountain Advisory Council is requested prior to the start of each Steens Mountain Advisory Council meeting. Public comment is generally scheduled for 11 a.m. to 11:30 a.m., local time, both days of each meeting session. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all who seek to be heard regarding matters on the agenda.

Under the Federal Advisory Committee Act management regulations (41 CFR 102–3.15(b)), in exceptional circumstances an agency may give less than 15 days notice of committee meeting notices published in the **Federal Register.** In this case, this notice is being published less than 15 days prior to the meeting due to the urgent need to meet legal requirements for completion of the Steens Mountain Travel Management Plan/Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Highway 20 West, Hines, Oregon, 97738, (541) 573–4400 or *Rhonda_Karges@blm.gov*.

Dated: January 10, 2007.

Dana R. Shuford,

Burns District Manager.

[FR Doc. E7–652 Filed 1–17–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices for calendar year 2005.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion prices. This notice provides the major portion prices for the 12 months of 2005. The due date to pay additional royalties based on the major portion prices is 60 days after the publication date of this notice.

DATES: March 19, 2007.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3702; FAX (303) 231–3755; e-mail to *John.Barder@mms.gov*; or Larry Gratz, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3427; FAX (303) 231–3755; e-mail to *Larry.Gratz@mms.gov.* Mailing address: Minerals Management Service, Minerals Revenue Management, Compliance and Asset Management, Indian Oil and Gas Compliance and Asset Management, P.O. Box 25165, MS 396B2, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii) (2005). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest, under 30 CFR 218.54 (2005), will accrue from the due date until payment is made, and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS-Designated areas	Jan 2005 (MMBtu)	Feb 2005 (MMBtu)	Mar 2005 (MMBtu)	Apr 2005 (MMBtu)
Blackfeet Reservation	7.93	7.28	7.41	5.86
Fort Belknap	5.59	5.71	5.83	5.92
Fort Berthold	5.08	5.00	5.60	5.98
Fort Peck Reservation	6.30	6.21	6.70	7.05
Navajo Allotted Leases in the Navajo Reservation	5.46	5.31	5.35	6.09
Rocky Boys Reservation	4.56	4.58	5.36	5.50
Ute Allotted Leases in the Uintah and Ouray Reservation	5.58	5.13	5.21	6.09
Ute Tribal Leases in the Uintah and Ouray Reservation	5.54	5.09	5.45	5.71
	May 2005 (MMBtu)	Jun 2005 (MMBtu)	Jul 2005 (MMBtu)	Aug 2005 (MMBtu)
Blackfeet Reservation	5.82	5.29	5.66	5.95
Fort Belknap	5.84	5.79	5.97	5.97

	May 2005 (MMBtu)	Jun 2005 (MMBtu)	Jul 2005 (MMBtu)	Aug 2005 (MMBtu)
Fort Berthold	5.58	5.46	6.80	7.60
Fort Peck Reservation	6.60	6.52	7.41	7.90
Navajo Allotted Leases in the Navajo Reservation	6.06	5.36	6.00	6.31
Rocky Boys Reservation	4.77	5.19	5.27	6.72
Ute Allotted Leases in the Uintah and Ouray Reservation	6.00	5.28	5.80	6.22
Ute Tribal Leases in the Uintah and Ouray Reservation	5.77	5.28	5.71	5.97
	Sep 2005 (MMBtu)	Oct 2005 (MMBtu)	Nov 2005 (MMBtu)	Dec 2005 (MMBtu)
Blackfeet Reservation	7.76	9.60	10.53	8.93
Fort Belknap	6.63	7.10	6.68	6.63
Fort Berthold	9.93	11.22	8.45	11.26
Fort Peck Reservation	9.26	10.61	12.33	9.75
Navajo Allotted Leases in the Navajo Reservation	8.13	9.40	10.26	8.52
Rocky Boys Reservation	8.42	9.46	7.46	9.34
Ute Allotted Leases in the Uintah and Ouray Reservation	8.07	9.42	9.70	8.04
Ute Tribal Leases in the Uintah and Ouray Reservation	7.99	9.37	9.75	8.71

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the MMS Web site address at *http://www.mrm.mms.gov/ReportingServices/PDFDocs/991201.pdf.*

Dated: November 16, 2006.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. E7–629 Filed 1–17–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Securing Financial Obligations under the Longshore and Harbor Workers' Compensation Act and its Extension (LS–276, LS–275–IC and LS–275–SI). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 19, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Longshore and Harbor Workers' Compensation Act (LHWCA) requires covered employers to secure the payment of compensation under the Act and its extensions by purchasing insurance from a carrier authorized by the Secretary of Labor to write Longshore Act insurance, or by becoming authorized self-insured employers (33 U.S.C. 932 et seq.). Each authorized insurance carrier (or carrier seeking authorization) is required to establish annually that its Longshore obligations are fully secured either through an applicable state guaranty (or analogous) fund, a deposit of security with the Division of Longshore and Harbor Workers' Compensation (DLHWC), or a combination of both. Similarly, each authorized self-insurer (or employer seeking authorization) is required to fully secure its Longshore Act obligations by depositing security with DLHWC. These requirements are designed to assure the prompt and continued payment of compensation and other benefits by the responsible carrier or self-insurer to injured workers and their survivors. Forms LS–275, Application for Security Deposit Determination; LS–275–IC, Agreement and Undertaking (Insurance Carrier); and LS–275–SI, Agreement and Undertaking (Self-insured Employer) are used to cover the submission of information by insurance carriers and self-insured employers regarding their ability to meet their financial obligations under the Longshore Act and its extensions. This information collection is currently approved for use through June 30, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to ensure that a carrier's LHWCA obligations are sufficiently secured and, if necessary, to deposit security in an amount set by OWCP. This procedure will ensure the prompt and continued payments of compensation and medical benefits to injured workers and help protect the Longshore special funds assets from consequences flowing from insurance carriers' insolvencies.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Request for Earnings Information.

OMB Number: 1215–0204.

Agency Numbers: LS–276; LS–275–IC and LS–275–SI.

Affected Public: Business or other for-profit, Not-for-profit institution.

Total Respondents: 566.

Total Annual responses: 647.

Estimated Total Burden Hours: 434.

Estimated Time Per Response: 1 hour to 15 minutes.

Frequency: On Occasion and Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $287.89.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 11, 2007.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–559 Filed 1–17–07; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Medical Travel Refund Request (OWCP–957). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 19, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP reimburse beneficiaries for travel expenses incurred for covered medical treatment. In order to determine whether amounts requested as travel expenses are appropriate, OWCP must receive certain data elements, including the signature of the physician for expenses claimed under the BLBA. Form OWCP–957 is the standard format for the collection of these data elements. The OWCP–957 is used by OWCP and its contractor bill processing staff to process reimbursement requests for travel expenses. This information collection is currently approved for use through June 30, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to determine if requests for reimbursement for out-of-pocket expenses incurred when traveling to medical providers for covered medical testing or treatment should be paid.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Medical Travel Refund Request.

OMB Number: 1215–0054.

Agency Number: OWCP–957.

Affected Public: Individual or households.

Total Respondents: 163,236.

Total Responses: 163,236.

Time per Response: 10 minutes.

Frequency: On occasion.

Estimated Total Burden Hours: 27,098.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $68,559.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 11, 2007.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–560 Filed 1–17–07; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Qualification and Certification Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the Title 30, CFR § 75.153(a)(2) and § 77.103(a)(2) require that a program be provided for the qualification of certain experienced personnel as mine electricians. A qualified person is one who has had at least one year of experience in performing electrical work underground in a coal mine, in the surface work area of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program.

DATES: Submit comments on or before March 19, 2007.

ADDRESSES: Send comments to, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Ferraro.Debbie@DOL.GOV*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Persons performing tasks and certain required examinations at coal mines which are related to miner safety and health, and which required specialized experience, are required to be either ''certified'' or ''qualified''. The regulations recognize State certification and qualification programs. However, where State programs are not available, under the Mine Act and MSHA standards, the Secretary may certify and qualify persons for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same mine or by the same independent contractor.

Applications for Secretarial certification must be submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. MSHA Form 5000–1 provides the coal mining industry with a standardized reporting format that expedites the certification process while ensuring compliance with the regulations. The information provided on the forms enables the Secretary of Labor's delegate—MSHA, Qualification and Certification Unit—to determine if the applicants satisfy the requirements to obtain the certification or qualification. Persons must meet certain minimum experience requirements depending on the type of certification or qualification applied for.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations; requiring specialized expertise; related to miner safety and health at coal mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Qualification and Certification Program.

OMB Number: 1219–0001.

Recordkeeping: MSHA Form 5000–1 is used by instructors, who may be mining personnel, consultants, or college professors, to report to MSHA those miners who have satisfactorily completed a coal mine electrical training program. Based on the information submitted on Form 5000–1, MSHA issues certification cards that identify these individuals as qualified to perform certain tasks at the mine.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 2,294.

Total Burden Hours: 3,346.

Total Burden Cost (operating/maintaining): $210,801.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 11th day of January, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–603 Filed 1–17–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

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

ACTION: Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) was established to advise the Assistant Secretary of Labor for Occupational Safety and Health on issues relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce the MACOSH and workgroup meetings scheduled for February 7 and 8, 2007.

DATES: The workgroups will meet on February 7, 2007 from 8:30 a.m. until approximately 4 p.m. The MACOSH Committee will meet on February 8, 2007 from 8:30 a.m. to approximately 4:30 p.m.

ADDRESSES: The Committee will meet at the Sheraton Inner Harbor, 300 South Charles Street, Baltimore, Maryland 21202. On Wednesday February 7, 2007, the workgroups will meet in the Severn II and Severn III rooms. On Thursday February 8, 2007, the MACOSH Committee will meet in the Chesapeake I room.

Mail comments, views, or statements in response to this notice to Jim Maddux, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; phone (202) 693–2086; FAX: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: For general information about MACOSH and this meeting contact: Jim Maddux, Director, Office of Maritime, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693–2086. Individuals with disabilities wishing to attend the meeting should contact Vanessa L. Welch at (202) 693–2086 no later than January 31, 2007 to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: All MACOSH meetings, including work group meetings, are open to the public. All interested persons are invited to attend the MACOSH meetings at the times and places listed above. OSHA has formed five MACOSH workgroups and assigned each workgroup a number of occupational safety and health topics. Each workgroup may discuss one or more of the topics listed below as time permits:

Health workgroup: beryllium, radiation, welding fumes, and diesel emissions;

Longshoring workgroup: radio communications with crane operators, traffic safety, cargo ship design issues, and maintenance and repair cross training;

Cranes and falls workgroup: scaffold erection and disassembly, lashing platforms, inflatable personal flotation devices, and fall protection systems;

Shipyard workgroup: review of OSHA Safety and Health Injury Prevention Sheet (SHIPS) on ship-fitting, hot work on coatings, and ship module placement; and

Outreach workgroup: leading indicators, root cause analysis, industry pocket guides; and Hispanic worker issues.

The agenda for the full committee will include reports from each workgroup and a discussion of shipyard and marine terminal injury and illness data.

Public Participation: Written data, views or comments for consideration by MACOSH on the various agenda items listed above should be submitted to Vanessa L. Welch at the address listed above. Submissions received by January 31, 2007 will be provided to Committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items listed above should notify Vanessa L. Welch by January 31, 2007. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC, this 10th day of January, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E7–606 Filed 1–17–07; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors; Amended Notice; Clarification Regarding Record of Committee Meeting

Notice: This notice serves to clarify the ultimate disposition of the record resulting from the Corporation's January 19, 2007 closed session of the Annual Performance Reviews Committee, as follows:

A verbatim written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6) and (10)] and LSC's implementing regulation 45 CFR 1622.5(e) and (h) will not be available for public inspection. The transcript of any portions not falling within either of these provisions will be available for public inspection.

The above language has been inserted in the section of the notice regarding the STATUS of the Committee's meeting in *italicized* format.

There are no other changes to the notice of meetings issued by the Legal Services Corporation on January 11, 2007.

Amended Notice

TIMES AND DATES: The Legal Services Corporation Board of Directors and four of its Committees will meet on January 19–20, 2007 in the order set forth in the following schedule, with each meeting commencing shortly after adjournment of the immediately preceding meeting.

MEETING SCHEDULE

Date	Time
Friday, January 19, 2007:	
1. Annual Performance Reviews Committee (Performance Reviews Committee)	10:30 a.m.
2. Provision for the Delivery of Legal Services Committee (Provisions Committee)	1 p.m.
3. Operations & Regulations Committee	
Saturday, January 20, 2007:	
4. Finance Committee	9 a.m.
5. Board of Directors	

LOCATION: The Legal Services Corporation, 3333 K Street, NW.—3rd Floor Conference Center, Washington, DC.

STATUS OF MEETINGS: Open, except as noted below.

- *Status:* January 19, 2007 Performance Reviews Committee Meeting—Closed. The meeting of the Performance Reviews Committee may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to consider and act on the performance evaluation of the LSC President for calendar year 2006. In addition, the Committee may consider and act on whether and how to undertake an annual performance evaluation of the LSC Inspector General for calendar year 2006. The closing will be authorized by the relevant provision(s) of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6)] and the Legal Services Corporation's

corresponding regulation, 45 CFR 1622.5(e). *A verbatim written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6) and (10)] and LSC's implementing regulation 45 CFR 1622.5(e) and (h) will not be available for public inspection. The transcript of any portions not falling within either of these provisions will be available for public inspection.* A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

• *Status:* January 20, 2007 Board of Directors Meeting—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Board may consider and may act on the report of the Annual Performance Reviews Committee on its plans for conducting the performance review of the LSC President and Inspector General, will consider and may act on the General Counsel's report on litigation to which the Corporation is or may become a party, and will receive a briefing from the Inspector General (IG).[1] A verbatim written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6) and (10)] and LSC's implementing regulation 45 CFR 1622.5(e) and (h) will not be available for public inspection. The transcript of any portions not falling within either of these provisions will be available for public inspection.

MATTERS TO BE CONSIDERED:

Friday, January 19, 2007

Annual Performance Reviews Committee

Agenda

Closed Session

1. Approval of agenda.
2. Approval of minutes of the *Committee's* meeting of October 28, 2006.
3. Consider and act on whether and how to undertake an annual performance evaluation of the LSC Inspector General for calendar year 2006.
4. Consider and act on the Performance Evaluation of the President for calendar year 2006.
5. Consider and act on other business.
6. Consider and act on adjournment of meeting.

Provision for the Delivery of Legal Services Committee

Agenda

1. Approval of agenda.
2. Approval of the *Committee's* meeting minutes of October 27, 2006.
3. Presentation on Private Attorney Involvement.
• Staff report on the LSC strategic work plan on private attorney involvement based on the 2006 work of the Provisions Committee.
4. Presentation on LSC Leadership Mentoring Pilot Project—a cornerstone of the LSC quality initiative.
• This presentation will be done in three parts: The African-American Project Directors Association (AAPDA) will make a presentation to the Committee; LSC staff will present an overview of the Leadership Mentoring Pilot Project; and proteégé and mentor participants will share highlights of their experiences in the Pilot Project:

AAPDA Presenter: Lillian Johnson.
Staff Presenters: Evora Thomas, Althea Hayward.
Protégé/Mentor Presenters: Claudia Johnson/Don Isaacs; Peggy Lee/Guy Lescault; Tanya Douglas/Allison Thompson.

5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

Operations & Regulations Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the *Committee's* October 27, 2006 meeting.
3. Consider and act on Draft Final Rule revising 45 CFR part 1621, Client Grievance Procedure.
a. Staff report.
b. Public comment.
4. Staff report on history and implementation of LSC restrictions.
a. Staff report.
b. Public comment.
5. Consider and act on adoption of a regulatory agenda for Operations & Regulations Committee for 2007:
a. OIG report.
b. Staff report.
c. Public comment.
6. Consider and act on adoption of Personnel Manual:
a. Staff report.
b. Public comment.
7. Consider and act on response to OIG Fiscal Practices Report recommendation regarding locality pay for LSC President:
a. Staff report.
b. Public comment.
8. Public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

Saturday, January 20, 2007

Finance Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the *Committee's* meeting of October 28, 2006.
3. Presentation of the Fiscal Year 2006 Annual Financial Audit:
• Kirt West, Inspector General
• Nancy Davis, M.D. Oppenheim.
4. Presentation on LSC's Financial Reports for the first two months of FY 2007:
• Presentation by David Richardson, Treasurer/Comptroller.
• Comments by Charles Jeffress, Chief Administrative Officer.
5. Consider and act on adoption of Revised Temporary Operating Budget for FY 2007:
• David Richardson.
6. Staff report on revisions to LSC travel regulations:
• Charles Jeffress.
7. Staff report on progress of comparison of other Federal spending practices (in addition to travel) to LSC spending practices:
• Charles Jeffress.
8. Consider and act on adoption of budget guidelines:
• Victor M. Fortuno, General Counsel.
• Laurie Tarantowicz, OIG.
9. Public comment.
10. Consider and act on other business.
11. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the *Board's* meeting of October 28, 2006.
3. Approval of minutes of the Executive Session of the *Board's* meeting of October 28, 2006.
4. Approval of minutes of the *Board's* Open Session *Telephonic* meeting of November 27, 2006.
5. Approval of minutes of the *Board's* Open Session *Telephonic* meeting of December 18, 2006.
6. Consider and act on nominations for the Chairman of the Board of Directors.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

7. Consider and act on nominations for the Vice Chairman of the Board of Directors.

8. Consider and act on delegation to Chairman of authority to make Committee assignments.

9. *Chairman's* Report.

10. *Members'* Reports.

11. *President's* Report.

12. *Inspector General's* Report.

13. Consider and act on the report of the *Provision for the Delivery of Legal Services Committee.*

14. Consider and act on the report of the *Finance Committee.*

15. Consider and act on the report of the *Operations & Regulations Committee.*

16. Staff presentation on LSC's Technology Initiative Grants.

17. Staff presentation on LSC's Competitive Grants Process.

18. Status Report on Performance Measures for Strategic Directions.

19. Consider and act on the selection of locations for LSC Board meetings in calendar year 2008.

20. Consider and act on Director Fuentes' suggestion that Board meet more frequently.

21. Public comment.

22. Consider and act on other business.

23. Consider and act on whether to authorize an executive session of the Board to address items listed below under *Closed Session.*

Closed Session

24. Consider and act on the report of the *Performance Reviews* Committee.

25. Consider and act on General Counsel's report on potential and pending litigation involving LSC.

26. IG briefing of the Board.

27. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: January 12, 2007.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 07–199 Filed 1–12–07; 5:01 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 1:30 p.m., Tuesday, January 23, 2007.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Part 703 of NCUAs Rules and Regulations, Pilot Program Request. Closed pursuant to Exemption (4).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 07–206 Filed 1–16–07; 1:44 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Request To Amend License To Import Radioactive Waste

Pursuant to 10 CFR 110.70 (c) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request to amend an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

Information concerning the exemption from the requirement for a specific import license is as follows:

NRC IMPORT LICENSE APPLICATION

Name of applicant, date of application, date received, Application No., Docket No.	Description of material	End use	Country of origin
Diversified Scientific Services, Inc. (DSSI), December 22, 2006, December 28, 2006, IW004/04, 11004982.	Class A radioactive mixed waste containing tritium and carbon-14, and mixed fission product radionuclides.	For processing, incineration and return of resultant residue to Canada. Amend to extend the expiration date from December 31, 2006 to December 31, 2008.	Canada.

For the Nuclear Regulatory Commission.

Dated this 5th day of January 2007 at Rockville, Maryland.

Margaret M. Doane,

Deputy Director, Office of International Programs.

[FR Doc. E7–617 Filed 1–17–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33881]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 37–30229–01, for Termination of the License and Unrestricted Release of the West Pharmaceutical Service's Facility in Lionville, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone (610) 337–5366; fax number (610) 337–5393; or by e-mail: *drl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 37–30229–01. This license is held by West Pharmaceutical Services (the Licensee), for its West Pharmaceutical Services facility located at 101 Gordon Drive in Lionville, Pennsylvania (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated February 17, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's February 17, 2006, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 37–30229–01 was issued on July 26, 1995, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods.

The Facility is a 260,000 square foot building consisting of office space and laboratories. The Facility is located in a mixed residential, light industrial, retail, and commercial area. Within the Facility, use of licensed materials was confined to the 528 square foot Radioisotope and Tissue Culture Laboratory.

On February 14, 2005, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3 and carbon-14 . Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey on February 14, 2005, and September 6, 2006. The final status survey report was submitted with the Licensee's amendment request dated February 17, 2006, and letter dated October 17, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Commonwealth of Pennsylvania's Department of Environmental Protection for review on December 18, 2006. On December 21, 2006, the Commonwealth of Pennsylvania responded by e-mail. The Commonwealth agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. REG–1757, ''Consolidated NMSS Decommissioning Guidance;''

2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''

3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''

4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''

5. West Pharmaceutical Services, Termination Request Letter dated February 17, 2006 [ML060580120];

6. West Pharmaceutical Services, NRC 314 Signed and dated February 27, 2006 [ML060580124];

7. West Pharmaceutical Services, letter dated May 19, 2006 [ML061430439];

8. West Pharmaceutical Services, letter dated October 17, 2006 [ML062980524];

9. West Pharmaceutical Services, letter dated November 17, 2006 [ML063280230].

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated: Region I, 475 Allendale Road, King of Prussia, Pennsylvania this 9th day of January 2007.

For The Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1.

[FR Doc. E7–618 Filed 1–17–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meetings

Nuclear Regulatory Commission

DATE: Weeks of January 15, 22, 29; February 5, 12, 19, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 15, 2007

There are no meetings scheduled for the Week of January 15, 2007.

Week of January 22, 2007—Tentative

Monday, January 22, 2007

1:25 p.m.
Affirmation Session (Public Meeting) (Tentative).
a. Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP–06–20 (9/22/06): Entergy Nuclear Generation Company & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP–06–23 (10/16/06) (Tentative)
b. Exelon Generation Company, LLC (Early Site Permit for Clinton ESP) (Tentative)

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1).

Tuesday, January 23, 2007

1:30 p.m.
Joint Meeting with Federal Energy Regulatory Commission on Grid Reliability (Public Meeting) (Contact: Mike Mayfield, 301–415–0561).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of January 29, 2007—Tentative

Wednesday, January 31, 2007

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1 & 3). To be held at Department of Homeland Security Headquarters, Washington, DC.

Thursday, February 1, 2007

9:30 a.m.

Discussion of Management Issues (Closed—Ex. 2).

1:30 p.m.

Briefing on Strategic Workforce Planning and Human Capital Initiatives (Public Meeting) (Contact: Mary Ellen Beach, 301–415–6803).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 5, 2007—Tentative

There are no meetings scheduled for the Week of February 5, 2007.

Week of February 12, 2007—Tentative

Thursday, February 15, 2007

9:30 a.m.

Briefing on Office of Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Edward New, 301–415–5646).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 19, 2007—Tentative

There are no meetings scheduled for the Week of February 19, 2007.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

ADDITIONAL INFORMATION: Affirmation of ''Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP–06–20 (9/22/06): Entergy Nuclear Generation Company & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP–06–23 (10/16/06)'' tentatively scheduled for Thursday, January 11, 2007, at 1:25 p.m. has been rescheduled tentatively on Monday, January 22, 2007, at 1:25 p.m.

Affirmation of ''Final Rulemaking to Revise 10 CFR 73.1, Design Basis Threat (DBT) Requirements'' tentatively scheduled on Thursday, January 11, 2007, at 1:25 p.m. was cancelled and will be rescheduled at a later date.

''Periodic Briefing on New Reactor Issues'' (Public Meeting) previously scheduled on Thursday, January 11, 2007, at 1:30 p.m. was cancelled and will be rescheduled at a later date.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 12, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–207 Filed 1–16–07; 12:26 pm]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Seeking Comments From the Public on the 2005 WTO Ministerial Decision on Duty-Free Quota-Free Market Access for the Least Developed Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting the public to submit written comments on considerations relating to the Decision that Members adopted at the Sixth Ministerial Conference of the World Trade Organization (WTO) in December 2005 on duty-free, quota-free (DFQF) market access for the least-developed countries (LDCs). The TPSC is seeking comments from the public on to the full range of issues that may affect implementation of this Decision.

DATES: Comments are due by March 15, 2007.

ADDRESSES: *Submissions by electronic mail: FR0704@USTR.EOP.GOV. Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: General inquiries should be made to the USTR Office of WTO and Multilateral Affairs at (202) 395–6843; calls on individual subjects will be transferred as appropriate. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative (USTR), (202) 395–3475. Further information on the WTO, including the declarations, decisions referred to in this notice, can be obtained via the Internet at the WTO Web site, *http://www.wto.org,* and/or the USTR Web site, *http://www.ustr.gov.* The 2005 President's Annual Report on the Trade Agreements Program, which is available on the USTR Web site, contains extensive information on the WTO, the Sixth WTO Ministerial Conference in Hong Kong, China, and the status of work in the WTO.

SUPPLEMENTARY INFORMATION:

Duty-Free Quota-Free Market Access: The TPSC calls attention to the decision adopted at the Sixth Ministerial Conference of the WTO in December 2005 on duty-free, quota-free (DFQF) market access for LDCs. The DFQF decision is contained in Annex F of the Ministerial Declaration, which can be found at *http://www.wto.org* with the document symbol ''WT/MIN(05)/DEC''. Ministers agreed that WTO Members would implement the DFQF initiative coincident with the implementation of the results of the negotiations under the Doha Development Agenda (DDA). On a voluntary basis, WTO Members may also implement sooner.

Implementation of the DFQF by relevant WTO Members is subject to review by Members through the WTO Committee on Trade and Development (CTD). On May 15, 2006, the United States submitted a paper to the CTD, ''Duty-Free, Quota-Free Market Access for the Least-Developed Countries: Communication from the United States''. This paper can be found at *http://www.wto.org* with the document symbol ''WT/COMTD/W/149''. The paper summarizes the U.S. legal and consultative process for implementing the DFQF decision, and outlines certain factors and related obligations affecting implementation. The TPSC recognizes

that some factors related to implementation of DFQF can only be determined once certain results are obtained in the overall DDA negotiations. At this time, however, as part of consultative process, the TPSC is seeking comments from the public addressing the range of issues that may affect implementation in order to inform the planning process. The TPSC may seek further public comments on specific issues related to implementation of DFQF at a later time.

The U.S. International Trade Commission has provided to the TPSC the comments received from the public on agricultural and non-agricultural products as part of its investigation No. 332–440, Probable Economic Effects on Reduction or Elimination of U.S. Tariffs, August 9, 2002 (Confidential Report). Hence, these comments need not be resubmitted.

Written Submissions: Comments should state clearly the issue identified and should contain detailed information explaining why it is an issue and, to the extent possible, the means to address the issue. The provision of supplemental technical information is optional. This information should be provided in an attachment containing a spreadsheet or table in Microsoft Word, Word Perfect, Excel, Quatro Pro or MS Access.

Persons submitting comments may either send one copy by fax to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143 or transmit a copy electronically to *FR0704@USTR.EOP.GOV*, with ''Duty-Free, Quota-Free'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. The public is strongly encouraged to submit documents electronically rather than by facsimile. USTR encourages the use of Adobe PDF format to submit attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments should be submitted electronically no later than March 15, 2007.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such and must be accompanied by a non-confidential summary thereof. A justification as to why the information contained in the submission should be treated confidentially should also be contained in the submission. In addition, any submissions containing business confidential information must clearly be marked ''Business Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain business confidential information should also be clearly marked at the top and bottom of each page, ''Public Version'' or ''Non-Confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 will be available for public inspection in the USTR Reading Room, Office of the United States Trade Representative. An appointment to review the file can be made by calling (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m. Monday through Friday.

Dated: January 10, 2007.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. 07–198 Filed 1–12–07; 4:38 pm]

BILLING CODE 3190–W7–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55081; File No. SR–CBOE–2007–02]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rule Pertaining to Accommodation Liquidations (Cabinet Trades)

January 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend provisions in CBOE Rule 6.54 pertaining to accommodation liquidations (also referred to as ''cabinet trades'') to provide that a Market-Maker may initiate a cabinet trade without the need to place an order with an Order Book Official (''OBO'') or a Floor Broker. The Exchange is also proposing to make clear in the rule that a Floor Broker or a Market-Maker can enter into an opening or closing cabinet transaction, but must yield priority to all orders in the cabinet book. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with Exchange Rules; Exchange Rule 6.54, *Accommodation Liquidations (Cabinet Trades),* sets forth specific procedures for engaging in cabinet trades. Rule 6.54 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract whether or not the class trades on the Exchange's Hybrid Trading System.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

The first purpose of the rule change is to amend Rule 6.54 to authorize Market-Makers to initiate cabinet trades. Thus, in addition to the existing cabinet trading procedures which permit Market-Makers to (i) place cabinet orders with an OBO[5] or a Floor Broker for representation and execution, and (ii) respond at a cabinet price in response to a request for quote from an OBO or a Floor Broker, a Market-Maker may now himself or herself initiate a cabinet trade in the trading crowd without need to first place the cabinet order with an OBO or Floor Broker. This will save the additional time and process involved in a Market-Maker needing to first place a cabinet order that he or she is initiating with an OBO or a Floor Broker, who would then in turn represent and execute the order on behalf of the Market-Maker. Thus, permitting Market-Makers to initiate cabinet orders and trades in accordance with the procedures described in Rule 6.54 will provide Market-Makers with additional flexibility and assist in the fair, orderly and efficient handling of cabinet transactions on the Exchange.[6]

The second purpose of the rule change is to amend Rule 6.54 to make clear that Floor Brokers or Market-Makers may enter into both opening and closing cabinet transactions, so long as they first yield priority to all orders in the cabinet book. Rule 6.54 currently provides that bids and offers for cabinet transactions may be placed with an OBO, provided that bids and offers for opening transactions may only be placed with an OBO to the extent that the cabinet book maintained by the OBO contains unexecuted contra closing orders with which the opening orders may be immediately matched. In addition, Rule 6.54 currently provides that Floor Brokers are permitted to represent and execute cabinet orders and also provides that bids and offers may be provided by Floor Brokers and Market-Makers in response to a request by an OBO or a Floor Broker, provided they yield priority to all orders in the OBO's cabinet book. However, the existing rule text is silent as to whether such orders represented by Floor Brokers and such bids and offers provided by Floor Brokers and Market-Makers may be for opening and closing transactions. In order to resolve any ambiguity that may exist, the rule text is being amended to make clear that both opening and closing transactions by Floor Brokers and Market-Makers are permitted, so long as they first yield priority to all orders in the cabinet book.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5) of the Act[8] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.[12] The Commission believes that CBOE's proposal to permit Market-Makers to initiate cabinet trades without the need to go through an OBO or Floor Broker should result in more efficient handling of cabinet transactions. In addition, explicitly permitting Floor Brokers or Market-Makers to enter into both opening and closing transactions (provided that they yield to any existing orders in the cabinet book) will eliminate ambiguity from the rule text. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

[5] A PAR Official may also perform the functions of an OBO. *See* Interpretation and Policy .02 to Rule 6.54.

[6] The Exchange notes that permitting a Market-Maker to initiate a cabinet trade is similar to and consistent with a recent amendment to Rule 6.54 that permitted Floor Brokers to initiate cabinet orders and trades. *See* Securities Exchange Act Release No. 53808 (May 16, 2006), 71 FR 29371 (May 22, 2006) (SR–CBOE–2006–33).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] Rule 19b–4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing. The Exchange complied with this requirement.

[12] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15U.S.C. 78c(f).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–02 and should be submitted on or before February 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–615 Filed 1–17–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55082; File No. SR–NSCC–2006–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Create Service To Facilitate the Exchange of Account Related Information on an Automated Basis Between Members

January 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 5, 2007, amended[3] the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to modify NSCC's Rules to provide for a service to facilitate the exchange of account related information on an automated basis during the movement of correspondent broker accounts between members or during other material events that result in the bulk movement of accounts between members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, when a correspondent firm chooses to move its book of business from one NSCC member to another, there is no standard method for transmitting the detailed customer data between the members. This information is currently exchanged through tapes, CDs, and other means and is dependent on the proprietary data format and values defined by the clearing firm from which the correspondent is moving. The process is time-consuming and prone to incorrect interpretation of data values. It is made more inefficient because clearing firms maintain separate code for each other clearing firm for which they convert data.

NSCC proposes to modify its rules to create the Account Information Transmission Service (''AIT'') to facilitate the exchange of account related information during the movement of correspondent broker accounts between members or during other material events that result in the bulk movement of accounts between members. AIT will provide members with a standard mechanism to transmit customer data that will reduce the potential for lost and incorrectly interpreted data and will provide members with a secure facility for the exchange of data. The standard data model also will allow for the adoption of a single code base that is applicable for all conversion events. NSCC believes the single standard format could reduce costs, increase accuracy, and accelerate delivery time.

NSCC proposes to develop and introduce AIT in two phases. The first phase will be to create the mechanism by which members may transmit data between themselves. Subject to final approval, NSCC intends to implement the first phase on Monday, February 12, 2007. The second phase will involve the development of standardized data formats. NSCC will notify the Commission of phase two enhancements prior to their implementation.

Since AIT is only an information transmission service, NSCC is also proposing to amend its rules to clarify that NSCC will neither be responsible for the accuracy or completeness of any information transmitted through AIT nor for any omissions or delays that may occur in the transmission of AIT data. Finally, NSCC is proposing a $200 monthly subscription fee for participation in AIT during phase one. NSCC will reevaluate AIT service fees as subsequent enhancements are completed.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because by reducing costs, increasing accuracy, and accelerating delivery time of bulk movement of accounts between members, it will enable NSCC to facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

[13] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment added the number of the new rule inadvertently omitted in the original filing.

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The SIA Data Conversion Privacy Working Group initially requested NSCC provide this service. No written comments relating to the proposed rule change have been solicited or received. On November 3, 2006, NSCC notified members of the terms of AIT by Important Notice A#6334, P&S#5904. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2006–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2006–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal/2006/2006-18-amendment.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2006–18 and should be submitted on or before February 2, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–585 Filed 1–17–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55084; File No. SR–NYSE–2006–90]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 13 (Definitions of Orders)

January 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend Exchange Rule 13.30 to clarify that Stop Orders in Exchange Traded Funds (as defined below) are elected on quotes and trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is seeking to amend Exchange Rule 13.30 to clarify that Stop Orders (''STP'') in Investment Company Units,[5] Trust Issued Receipts,[6] and securities treated similarly (*i.e.*, streetTRACKS® Gold Shares, *See* Exchange Rule 1300) (collectively Exchange-Traded Funds (''ETFs'')) are elected on both quotes and trades.

Prior to December 1, 2000, STP[7] Orders in ETFs were elected only on trades. At that time a STP Order to buy ETFs was elected and became a market order only when a transaction in the security occurred at or above the stop price, after the order was routed to the Display Book® or was manually represented by a Floor broker in the

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C.78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Investment Company Units are defined in Rule 703.16 of the NYSE Listed Company Manual.

[6] Trust Issued Receipts are defined in Exchange Rule 1200.

[7] At that time, order types available to customers included both Stop Orders and Stop Limit Orders. Subsequently, on November 27, 2006, the Commission approved the Exchange's proposal to eliminate Stop Limit Orders as an acceptable order type on the Exchange. *See* Securities Exchange Act Release No. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR–NYSE–2006–65). Stop Limit Orders are therefore not addressed in this filing.

Crowd. Similarly, a STP Order to sell ETFs was elected and became a market order only when a transaction in the security occurred at or below the stop price, after the order was routed to the Display Book® or was manually represented by a Floor broker in the Crowd.

On December 1, 2000, due to the inherent speed of ETF trading and quote changes, the Exchange amended Rule 13.30 to allow STP Orders in ETFs to be elected also on quotations.[8] The purpose of that amendment was to allow STP Orders in ETFs to participate more often and minimize STP Orders in ETFs from missing the market. It was not the Exchange's intent to preclude STP Orders in ETFs from being elected on trades and nothing in that filing or the rule amendment excludes STP Orders in ETFs from election on trades. Rather, it added a section to provide that STP Orders in ETFs are elected on quotes, leaving the previous section regarding elections on trades intact. Since the amendment, the Exchange has elected STP Orders in ETFs on quotes and trades. In this filing, the Exchange seeks to amend Rule 13.30 to clarify that STP orders are elected on quotes and trades, in order to eliminate any ambiguity inherent in the current rule's structure.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[8] *See* Securities Exchange Act Release No. 43658 (December 1, 2000), 65 FR 77408 (December 11, 2000) (SR–NYSE–2000–53).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would clarify that stop orders in ETFs are elected on quotes and trades. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- (Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–90 and should be submitted on or before February 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–616 Filed 1–17–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55083; File No. SR–NYSEArca-2006–39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade Certain iShares MSCI Index Funds Pursuant to Unlisted Trading Privileges

January 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'') proposes to trade shares (''Shares'') of the following index funds (''Funds'') pursuant to unlisted trading privileges (''UTP'') based on NYSE Arca Equities Rule 5.2(j)(3):

- iShares MSCI Emerging Markets Index Fund (Symbol: EEM); and
- iShares MSCI Pacific Free Ex Japan Index Fund (EPP).

The text of the proposed rule change is available from the Exchange's Web site (*http://www.nysearca.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to trade the Shares pursuant to UTP. The objective of each Fund is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular markets, as represented by specific MSCI benchmark indices (each, an ''Index''). Each Fund utilizes a passive or indexing investment approach which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures. Each Fund normally invests at least 95% of its total assets in component securities that are represented in the underlying Index and at all times invests at least 90% of its total assets in such stocks, except that the MSCI Emerging Markets Index is subject to the 80%/20% investment flexibility.

The Commission previously approved the original listing and trading of the Shares on the American Stock Exchange, LLC (''Amex'').[3] The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34, except that the iShares MSCI Emerging Markets Index Fund will not trade during the Opening Session (4 a.m. to 9:30 a.m. Eastern Time) unless the Indicative Optimized Portfolio Value (''IOPV'', as described below) is calculated and disseminated during that time. The iShares MSCI Pacific Free Ex Japan Index Fund will trade during the Opening Session since there is no overlap in trading hours of the Opening Session and the foreign markets trading the securities in that Index. In addition, the last calculated IOPV is available to investors during the Opening Session by means of the consolidated tape or major market data vendors and remains unchanged during the Opening Session.

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. The Index on which each Fund is based is calculated by MSCI for each trading day in the applicable foreign market based on official closing prices in such market. The value of each underlying Index is updated intra-day on a real-time basis as individual component securities of the underlying Index change in price. The intra-day value of each Index is disseminated every 15 seconds throughout the trading day by organizations authorized by MSCI. The net asset value (''NAV'') of each Fund is calculated by each Fund's administrator and disseminated daily by Amex. The Funds' administrator calculates the NAV for each Fund generally once daily Monday through Friday generally as of the regularly scheduled close of business of the New York Stock Exchange (''NYSE'') (normally 4 p.m. Eastern Time) on each day the NYSE is open for trading, based on prices at the time of closing.[4]

To provide updated information relating to the Shares for use by investors, professionals, and persons wishing to create or redeem them, Amex disseminates through the facilities of the Consolidated Tape Association (''CTA'') the IOPV for each Fund as calculated by Bloomberg, L.P. The IOPV is disseminated on a per-share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern Time, depending on the time Amex specifies for the trading of the Shares.

The IOPV may not reflect the value of all securities included in the applicable underlying Index and does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IOPV on a per-share basis disseminated during Amex's regular trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. The IOPV is intended to closely approximate the value per-share of the portfolio of securities for a Fund and provide for a close proxy of the NAV at a greater frequency for investors.

For the iShares MSCI Pacific Free Ex Japan Index, there is no overlap in trading hours between the foreign markets trading the Index's component stocks and Amex. Therefore, for the iShares MSCI Pacific Free Ex Japan Index Fund, the IOPV is calculated based on closing prices in the principal foreign market for securities in the Fund

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44990 (October 25, 2001), 66 FR 55712 (November 2, 2001) (SR–Amex–2001–45).

[4] *See* e-mail dated January 9, 2007 from Michael Cavalier, Assistant General Counsel, NYSE Group, Inc. to Mitra Mehr, Special Counsel, Division of Market Regulation, Commission.

portfolio, which are then converted from the applicable foreign currency to U.S. dollars. The IOPV for this Fund is updated every 15 seconds during Amex's regular trading hours of 9:30 a.m. to 4 p.m. Eastern Time to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency.

The MSCI Emerging Markets Index includes companies trading in markets with trading hours overlapping regular Amex trading hours. For the iShares MSCI Emerging Markets Index Fund, the IOPV calculator updates the IOPV during the overlap period every 15 seconds to reflect price changes in the principal foreign market, and converts such prices into U.S. dollars based on the currency exchange rates. When the foreign market or markets are closed but Amex is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates.

The Commission has granted each Fund an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act'').[5] Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in each Fund's application for orders under the 1940 Act.[6]

In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares, including how they are created and redeemed, the prospectus or product description delivery requirements applicable to the Shares, applicable Exchange rules, how information about the value of each underlying Index is disseminated, and trading information.

In addition, before an ETP Holder recommends a transaction in the Shares, the ETP Holder must determine that the Shares are suitable for the customer as required by NYSE Arca Equities Rule 9.2(a)–(b).

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[7] in general and Section 6(b)(5) of the Act[8] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act[9] because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–39 and should be submitted on or before February 8, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[12] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on

[5] 15 U.S.C. 80a–24(d).

[6] *See In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 240.12f–5.

[10] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78*l*(f).

another exchange.[13] The Commission notes that it previously approved the listing and trading of the Shares on Amex.[14] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[15] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, the IOPV calculator updates the applicable IOPV every 15 seconds to reflect price changes in the principal foreign markets, and converts such prices into U.S. dollars based on the currency exchange rate. When the foreign market or markets are closed but Amex is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates. NYSE Arca Equities Rule 7.34 describes the situations when the Exchange would halt trading when the IOPV or the value of the Index underlying one of the Funds is not calculated or widely available.

The Commission notes that, if the Shares should be delisted by Amex, the original listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to monitor the trading of the Shares.

2. In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would inform participants of the prospectus or product delivery requirements applicable to the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act.[17] The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEArca–2006–39) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E7–614 Filed 1–17–07; 8:45 am]

BILLING CODE 8011–01–P

[13] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[14] *See supra* note 3.

[15] 17 CFR 240.12f–5.

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] *See supra* note 3.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55080; File No. SR–Phlx–2006–51]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Performance Evaluations for Streaming Quote Traders and Remote Streaming Quote Traders

January 10, 2007.

I. Introduction

On November 22, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Phlx Rule 510, SQT and RSQT Performance Evaluation, to establish performance requirements for Streaming Quote Traders (''SQTs'') [3] and Remote Streaming Quote Traders (''RSQTs'').[4] The proposed rule change was published for comment in the **Federal Register** on December 11, 2006.[5] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed rule change is to adopt new Phlx Rule 510 to: (1) Establish performance requirements for SQTs and RSQTs; (2) authorize the Exchange to conduct performance evaluations periodically; and (3) authorize the Exchange's Options Allocation, Evaluation and Securities Committee (''OAESC'') [6] to take corrective action where minimum requirements are not met.

Proposed Phlx Rule 510 would provide for monthly performance evaluations of SQTs and RSQTs to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, efficient quote submission to the Exchange (including quotes submitted through a third party vendor), competition, observance of ethical standards, and administrative factors.

The proposal would permit the Exchange to consider requests for relief from established quote spread

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx Rule 1014(b)(ii)(A).

[4] *See* Phlx Rule 1014(b)(ii)(B).

[5] *See* Securities Exchange Act Release No. 54859 (December 1, 2006), 71 FR 71605.

[6] *See* Phlx By-Law Article X, Section 10–7.

parameters on the Exchange [7] and efficiency of quote submission through the Specialized Quote Feed (''SQF''), as defined in Phlx Rule 1080, Commentary .01. Failure to meet established minimum performance requirements could result in restriction by the OAESC of additional options assignments; suspension, termination, or restriction of an existing assignment on one or more options; or suspension, termination, or restriction of an SQT's or RSQT's status as such.

Phlx Rule 510 would establish specific criteria for each option assigned to an SQT or RSQT that would be regularly evaluated by the Exchange. First, the Exchange would evaluate the percentage of total quotes submitted by the SQT or RSQT that represent the NBBO. If the percentage of the total quotes that represent the NBBO is in the lowest quartile of all SQTs or RSQTs for two or more consecutive months, this may be considered sub-standard performance. Second, the Exchange would evaluate the SQT or RSQT's adherence to the Exchange's established quoting requirements pursuant to Phlx Rule 1014.[8] If an SQT or RSQT fails to meet the quoting requirements as prescribed by the rule, this may be considered sub-standard performance. Third, the Exchange would consider the number of requests for quote spread parameter [9] relief for the purposes of evaluating performance standards.

Finally, to evaluate efficient quote submission to the Exchange, the Exchange would consider how an SQT or RSQT optimizes the submission of quotes through the SQF, as defined in Phlx Rule 1080, by evaluating the number of individual quotes per quote ''block'' received by the Exchange.[10] An SQT or RSQT is assigned a number of ports or lines on which they can send quote blocks. The number of lines assigned dictates the number of blocks that may be sent simultaneously by the SQT or RSQT. The number of lines assigned to an SQT or RSQT is generally a function of the number of products being quoted, taking into account the throughput required to minimize quote latency risk. The Exchange intends to evaluate the average number of quotes (1–99) submitted within the SQT or RSQT's quote blocks. The number of quotes delivered in each block would generally be a measure of the SQT or RSQT's quoting efficiency. For example, a firm sending an average of 1 quote in each block may be considered inefficient while a firm sending an average of 99 quotes in each block would be considered very efficient.

The Exchange explained that, in general, the expenditure of systemic resources required to process an inefficient block is nearly equal to the expenditure of systemic resources required to process an efficient block. Therefore, an efficient SQT or RSQT can achieve a much higher level of quote submission than an inefficient SQT or RSQT using nearly the same amount of exchange system resources. The Exchange believes that the regular monitoring of quoting efficiency in this fashion will result in more efficient quoting on the Exchange (*i.e.,* more quotes submitted per block), thus preserving and maximizing Exchange system capacity for handling quote traffic.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to establish performance requirements for SQTs and RSQTs should, among other things, encourage Exchange traders to enhance quoting efficiency, preserve system capacity, and minimize requests for relief from quote spread parameters. Consequently, the proposal should encourage Phlx SQTs and RSQTs to strive to improve their performance as market makers on the Exchange, as well as help to mitigate the Exchange's quote message traffic.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–2006–51), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–586 Filed 1–17–07; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Phlx Rule 1014(c)(i)(A).

[8] Phlx Rule 1014(b)(ii)(D)(1) provides that an SQT and an RSQT shall be responsible to quote continuous, two-sided markets in not less than 60% of the series in each option in which such SQT or RSQT is assigned, provided that, on any given day, a Directed SQT (''DSQT'') or a Directed RSQT (''DRSQT'') (as defined in Phlx Rule 1080(l)(i)(C)) shall be responsible to quote continuous, two-sided markets in not less than 99% of the series listed on the Exchange in at least 60% of the options in which such DSQT or DRSQT is assigned. Whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain continuous quotations for not less than 99% of the series of the option listed on the Exchange until the close of that trading day.

[9] Phlx Rule 1034 establishes maximum allowable bid/ask differentials on the Exchange.

[10] A quote ''block'' is a component of the Exhange's SQF application that allows for delivery of a set of multiple quotations from the SQT or RSQT to the Exchange. Within a single ''block,'' the SQT or RSQT can deliver quotes for any number of option series ranging from 1 to 99.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration (SBA), pursuant to the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50), Advisory Committee on Veterans Business Affairs will host a public meeting on Friday, January 26, 2007, starting at 9 a.m. until 5 p.m. EST. The meeting will take place at SBA, 409 3rd Street, SW., Eisenhower Conference Room, Side B, 2nd Floor, Washington, DC 20416.

The purpose of the meeting is to select the Committee's Chairman and Vice-Chairman and outline the agenda for 2007.

Anyone wishing to attend must contact Cheryl Clark, Program Liaison, Office of Veterans Business Development at (202) 205–6773, or send e-mail to *cheryl.clark@sba.gov.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–613 Filed 1–17–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5674]

Determination Pursuant to the Darfur Peace and Accountability Act Related to the Provision of Military Assistance in Support of a Southern Sudan Security Sector Transformation Program (SST)

Pursuant to the authority vested in me by the laws of the United States, including Section 8(d) of the Darfur Peace and Accountability Act (Pub. L. 109–344) and the Presidential Delegation of Authority in E.O. 13412, I hereby:

—Determine that the provision of non-lethal military equipment and related defense services (hereafter ''assistance'') to the Government of Southern Sudan for the purpose of constituting a professional military force is in the national security interests of the United States; and

—Authorize, notwithstanding any other provision of law, for Fiscal Years 2007 and 2008, the provision of any such items 15 days after notification of this determination.

This determine covers the provision of all such non-lethal assistance, including vehicles and communications equipment; power generation; facilities construction/renovation; training and technical assistance; recommendations for force structure, training, equipment, infrastructure and resource management; military advisers; and the provision of other non-lethal defense articles and related defense services in support of military reform in Sothern Sudan, including support to the Sudan People's Liberation Movement, appropriate for the aforementioned purpose.

You are hereby authorized and directed to report this determination to Congress and publish it in the **Federal Register**.

Dated: January 2, 2007.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E7–630 Filed 1–17–07; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 5673]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Turkish Student Teacher Internship Project

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/X–07–02.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: March 21, 2007.

Executive Summary: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Turkish Student Teacher Internship Project. U.S. public and private universities meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer an eight-week professional development program for graduate students of education from Turkey beginning in January 2008. The focus of the program is to familiarize participants with U.S. student-centered teaching methods and the use of technology in the classroom. The exchange experience should also give Turkish participants an in-depth experience of American life and culture and contribute to mutual understanding between Turkey and the United States. The program should include both a theoretical component, provided through professional development seminars in an academic setting, and a practical component, provided through practice teaching experience under the guidance of experienced mentor teachers in local school districts. Interested organizations should indicate strong contacts with local U.S. school districts in order to provide the practical student-teaching component, as well as a demonstrated ability to conduct a substantive academic program. Host schools for internships may be public, private, magnet or charter schools, and should exemplify best practices.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The Turkish Student Teacher Internship Project will bring forty graduate student teachers of education from Bilkent University and other universities in Turkey to the U.S. to learn about student-centered teaching and technology in the classroom. Approximately twenty-six participants will be enrolled in a two-year Master's in Teacher Education program, a Teaching English as a Foreign Language program, or other innovative degree programs which train high school level teachers of other subjects to use student-centered teaching methods. Most of the students will have completed one year of M.A.-level academic work before beginning the program in the U.S. The English-speaking student teachers will be selected by the Commission for Educational Exchange between the U.S.A. and Turkey (Fulbright Commission) in coordination with the U.S. Embassy in Turkey. At least twelve of the participants will come from universities other than Bilkent University. Some of these other students may be upper-level undergraduate students with strong English language skills, subject field knowledge, and a background in education. The group will demonstrate diversity in terms of their home regions in Turkey, gender, and socio-economic background, and will prepare to teach in the subject fields of English as a Foreign Language, Turkish language and literature, mathematics, history, and biology. Following their program, the students will return to their home institutions for additional graduate study before starting careers as high school teachers in Turkey.

This program is designed to assist young Turkish educators who will prepare students to live in an increasingly interdependent world, and to provide these educators with an in-depth exchange experience in the United States. It is intended that this experience will provide a basis for continuing contact with American counterparts in order to promote mutual understanding between the two countries.

Guidelines

The eight-week program should provide participants with thorough exposure to student-centered teaching approaches and the use of technology in American schools and a substantive cultural/educational exchange experience in the United States. The cooperating institution will, in collaboration with representatives of the Fulbright Commission, U.S. Embassy,

and Bilkent University in Ankara, conduct a needs assessment, interview and select participants, and lead a three-day pre-departure orientation workshop for the participants.

The cooperating institution should provide substantive information for the pre-departure orientation about the program, the program's goals, and expectations of participants. It should also offer a framework for integrating the training and its objectives into the participants' previous training, and promote strategies for sharing their knowledge with professional counterparts and with students in their own classrooms. At the orientation, organizers should seek input from the participants about the needs of local teachers, review comparative teaching practices, and address issues about the participants' stay in the U.S.

Upon their arrival in the United States, the participants should receive a second orientation that includes a basic introduction to American life and customs, and how these customs differ from practices in their home country. The participants should also receive academic training on teaching methodology and instructional procedures. Teachers should then be placed in small groups at local schools, paired with experienced U.S. teachers whose academic specializations match their own (English, biology, history, mathematics, and Turkish language and literature—for which the pairing should be with U.S. literature mentor teachers). Internship activities should include: Observing a variety of teaching methods (inquiry, active classroom, group projects, etc.) as well as computer-based lessons; working individually with a mentor teacher on curriculum development; and team teaching. While the greatest emphasis should be on immersing student teachers actively in the American classroom environment, the participants should also participate in development seminars on related topics in a university academic setting. The internship and seminars will also help participants to create a curriculum development project or portfolio to use upon their return to Turkey.

Components of U.S. Program

- Cross-cultural orientation (2–4 days): Introduction to U.S. Government as it relates to education, the U.S. educational system, and American culture through site visits and a cross-cultural adjustment seminar;
- Site visits in school districts (2–3 days): To all levels and types of schools, including economically and ethnically diverse schools;
- Internships in high schools (6 weeks): Each student teacher will work with a U.S. mentor teacher individually or with one other student teacher; activities should include classroom observation, team teaching, and cultural presentations;
- Exposure to local school governance: Through such activities as attendance at faculty, board of education, and PTA meetings;
- Professional development seminars planned and conducted in an academic setting to complement school-based training: Topics may include classroom management, conflict resolution, diversity, and curriculum development. Seminars may be spread throughout the six weeks or take the form of a mid-program conference/debriefing;
- Final debriefing (1–2 days): Student teachers will share what they have observed and learned through presentations they will make to each other within the group;
- Curriculum development project: By the end of the eight-week program, the student teachers should complete a project incorporating a new teaching method or technology that they will put into practice when they begin teaching in Turkey. Students should be able to use this project to brief fellow students at seminars held at their home universities, sharing the knowledge they have gained during their exchange experience with a wider group of MA candidates in Turkey.
- Cultural experiences: The project should provide opportunities for participants to interact with the local community through brief home hospitality visits and through involvement with non-school-based groups; participants should take part in activities reflecting the diversity of American society, and should speak to Americans about Turkish history and culture.
- Final debriefing in Washington, DC: This portion of the program will allow Department of State staff to discuss the program in detail with the participants and to discuss how to improve such programs in the future. A cultural program, to be approved by the Bureau, will also be part of the Washington visit.

Grantee's Responsibilities

- Plan and implement the exchange program in all aspects, including both the academic and practical component;
- Together with the Fulbright Commission and the U.S. Embassy in Ankara, run a competition to select Turkish students to take part in the program;
- Conduct a needs assessment at beginning of project;
- Locate school districts to host groups for U.S. internships through an informal competition (schools must submit a brief proposal outlining their interest, understanding of goals, examples of best practices, and commitment to mentoring). Transportation should be provided for student teachers by the administering university or host school. Schools should expose participants to multiple pedagogical styles and should designate an experienced mentor teacher to oversee the day-today activities of the participants;
- Conduct orientations in Turkey and the U.S. (the pre-departure orientation in Turkey may be conducted by the Fulbright Commission in close cooperation with the grantee organization, and the local coordinating institution, Bilkent University);
- Conduct professional development seminars and a debriefing;
- Brief U.S. mentor teachers on their responsibilities in supervising the student teachers during their internships;
- Monitor and evaluate the program;
- Administer all participant logistics: arrange international transportation, ground transportation to local schools and training sites, and participant per diem and housing; enroll participants in State Department-provided emergency and accident insurance; prepare U.S. Government forms such as the DS–2019 forms, tax, social security, etc.
- Arrange for home hospitality visits for at least some portion of the exchange visit, perhaps through local schools or other participating organizations; cooperating institutions should be sensitive to accommodating participants' religious observances;
- Administer all financial aspects of the program and comply with reporting requirements;
- Arrange a visit to Washington, DC, at the end of the group's U.S. program, to include meetings with Bureau representatives, a cultural program, and a school site visit if possible;
- Plan follow-on activities with host schools and participants in conjunction with participants' academic program;
- Administer an alumni grants competition, in which Turkish participants may apply for financial assistance to obtain essential materials for their home schools, offer follow-on training for other teachers, open a teacher resource center, develop teaching materials, bring U.S. mentor teachers to Turkey to develop school linkages, and to conduct other activities that will build on the exchange visits.

The Fulbright Commission for Educational Exchange between the

U.S.A. and Turkey will assist in obtaining international airline tickets; the grantee will pay the airline office in Ankara for the air tickets. The purchase of tickets must be in compliance with the Fly America Act. The grantee will prepare DS–2019 forms and enroll the student teachers in the State Department's health insurance policy. The Fulbright Commission and the sending universities will assist in the pre-departure orientation and will conduct a post-program evaluation. The grantee will coordinate with the Fulbright Commission on all non-U.S. based aspects of program administration. The proposal should address mechanisms for communication and coordination. The grantee organization will coordinate with the Teacher Exchange Branch in the Bureau of Educational and Cultural Affairs regarding all U.S.-based activities, reporting and evaluation.

It will be important for the grantee organization to help create a network for participants to communicate and support each other in using the new methodologies after they have completed their academic program in Turkey and become teachers. A strong proposal will address follow-on activities in conjunction with the Fulbright Commission and the sending university or universities to increase future impact and participant support.

The grant will begin on or about June 1, 2007, and the grantee should complete all exchange activities by December 31, 2008. The exchange program will take place in January-March 2008. Please refer to additional program specific guidelines in the Project Objectives, Goals, and Implementation (POGI) document.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2007.

Approximate Total Funding: $350,000.

Approximate Number of Awards: 1.

Approximate Average Award: $350,000.

Anticipated Award Date: Pending availability of funds, June 1, 2007.

Anticipated Project Completion Date: December 31, 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by U.S. public and private universities meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $350,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV. 1. Contact Information to Request an Application Package

Please contact Patricia Mosley of the Teacher Exchange Branch, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 453–8897, fax: (202) 453–8890, e-mail: *MosleyPJ@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X–07–02 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Michael Kuban, telephone: (202) 453–8897, e-mail: *KubanMM@state.gov* and refer to the Funding Opportunity Number ECA/A/S/X–07–02 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the

appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640. Please refer to the Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3.d.4. Describe your plans for staffing: Please provide a staffing plan which outlines the responsibilities of each staff person and explains which staff member will be accountable for each program responsibility. Wherever possible please streamline administrative processes.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The budget should not exceed $350,000 for program and administrative costs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets for host campus and foreign teacher involvement in the program. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

The summary and detailed administrative and program budgets should be accompanied by a narrative which provides a brief rationale for each line item including a methodology for estimating appropriate average maintenance allowance levels and tuition costs (as applicable) for the participants, and the number that can be accommodated at the levels proposed. The total administrative costs funded by the Bureau must be reasonable and appropriate.

IV.3e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission.

Application Deadline Date: Wednesday, March 21, 2007.

Reference Number: ECA/A/S/X–07–02.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications.

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–07–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.3f.2—Submitting Electronic Applications.

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*). Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. eastern time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section and Fulbright Commission overseas. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the

Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal narrative should exhibit originality, substance, precision, and relevance to the Bureau's mission as well as the objectives of the Turkish Student Teacher Internship Project. It should include an effective, feasible program plan for U.S.-based school internships and host university seminars.

2. *Multiplier effect/impact:* The proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity and Record:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The successful proposal will demonstrate the organization's experience in international educational exchange and internship programs, and an understanding of Turkey's history, culture, religion, and system of education. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Follow-on and Alumni Activities:* Proposals should provide a plan for continued follow-on activity (both with and without Bureau support) ensuring that the Turkish Student Teacher Internship Project is not an isolated event. Activities should include tracking and maintaining updated lists of all alumni and facilitating follow-up activities, including administering an alumni grant competition.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants*; *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI*.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award; and

(2) Quarterly program and financial reports.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Michael Kuban, Office of Global Educational Programs, ECA/A/S/X, Room 349, ECA/A/S/X–07–02, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–453–8897, fax 202–453–8890, *KubanMM@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–07–02.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts

published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: January 8, 2007.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–631 Filed 1–17–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 14, 2006, vol. 71, no. 178, page 54330. FAR Part 157 requires that each person who intends to construct, deactivate, or change the status of an airport, runway, or taxiway must notify the FAA of such activity.

DATES: Please submit comments by February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Landing Area Proposal.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0036.

Form(s): 7480–1.

Affected Public: An estimated 1500 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 45 minutes per response.

Estimated Annual Burden Hours: An estimated 1125 hours annually.

Abstract: The information collected provides the basis for determining the effect the proposed action would have on existing airports and on the safe and efficient use of airspace by aircraft, determining the effects the proposed action would have on existing or contemplated traffic patterns of neighboring airports, determining the effects the proposed action would have on the existing airspace structure and projected programs of the FAA, and determining the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal.

Addresses: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 10, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–151 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 14, 2006, vol. 71, no. 178, pages 54330–54331. Title 49, United States Code, Section 44702 authorizes the appointment of appropriately qualified persons to be representatives of the Administrator to allow those persons to examine, test and certify other persons for the purpose of issuing them pilot and instructor certificates.

DATES: Please submit comments by February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Representatives of the Administrator.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0033.

Form(s): 8110–14, 8110–28, 8710–6, 8710–10.

Affected Public: An estimated 5015 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 1.42 hour per response.

Estimated Annual Burden Hours: An estimated 7098 hours annually.

Abstract: Title 49, United States Code, Section 44702 authorizes the appointment of appropriately qualified persons to be representatives of the Administrator to allow those persons to examine, test and certify other persons for the purpose of issuing them pilot and instructor certificates.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 10, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–152 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2007–01

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory; Safety in Yards; Behavior of Employees On or About Tracks; and Point Protection.

SUMMARY: FRA is issuing Safety Advisory 2007–01, which addresses the safety of shoving or pushing movements in yards, including those involving remote control locomotives. This advisory also addresses the behavior of employees on or about tracks.

FOR FURTHER INFORMATION CONTACT: Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone (202–493–6049 or 202–493–6052); Edward Pritchard, Director, Office of Safety Assurance and Compliance, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone (202–493–6300).

SUPPLEMENTARY INFORMATION: Although the overall safety of railroad operations has improved in recent years, a recent fatal accident involving a carman struck by a remote control yard movement while he was backing a pickup truck onto an in-yard private railroad grade crossing (yard crossing) highlights the need to review current railroad procedures and practices.

Results of Preliminary Investigation

The following discussion of the circumstances surrounding a fatal accident that occurred on December 14, 2006, is based on FRA's preliminary investigation. The accident is still under investigation by FRA and local authorities. The causes and contributing factors, if any, have not yet been established; therefore, nothing in this Safety Advisory should be construed as placing blame or responsibility for the accident on the acts or omissions of any person or entity.

The fatal accident occurred in Manlius, New York, a suburb of Syracuse, in CSX Transportation, Inc.'s (CSX) DeWitt Yard at about 5:25 p.m. on December 14, 2006. The victim was a 54-year-old carman with about 30 years of railroad service. While backing a pickup truck onto a yard crossing, he was struck by a yard movement of railroad cars shoved by a remote control locomotive. The remote control operator (RCO) aligned a track switch, initiated the yard movement by remote control, and was driven to the East End Yardmasters Tower by another CSX employee while the yard movement was underway.

The RCO stated that as he was riding to the East End Yardmasters Tower, he made a visual determination that the track (including the track at the two yard crossings over which the movement traversed) was clear of equipment or other obstructions. The yard movement was not conducted in an activated remote control zone. During the approximately ¼-mile shoving movement, the leading end of the movement was not under continuous observation by the RCO. The route traversed included both the yard crossing on which the accident occurred and a second, paved yard crossing.

The leading end of the yard movement, which is the end that struck the carman's pickup truck, consisted of six empty flat cars. Due to its low profile, the approach of an empty flat car is less perceptible than the approach of other rolling stock, e.g., box car, tank car, locomotive. This was exacerbated by darkness, as the sun had set approximately 1 hour before the accident.

Upon impact, the carman's truck was shoved for about 444 feet whereupon it flipped onto its roof and was additionally shoved approximately 490 feet. Immediately after the accident, the truck was observed with its backup lights illuminated and its backup alarm sounding, indicating that the carman had backed onto the crossing ahead of the yard movement.

The RCO stated that he stopped the yard movement when he noticed a strange white light at the leading end of the yard movement and heard a radio transmission to stop the yard movement. The preliminary investigation disclosed that upon impact, the carman in the pickup truck transmitted his urgent plea on the mechanical department radio channel to stop the movement. That transmission was heard by the yardmaster because he could monitor the mechanical department channel in the yard office. Within seconds, the yardmaster observed the carman's truck being shoved and radioed the RCO to stop. Because the carman and the RCO were utilizing different radio channels, the carman was unable to contact the RCO directly. The yard movement finally came to rest about 1,490 feet from where the movement was initiated and 934 feet from where it struck the carman's truck. The autopsy determined that the cause of death was due to injuries sustained when the truck overturned while being shoved by the yard movement. Post-accident testing of the carman's urine specimen revealed the presence of marijuana metabolite (THCA) at low levels. Neither the parent drug (THC) nor the marijuana metabolite was detected in the blood at the established cutoff point. Since the marijuana metabolite was not active and the parent drug was not reported in the blood, these findings do not provide scientific evidence that would support any conclusion regarding possible impairment of the carman's faculties. This is particularly the case since death occurred shortly after the impact, and marijuana constituents remain stable in these fluids for long periods after metabolism ceases.

Safety Issues

CSX's General and Operating Equipment Rule R15 (published in CSX System Bulletin 001 of October 1, 2006, under Instructions Governing Remote Control Locomotive Operation) states, in relevant part, that

> [P]oint protection must be provided when cars, platform or engines are being moved and conditions require. A crewmember must take a position on the lead equipment to see that the track ahead is clear, or be ahead of the movement. When an RCO operator is providing point protection, that operator should be the primary operator when practicable.

CSX rules do not define the term ''point protection.'' Although the RCO was ahead of the movement as permitted by CSX rule, he did not observe the collision and initiated a brake application only after hearing a radio transmission from the yardmaster.

The preliminary investigation indicates that the RCO controlled the yard movement while riding in a moving motor vehicle. CSX General and Operating Equipment Rule R8 states, in relevant part, that ''[an] RCL [remote control locomotive] crew member will not operate an RCL * * * while riding in a moving motor vehicle or other machinery that is not connected to their consist.'' This rule goes further than FRA's published guidelines for the operation of remote control locomotives, which states, in relevant part: ''[W]hen operating an RCL, the RCO should not operate any other type of machinery [66 FR 10340, 10344 (Feb. 14, 2001) (Notice

of Safety Advisory 2001–01)].'' Both CSX Rule R8 and FRA guidelines were intended to address the lack of situational awareness that a person may experience when ''multitasking''—in this case, focusing on a moving train while at the same time operating or riding in a moving vehicle.

Although Federal regulations do not currently prohibit shoving movements conducted in the manner described by the preliminary findings of this accident, FRA is contemplating the regulation of shoving movements as addressed in a recently published FRA notice of proposed rulemaking (NPRM), ''Railroad Operating Rules: Program of Operational Tests and Inspections; Railroad Operating Practices: Handling Equipment, Switches and Derails [71 FR 60372, 60410 (October 12, 2006)].'' In the NPRM, FRA stated that it proposes:

> A requirement that the employee providing point protection visually determine, for the duration of the shoving or pushing movement, that the track is clear within the range of vision for the complete distance to be shoved or pushed. Shoving accidents often occur because a train crew makes a shoving movement without determining that the track is clear in the direction of movement. This proposed paragraph would address this problem by requiring an operating rule that keeps a qualified employee observing the track to make sure it is clear and remains clear [71 FR 60393].

In this instance, the RCO apparently made an initial determination that the track was clear, but was not in a position to determine that the track would remain clear of conflicting mechanical department vehicles. (See 71 FR at 60409 defining ''track is clear.'') Although FRA has proposed requirements for shoving movements, it has not made any decisions as to the contents of a final rule in that proceeding, and thus the proposal is not now, and may not in the future become, a regulatory requirement. Railroads, however, are encouraged to consider FRA's proposed rule and this incident as they review their operating rules.

The investigation of this accident also raised questions regarding the visibility of the rail car leading the shoving movement. As stated earlier, the lead car was a low-profile, empty flat car followed by five more empty flat cars. The first freight car of significant height was the seventh car from the lead, a box car. It is possible that the carman did not see the low-profile cars in the darkness. Although FRA does have regulations pertaining to reflectorization of freight cars, there are no Federal rules regarding illumination within rail yards, at yard crossings, or on the leading point of a movement.

The following CSX rules may apply to this accident:

CSX Safe Way, Effective January 1, 2006 at GS–10. On or About Tracks; When working on or about tracks: * * * Be alert for and keep clear of the movement of cars, locomotives, or equipment at any time, in either direction, on any track. * * * Stop and look in both directions before making any of the following movements: Fouling or crossing a track.

SJP C–177 (Rev 3/99) Safe Procedure for Backing Vehicle Driver Only:

Step 4. Always look behind you before backing. If you are not sure get out and look again.

Step 5. Avoid backing when possible, pull thru if you can, or make a circle wide enough.

Operating rule 103: When cars are shoved and conditions require, a trainman must take a conspicuous position on the leading car. At night, the trainman must display a white light.

Recommended Action

In light of the above discussion and in an effort to maintain safety in the Nation's rail yards, FRA recommends that railroads:

(1) Assess their current rules addressing safety at yard crossings, including rules governing shoving and pushing movements and backing motor vehicles;

(2) Review, or amend as necessary, their point protection rules to clarify that the person protecting the point visually determine, for the duration of the shoving or pushing movement, that the track is clear either within the person's range of vision or for the complete distance the equipment is to be shoved or pushed, or that other safeguards are observed to prevent critical incidents involving shoving movements. FRA notes that continuous observation cannot be accomplished if the person is also attempting to accomplish other tasks that cause the person to divert attention from providing point protection;

(3) Review their point protection rules and their importance with all relevant employees;

(4) Review their current rules pertaining to employee behavior on or about tracks with particular emphasis in yards with all relevant employees;

(5) Address the ability of employees to call for assistance in emergency situations through the use of common emergency radio frequencies, or by other means; and

(6) Assess the conspicuity of flat cars and other equipment with low profiles and consider measures available to increase their visibility when they are the lead car in a shoving movement, especially at yard crossings.

Failure of industry members to take action consistent with the preceding recommendations or to take other actions to ensure yard safety may result in FRA pursuing other corrective measures under its rail safety authority. FRA may modify this Safety Advisory 2007–01, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on January 11, 2007.

Joseph H. Boardman,

Administrator.

[FR Doc. E7–594 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–26848]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request approval for three years of a new information collection.

DATES: Comments should be submitted on or before March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Walker, Maritime Administration, MAR–810, 400 Seventh St., SW.,Washington, DC 20590. *Telephone:* 202–366–8888, *Fax:* 202–366–6988; or *E-Mail: Richard.walker@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Marine Port and Terminal Infrastructure Data.

Type of Request: New Collection.

OMB Control Number: 2133-New.

Form Numbers: Marine Terminal Operator Survey (Unnumbered), Marine Port Survey (Unnumbered), and Marine Terminal Company Survey (Unnumbered).

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection Information: The Port and Terminal Infrastructure Data Collection Survey will provide MARAD with key U.S. marine terminal data to enable the agency to provide timely information to determine the present level of system performance and future requirements.

Need and Use of the Information: This biennial survey will assist MARAD in determining the number and type of facilities available for moving cargo. Emphasis will be on throughput capacity and the adequacy of the number and type of terminals available to move cargo efficiently through the U.S. global freight transportation system. The survey will also provide an overview of ownership of marine terminals in the United States.

Description of Respondents: U.S. port authorities, marine terminal operators and owners of marine terminal companies.

Annual Responses: 581.

Annual Burden: 872 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act

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

(Authority: 49 CFR 1.66)

Dated: January 11, 2007.

By Order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–595 Filed 1–17–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 11, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before February 20, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1700.

Type of Review: Extension.

Title: Qualified Subchapter S Subsidiary Election.

Form: 8869.

Description: Effective for tax years beginning after December 31, 1996, Internal Revenue Code section 1361(b)(3) allows an S corporation to own a corporate subsidiary, but only if it is wholly owned. To do so, the parent S corporation must elect to treat the wholly owned subsidiary as a qualified subchapter S subsidiary (QSub). Form 8869 is used to make this election.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 40,750 hours.

OMB Number: 1545–0016.

Type of Review: Revision.

Title: United States Additional Estate Tax Return.

Form: 706–A.

Description: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1,433 hours.

OMB Number: 1545–1732.

Title: REG–105946–00 (Final) Mid-Contract Change in Taxpayer.

Type of Review: Extension.

Description: The information is needed by taxpayers who assume the obligation to account for the income from long-term contracts as the result of certain nontaxable transactions.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1545–0236.

Title: Occupational Tax and Registration Return for Wagering.

Type of Review: Extension.

Form: 11–C.

Description: Form 11–C is used to register persons accepting wagers (IRC section 4412). IRS uses this form to register the respondent, collect the annual stamp tax (IRC section 4411), and to verify that the tax on wagers is reported on Form 730.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 126,175 hour.

OMB Number: 1545–1299.

Title: IA–54–90 (Final) Settlement Funds.

Type of Review: Extension.

Description: The reporting requirements affect taxpayers that are qualified settlement funds; they will be required to file income tax returns, estimated income tax returns, and withholding tax returns. The information will facilitate taxpayer examinations.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 3,542 hours.

OMB Number: 1545–0138.

Title: U.S. Departing Alien Income Tax Statement.

Type of Review: Extension.

Form: 2063.

Description: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing non-resident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Respondents: Individuals or households.

Estimated Total Burden Hours: 17,049 hours.

OMB Number: 1545–2028.

Title: Fuel Cell Motor Vehicle Credit.

Type of Review: Extension.

Description: This information will be used to determine whether the vehicle for which the credit is claimed under 30B by a taxpayer is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations and partnerships.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 280 hours.

OMB Number: 1545–1702.

Title: Information Return for Transfers Associated With Certain Personal Benefit Contracts.

Type of Review: Extension.

Form: 8870.

Description: Section 170(c) charitable organizations or section 664(d) charitable remainder trusts that paid premiums after February 8, 1999, on certain ''personal benefit contracts'' must file Form 8870.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 74,200 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–639 Filed 1–17–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel (TAP) will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 8, 2007 at 2 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Thursday, February 8, 2007 at 2 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: January 9, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–587 Filed 1–17–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel (TAP) will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 6, 2007.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, February 6, 2007 from 9 a.m. Pacific Time to 10:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: January 9, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–588 Filed 1–17–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on CARES Business Plan Studies; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on CARES Business Plan Studies has scheduled a meeting on February 9, 2007, at VA Palo Alto Health Care System, Livermore Division, Building 90, NHCU Dining Room, 4951 Arroyo Road, Livermore, CA. The meeting will convene at 9 a.m. and conclude at 4:30 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on proposed business plans at those VA facility sites identified in May 2004 as requiring further study by the Capital Asset Realignment for Enhanced Services (CARES) Decision document.

The objective of the meeting is to provide the Secretary with advice regarding the final selection of a business planning option from those previously selected by the Secretary for further study. An analysis of the business planning options completed by the VA contractor is to be presented prior to their submission to the VA. The agenda will also accommodate public commentary on the options.

Interested persons may attend and present oral or written statements to the Committee. For additional information regarding the meeting, please contact Mr. Jay Halpern, Designated Federal Officer, (00CARES), at 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273–5994, or by e-mail at *jay.halpern@hq.med.va.gov.*

Dated: January 10, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–183 Filed 1–17–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on CARES Business Plan Studies; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on CARES Business Plan Studies has scheduled a meeting for February 1, 2007, at the Lexington Veterans Affairs Medical Center, Leestown Division Auditorium Building 4,2250 Leestown Road, Lexington, Kentucky. The meeting will convene at 1 p.m. and conclude at 4 p.m. The meeting is open to the public.

The purpose of the committee is to provide advice to the Secretary of Veterans Affairs on proposed business plans at those VA facility sites identified in May 2004 as requiring further study by the Capital Asset Realignment for Enhanced Services (CARES) Decision document.

The objective of the meeting is to provide the Secretary with advice regarding the selection of a business planning option from the business planning options selected by the Secretary for further study. An analysis of the business planning options completed by the VA contractor are to be presented by the VA contractor prior to submission to the VA. The agenda will also accommodate public commentary on the options.

Interested persons may attend and present oral or written statements to the Committee. For additional information regarding the meeting, please contact Mr. Jay Halpern, Designated Federal officer, (00CARES), 810 Vermont Avenue, NW., Washington, DC 20024, or by phone at (202) 273–5994, or by e-mail at *jay.halpern@hq.med.va.gov*.

Dated: January 9, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–184 Filed 1–17–07; 8:45 am]

BILLING CODE 8320–07–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Availability of Report

In compliance with section 13 of Public Law 92–463 (Federal Advisory Committee Act) notice is hereby given that the 2006 Annual Report of the Department of Veterans Affairs (VA) Advisory Committee on Homeless Veterans has been issued. The report summarizes activities and recommendations of the Committee on matters relative to VA programs and policies affecting homeless veterans. It is available for public inspection at two locations:

Mr. Richard Yarnall, Federal Advisory Committee Desk, Library of Congress, Anglo-American Acquisition Division, Government Documents Section, Room LM–B42, 101 Independence Avenue, SE., Washington, DC 20540–4172.

and

Department of Veterans Affairs, Homeless Veterans Programs Office (075D), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 9, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–182 Filed 1–17–07; 8:45 am]

BILLING CODE 8320–07–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans; Notice of Availability of Report

In compliance with section 13 of Public Law 92–463 (Federal Advisory Committee Act) notice is hereby given that the 2006 Annual Report of the Department of Veterans Affairs (VA) Advisory Committee on Minority Veterans has been issued. The report summarizes activities and recommendations of the Committee on matters relative to VA programs and policies affecting minority veterans. It is available for public inspection at two locations:

Mr. Richard Yarnall, Federal Advisory Committee Desk, Library of Congress, Anglo-American Acquisition Division, Government Documents Section, Room LM–B42, 101 Independence Avenue, SE., Washington, DC 20540–4172.

and

Department of Veterans Affairs, Center for Minority Veterans, Suite 435, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 9, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–181 Filed 1–17–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Thursday, February 1, 2007, in room 900 at the Greenhoot Cohen Building, 1722 I Street, NW., Washington, DC. The meeting will convene at 8 a.m. and conclude at 3 p.m. The meeting is open to the public. The purpose of the Council is to provide external advice and review for VA's research mission.

The agenda will include a review of the VA research portfolio and a summary of current budget allocations. The Council will also provide feedback on the direction/focus of VA's research initiatives.

Any member of the pubic wishing to attend the meeting or wishing further information should contact Jay A. Freedman, PhD., Designated Federal Officer, at (202) 254–0267. Oral comments from the public will not be accepted at the meeting. Written statements or comments should be transmitted electronically to *jay.freedman@va.gov* or mailed to Dr. Freedman at Department of Veterans Affairs, Office of Research and Development (12), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 8, 2007.

By Direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 07–180 Filed 1–17–07; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 72, No. 11

Thursday, January 18, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0036]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study of Possible Footnotes and Cueing Schemes to Help Consumers Interpret Quantitative *Trans* Fat Disclosure on the Nutrition Facts Panel

Correction

In notice document E6–21486 beginning on page 75762 in the issue of Monday, December 18, 2006, make the following correction:

On page 75762, in the first column, under the heading **DATES**, in the second and third lines, ''December 18, 2006'' should read ''January 17, 2007''.

[FR Doc. Z6–21486 Filed 1–17–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
January 18, 2007

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 350, et al.

Electronic On-Board Recorders for Hours-of-Service Compliance; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 385, 395, and 396

[Docket No. FMCSA–2004–18940]

RIN–2126–AA89

Electronic On-Board Recorders for Hours-of-Service Compliance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs) manufactured on or after the date 2 years following the effective date of a final rule. On-board hours-of-service recording devices meeting FMCSA's current requirements and voluntarily installed in CMVs manufactured before the implementation date of a final rule may continue to be used for the remainder of the service life of those CMVs. Under the proposal, motor carriers that have demonstrated a history of serious noncompliance with the hours-of-service (HOS) rules would be subject to mandatory installation of EOBRs meeting the new performance standards. If FMCSA determined, based on HOS records reviewed during each of two compliance reviews conducted within a 2-year period, that a motor carrier had a 10 percent or greater violation rate (''pattern violation'') for any regulation in proposed Appendix C to Part 385, FMCSA would issue the carrier an EOBR remedial directive. The motor carrier would be required to install EOBRs in all of its CMVs regardless of their date of manufacture and to use the devices for HOS recordkeeping for a period of 2 years, unless the carrier already had equipped its vehicles with automatic on-board recording devices (AOBRDs) meeting the Agency's current requirements under 49 CFR 395.15 and could demonstrate to FMCSA that its drivers understand how to use the devices. We also propose changes to the safety fitness standard that would require this group of carriers to install, use, and maintain EOBRs in order to meet the new standard. Finally, FMCSA would encourage industrywide use of EOBRs by providing the following incentives for motor carriers to voluntarily use EOBRs in their CMVs: Revising the Agency's compliance review procedures to permit examination of a random sample of drivers' records of duty status; providing partial relief from HOS supporting documents requirements, if certain conditions are satisfied; and other potential incentives made possible by the inherent safety and driver health benefits of EOBR technology.

DATES: Comments must be received by April 18, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2004–18940 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN–2126–AA89). Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents including those referenced in this document, or to read comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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

Comments received after the comment closing date will be included in the docket and the Agency will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This rulemaking notice is organized as follows:

I. Legal Basis for the Rulemaking

The Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935,

now codified at 49 U.S.C. 31502(b)) (the 1935 Act) provides that ''[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' This notice of proposed rulemaking (NPRM) addresses ''safety of operation and equipment'' of motor carriers and ''standards of equipment'' of motor private carriers and, as such, is well within the authority of the 1935 Act. The NPRM would allow motor carriers to use EOBRs to document drivers' compliance with the HOS requirements; require some noncompliant carriers to install, use, and maintain EOBRs for this purpose; and update existing performance standards for on-board recording devices.

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.'' (49 U.S.C. 31136(a)) Section 211 of the 1984 Act also grants the Secretary broad power, in carrying out motor carrier safety statutes and regulations, to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate.'' (49 U.S.C. 31133(a)(8) and (10))

The HOS regulations are designed to ensure that driving time—one of the principal ''responsibilities imposed on the operators of commercial motor vehicles''—does ''not impair their ability to operate the vehicles safely.'' (49 U.S.C. 31136(a)(2)) EOBRs that are properly designed, used, and maintained would enable motor carriers to track their drivers' on-duty driving hours accurately, thus preventing regulatory violations or excessive driver fatigue, and to schedule vehicle and driver operations more efficiently. Driver compliance with the HOS rules helps ensure that ''the physical condition of [commercial motor vehicle drivers] is adequate to enable them to operate the vehicles safely.'' (49 U.S.C. 31136(a)(3)) To assist in the enforcement of the HOS regulations generally, and thus improve driver safety and welfare, FMCSA proposes to require EOBR use by motor carriers with the most serious HOS compliance deficiencies (''pattern violations''), as described elsewhere in this NPRM. The Agency considered whether this proposal would impact driver health under 49 U.S.C. 31136(a)(3) and (a)(4). Since the proposal could increase compliance with the HOS regulations, including driving and off-duty time, it would not have a deleterious effect on the physical condition of drivers. (See the discussion regarding health impacts at section 13.3.) The requirements in 49 U.S.C. 31136(a)(1) concerning safe motor vehicle maintenance, equipment, and loading are not germane to this proposed rule, as EOBRs influence driver operational safety rather than vehicular and mechanical safety. Consequently, the Agency has not explicitly assessed the proposed rule against that requirement. However, to the limited extent 49 U.S.C. 31136(a)(1) pertains specifically to driver safety, the Agency has taken this statutory requirement into account throughout the proposal.

In addition, section 408 of the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, at 958) (ICCTA) required the Agency to issue an advance notice of proposed rulemaking (ANPRM) ''dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety (including * * * automated and tamper-proof recording devices * * *) no later than March 1, 1996.'' The original ANPRM under section 408 of ICCTA was published on November 5, 1996 (61 FR 57252), the NPRM on May 2, 2000 (65 FR 25540), and the final rule on April 28, 2003 (68 FR 22456). As discussed further later in this preamble, FMCSA decided not to adopt EOBR regulations in 2003. FMCSA noted, however, that it planned ''to continue research on EOBRs and other technologies, seeking to stimulate innovation in this promising area'' (68 FR 22456, at 22488, Apr. 28, 2003).

Section 113(a) of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103–311, August 26, 1994, 108 Stat. 1673, at 1676) (HMTAA) requires the Secretary to prescribe regulations to improve—(A) compliance by commercial motor vehicle drivers and motor carriers with hours-of-service requirements; and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance. HMTAA section 113(b) states that such regulations must allow for a motor carrier's use of a ''written or electronic document[s] to be used by a motor carrier or by an enforcement officer as a supporting document to verify the accuracy of a driver's record of duty status.'' Today's EOBR proposals set forth performance standards, incentives measures, and remedial requirements for use of devices that generate such electronic documents and address the HMTAA mandate.

Section 9104 of the Truck and Bus Safety and Regulatory Reform Act (Pub. L. 100–690, November 18, 1988, 102 Stat. 4181, at 4529) also anticipates the Secretary prescribing ''a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations,'' and requires the Agency to ensure that any such device is not used to ''harass vehicle operators.'' (49 U.S.C. 31137(a))

Section 4012 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178) (TEA–21) makes inapplicable to drivers of utility service vehicles, during an emergency period of not more than 30 days, regulations issued under 49 U.S.C. 31502 or 31136 regarding ''the installation of automatic recording devices associated with establishing the maximum driving and on-duty times.'' (49 U.S.C. 31502(e)(1)(C))

Based on the statutory framework reviewed previously, FMCSA thus has statutory authority to adopt an industrywide requirement that all motor carriers subject to HOS requirements under 49 CFR Part 395 install and use EOBR-based systems. The Agency elects not to exercise the full extent of its authority at this time, however, and instead proposes a more targeted approach of mandating EOBR use for only those carriers with deficient safety management controls, as demonstrated by repeated patterns of hours-of-service violations. In this NPRM, the Agency proposes criteria for identifying carriers with patterns of HOS violations. We also propose changes to the safety fitness standard that would require this group of carriers to install, use, and maintain EOBRs in order to meet the new standard.

The determination of a carrier's safety fitness is well within the Secretary's authority. Section 215 of the 1984 Act

requires the Secretary to ''determine whether an owner or operator is fit to operate safely commercial motor vehicles,'' (49 U.S.C. 31144(a)(1)) and to ''maintain by regulation a procedure for determining the safety fitness of an owner or operator.'' (49 U.S.C. 31144(b)) That procedure must include ''[s]pecific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness.'' (49 U.S.C. 31144(b)(1)) Section 4009 of TEA–21 prohibits motor carriers found to be unfit according to a safety fitness determination from operating commercial motor vehicles in interstate commerce. With limited exceptions, owners and operators determined to be unfit may not operate commercial motor vehicles in interstate commerce beginning on the 61st day after the date of such fitness determination, or the 46th day after such determination in the case of carriers transporting passengers or hazardous materials, ''and until the Secretary determines such owner or operator is fit.'' (49 U.S.C. 31144(c))

Section 4104 of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (Pub. L. 109–59, August 10, 2005, 119 Stat. 1144) (SAFETEA–LU) directs FMCSA to revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of 49 U.S.C. 31144. Section 4114(b) of SAFETEA–LU expands FMCSA jurisdiction into intrastate operations by amending 49 U.S.C. 31144(c) to prohibit from operating in interstate commerce and intrastate operations affecting interstate commerce owners or operators of CMVs that FMCSA has determined do not meet the safety fitness requirement to operate in interstate commerce, until the Secretary determines that such owner or operator is fit.

II. Background

The Federal HOS regulations (49 CFR Part 395) limit the number of hours a commercial motor vehicle driver may drive and be on duty each day, and during each 7- or 8-day period. The rules are needed to prevent commercial vehicle operators from driving for long periods without opportunities to obtain adequate sleep. Sufficient sleep is necessary to ensure that a driver is alert behind the wheel and able to respond appropriately to changes in the driving environment. Under § 395.8, all motor carriers and drivers (except private motor carriers of passengers [non-business]) must keep records to track on-duty and off-duty time. FMCSA and State agencies use these records to carry out safety oversight activities.

As FMCSA discussed in its September 2004 ANPRM on EOBRs (69 FR 53386, Sept. 1, 2004), the methods of recording and documenting HOS have been modified several times over the years. The Interstate Commerce Commission (ICC) first established a requirement for a Driver's Daily Log in 1940. This requirement was later revised to add the familiar graph-grid recording format to the driver's log, which became known as ''Driver's Record of Duty Status (RODS).''

In the mid-1980s, motor carriers began to look to automated methods of recording drivers' duty status as a way of saving drivers time and improving the efficiency of their compliance-assurance procedures. On April 17, 1985 (50 FR 15269), the Federal Highway Administration (FHWA), the predecessor Agency to FMCSA within the U.S. Department of Transportation (DOT), granted a waiver to Frito-Lay, Inc. to allow it to use on-board computers rather than requiring its drivers to complete handwritten RODS (the driver logbook, or ''logs''). Nine other motor carriers were subsequently granted waivers.

In 1986, the Insurance Institute for Highway Safety (IIHS) petitioned FHWA to require the installation and use of automatic on-board recordkeeping systems. Although the petition was denied, FHWA determined that regulations were needed to allow motor carriers to use AOBRDs without having to seek waivers. After providing the public with notice and opportunity to comment, FHWA issued a final rule on September 30, 1988 (53 FR 38666), which revised part 395 of the FMCSRs to allow, but not require, motor carriers to equip CMVs with AOBRDs instead of requiring drivers to complete handwritten RODS (49 CFR 395.15). An AOBRD was defined under § 395.2 as:

> * * an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by § 395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.

Performance requirements for AOBRDs are straightforward. The AOBRD and its support systems must be certified by the manufacturer as evidence that they ''have been sufficiently tested to meet the requirements of § 395.15'' and Appendix A to Part 395 ''under the conditions in which they would be used.'' The design must permit duty status to be updated only when the vehicle is at rest, unless the driver is registering the crossing of a State boundary. The AOBRD and support systems must be resistant to tampering ''to the maximum extent practicable.'' The AOBRD must provide a visual or audible warning to the driver if it ceases to function, and any sensor failures and edited data must be identified in the RODS printed from the device. Finally, the AOBRD must be maintained and recalibrated according to the manufacturer's specifications; drivers must be adequately trained in the proper operation of the device; and the motor carrier must maintain a second (backup) copy of electronic HOS files in a separate location.

At the time § 395.15 was issued, the technology to allow on-board recorders to communicate data wirelessly between the CMV and the motor carrier's base of operations did not exist on a widespread commercial basis. Today's technologies allow for real-time transmission of a vehicle's location and other operational information. FMCSA calls these current-generation recording devices EOBRs. By exploiting the power of these technologies, a motor carrier can improve not only its scheduling of vehicles and drivers but also its asset management and customer service. In fact, some system providers offer applications for real-time HOS monitoring that build upon the time- and location-tracking functions included in the providers' hardware and software products. Because of these developments in technology and communications, the current, narrowly crafted on-board recorder regulations require revision.

On August 3, 1995, the IIHS, Advocates for Highway and Auto Safety (Advocates), and several other highway safety and advocacy organizations petitioned FHWA to require on-board recorders in CMVs. The petitioners believed that mandated use of these devices would improve HOS compliance, thereby reducing the number of fatigued drivers and fatigue-related crashes. Subsequently, FMCSA included in its May 2, 2000, NPRM (65 FR 25540) on HOS a proposal to require EOBRs on commercial motor vehicles used in long-haul and regional operations. In its report ''Top Ten Management Issues'' (Report Number PT–2001–017, January 18, 2001) the DOT Office of Inspector General summarized the NPRM regarding EOBR use as follows:

> Driver HOS violations and falsified driver logs continue to pose significant safety

concerns. Research has shown that fatigue is a major factor in commercial vehicle crashes. During roadside safety inspections, the most frequent violation cited for removing a driver from operation is exceeding allowed hours of service. Use of electronic recorders and other technologies to manage the HOS requirements has significant safety value. FMCSA's [May 2, 2000] proposed rulemaking would revise the hours of service by reducing the driving time allowed within a 24-hour period and by phasing in, over a period of years, the use of on-board electronic recorders to document drivers' hours of service. The Congress prohibited the Department from adopting a final rule during FY 2001. FMCSA management should use this time to consider all of the comments received and revise the proposed rule as appropriate.

When FMCSA published its final HOS rule in April 2003, however, the proposal for mandatory use of EOBRs for CMVs used in long-haul and regional operations was withdrawn (68 FR 22456, Apr. 28, 2003). FMCSA concluded there were insufficient economic and safety data, coupled with a lack of support from the transportation community at large, to justify an EOBR requirement at that time. The Agency based these conclusions on the following:

(1) Neither the costs nor the benefits of EOBR systems were adequately ascertainable, and the benefits were easier to assume than to accurately estimate.

(2) The EOBR proposal was drafted as a performance standard, but enforcement officials generally preferred the concept of a design standard to facilitate data accessibility.

(3) There was considerable opposition to the proposal to phase in the EOBR requirement, starting with large long-haul motor carriers—those having more than 50 power units. Large carriers argued that mandated EOBR use was irrational because small carriers generally have higher crash rates. Major operators also complained that the phase-in schedule would force them to pay high initial prices for EOBRs, while carriers allowed to defer the requirement would benefit from the lower costs associated with increased demand, competition, and economies of scale.

(4) There was considerable concern about the potential use of EOBR data for purposes other than HOS compliance.

On July 16, 2004, the United States Court of Appeals for the District of Columbia Circuit vacated the 2003 final rule, for reasons unrelated to EOBRs. See *Public Citizen, et al.* v. *FMCSA,* 374 F.3d 1209 (D.C. Cir. 2004). In dicta, however, the court stated that section 408 of the ICCTA ''required the Agency, at a minimum, to collect and analyze data on the costs and benefits of requiring EOBRs.'' (Id. at 1221)

On September 1, 2004, FMCSA published an ANPRM requesting comments on a wide range of issues related to the design, use, applicability, costs, and benefits of EOBRs (69 FR 53386). FMCSA also conducted research into the current use, design, and costs of EOBRs and other communications systems being deployed by trucking companies, to provide additional information on which to base an approach to incorporating EOBR requirements in the FMCSRs. This proposed rule is based, therefore, both on the comments received to the ANPRM and on independent research the Agency conducted. The four research studies cited in the ANPRM are available in the docket at entries 2, 3, 6, and 7. FMCSA sponsored three additional studies: ''Recommendations Regarding the Use of Electronic On-Board Recorders (EOBRs) for Reporting Hours of Service (HOS),'' prepared by staff of the John A. Volpe National Transportation Systems Center, U.S. Department of Transportation Research and Innovative Technology Administration, Cambridge, Massachusetts (''Volpe Center Study''); ''Technical Review and Assessment: Recommendations Regarding the Use of Electronic On-Board Recorders (EOBRs) for Reporting Hours of Service (HOS),'' prepared by Dr. Kate A. Remley, Electromagnetics Division, National Institute of Standards and Technology, Boulder, Colorado; and the 2005 update of ''On-Board Recorders: Literature and Technology Review,'' prepared by Cambridge Systematics (Cambridge, Massachusetts). These studies are also in the docket.

Three of FMCSA's sister agencies within DOT–FHWA, the National Highway Traffic Safety Administration (NHTSA), and the Federal Railroad Administration—conducted a peer review of the Volpe Center Study in accordance with Office of Management and Budget peer review requirements. The reviewers evaluated the research with respect to scientific and technical merit, adequacy, and overall quality. A summary report of the peer review panel's evaluation and FMCSA's response to the evaluation are available in the Agency's EOBR Peer Review docket (FMCSA–2006–25548) of the DOT Docket Management System.

III. Executive Summary

FMCSA proposes a comprehensive rule intended to improve CMV safety, increase use of EOBRs within the motor carrier industry, and to improve HOS compliance. The approach has three components: (1) A new performance-oriented standard for EOBR technology; (2) use of EOBRs to remediate regulatory noncompliance; and (3) incentives to promote EOBR use. FMCSA believes this approach strikes an appropriate balance between promoting highway safety and minimizing cost and operational burdens on motor carriers that demonstrate strong and consistent compliance with the HOS regulations.

EOBR Performance Requirements. In developing the proposed requirements for EOBRs, FMCSA focused its attention on seven research factors listed in the ANPRM: (1) Ability to identify the individual driver; (2) Tamper resistance; (3) Ability to produce records for audit; (4) Ability of roadside enforcement personnel to access the HOS information quickly and easily; (5) Level of protection afforded other personal, operational, or proprietary information; (6) Cost; and (7) Driver acceptability. FMCSA proposes that the EOBR record basic information needed to track duty status, including the identity of the driver, duty status, date and time, location of the CMV, distance traveled, and other items that the driver would enter (such as truck numbers and shipping document numbers). The EOBR would be required to identify the driver, although FMCSA does not propose mandating a specific identification method. This approach would allow carriers to use existing identification systems or implement newer technologies as they become feasible.

While many of the proposed requirements, such as that for tamper resistance, parallel the requirements for AOBRDs, others would extend the AOBRD requirements based on our expectation that the EOBR will have a high degree of reliability. The EOBR would not need to be integrally synchronized to the engine or other vehicle equipment. An EOBR must, however, have GPS or other location tracking systems that record location of the CMV at least once a minute. EOBRs could still use sources internal to the vehicle to record distance traveled and time. EOBRs must perform a power-on self-test on demand and must also warn the driver if the device ceased to function. Maintenance, recalibration, and self-certification requirements would be similar to those for AOBRDs.

EOBRs would need to produce parallel data streams of original and modified entries to provide an audit trail for data. FMCSA proposes several options for information transfer and display; EOBRs could produce the driver's HOS chart in a graph-grid

format in either electronic or printed form. Data transfer could be either hardwired or wireless.

EOBR Use Requirements. FMCSA is proposing to require EOBR use only for those carriers found to have HOS violation rates of 10 percent or more of the records reviewed during each of two compliance reviews (CRs), when the two reviews are conducted within a 2-year period. These carriers would be issued a remedial directive requiring that they install EOBRs in all of their CMVs and use the devices for HOS recordkeeping for a period of 2 years. This approach focuses on carriers with a history of serious HOS violations.

EOBR Incentives. FMCSA would encourage all motor carriers to install and use EOBRs. Some carriers are reluctant to take this step, out of concerns that EOBRs' accuracy and the accessibility of the electronic records they generate would cause safety investigators to examine all of the carrier's HOS records and make minor violations easier to identify. We believe these concerns are warranted. To avoid putting EOBR-using carriers at a disadvantage during CRs, and to provide an incentive for EOBR use, under this proposed rule FMCSA would evaluate HOS compliance differently during CRs of carriers using EOBRs voluntarily than during CRs of other carriers. If a carrier voluntarily using EOBRs is found to have HOS violations in 10 percent or more of the records reviewed in the initial analysis, which focuses on drivers expected to have compliance problems,[1] FMCSA would conduct a second review, of a random sample made up of records of duty status for the carrier's other drivers, and use the results of the second sample in determining the carrier's safety rating. FMCSA would assess civil penalties on the carrier in the Notice of Claim phase for all HOS violations discovered, regardless of the safety rating assigned. (If the initial, focused sample did not disclose a 10 percent or greater violation rate, then under current regulations the violations found would not affect the carrier's safety rating in any case.) We believe this approach would remove a disincentive to EOBR use while maintaining the Agency's focus on safety. This incentive would not be available to motor carriers operating under a remedial directive to install, use, and maintain EOBRs.

Under this proposed rule, FMCSA also would provide partial relief from HOS supporting documents requirements for motor carriers that voluntarily use EOBRs, provided certain conditions are satisfied. EOBRs meeting the proposed requirements produce regular time and CMV location position histories sufficient to verify adequately a driver's on-duty driving activities. Motor carriers voluntarily maintaining the time and location data produced by such devices would need to maintain only those additional supporting documents as are necessary to verify on-duty not-driving activities and off-duty status.

FMCSA is also requesting comment on other incentives for EOBR adoption. We are interested in identifying other regulatory relief that a motor carrier's EOBR use might justify, including relief from specific HOS requirements or limitations consistent with the safety and driver health benefits of EOBR technology.

Other Issues. In response to the ANPRM, some carriers and drivers expressed a reluctance to use EOBRs because of other uses that could be made of the data the devices produce. Drivers objected to the devices as an invasion of privacy and as a source of information that could be used against them for non-HOS-related issues, such as speeding. Carriers were concerned that the data could be used in post-crash litigation. Both asked that FMCSA limit access to the data for the purpose of HOS compliance-related enforcement.

This NPRM does not propose to require EOBRs to record engine speed, although we are aware that other data could be used to derive that information. We recognize the industry's concerns in this area, and are not proposing that EOBRs display, or make readily available to enforcement officials, information other than what is necessary to determine compliance with the HOS regulations.

IV. Discussion of Comments to the ANPRM

A. Overview of Comments

FMCSA received 307 comments in response to the ANRPM. Nearly half (148) were from drivers or driver trainers. There were 35 comments from private citizens, not all of whom indicated whether they were drivers. FMCSA also received comments from 70 carriers, 35 of which were owner-operators. Fourteen trucking associations submitted comments, as did three passenger carrier associations. Also commenting were six advocacy organizations and eight associations representing companies such as utilities, ready-mixed concrete suppliers, and solid waste management firms. Finally, 15 vendors of EOBRs or similar products, 3 individual non-trucking firms, one union, and one law enforcement agency submitted comments.

In addition, 172 of the commenters to FMCSA's May 2, 2000, NPRM on hours of service of drivers (65 FR 25540) included comments on the issue of an EOBR requirement. Of these commenters, 48—including the National Transportation Safety Board (NTSB), advocacy organizations, 8 carriers, and 34 drivers—supported such a requirement, while 124 were opposed. The latter group included construction industry associations and carriers, trucking associations, an express carrier, and 88 drivers.

The potential imposition of an EOBR requirement drew diverse comments. Some motor carriers requested that FMCSA exempt them from any EOBR requirement because of the nature of their activities. By contrast, other carriers thought any requirement to use EOBRs should be applied evenly across the industry to maintain a level playing field. The Canadian Trucking Alliance (CTA) stated that it ''has adopted a policy position, which has been communicated to Canadian governments at both the Federal and provincial levels, that calls for the mandatory use of EOBRs for the operators of all commercial vehicles, where a commercial driver's license is required to operate the vehicle and a logbook must be completed by the driver under the current rules.'' Advocacy organizations recommended an across-the-board mandate, viewing full compliance with the HOS regulations as vital to roadway safety. They believe EOBRs are necessary to improve both motor carriers' compliance with the HOS regulations and FMCSA's ability to enforce them.

Many drivers contended that mandating EOBR use would constitute an unwarranted (and possibly unconstitutional) invasion of privacy. Some expressed concerns about trucking companies using EOBRs to maximize driving time under the HOS regulations at the expense of driver health and safety. The Truckload Carriers Association (TCA) cited protections afforded to consumer credit reports by the Fair Credit Reporting Act and the protections of medical information required by the Health Insurance Portability and Accountability Act of 1996.

[1] FMCSA's routine compliance review procedures call for FMCSA or State safety investigators to focus their sample of HOS records on the RODS of drivers involved in interstate recordable accidents, drivers placed out of service for hours-of-service violations during roadside inspections, drivers discovered to have poor driving records through Commercial Driver's License Information System checks, recently hired drivers, and drivers having a high probability of excessive driving.

Motor carriers and trucking industry associations also expressed concerns with a potential mandate. Many motor carriers, especially smaller companies, echoed drivers' concerns regarding the potential financial burden of installing and maintaining EOBRs. On the other hand, several medium and large carriers noted they currently use vehicle tracking and wireless communication systems. They asked FMCSA to consider those systems as equivalent to EOBRs, similar to the exemption granted to Werner Enterprises (Werner) (69 FR 56474, Sept. 21, 2004) to allow use of a system based upon global positioning system (GPS) technology. Motor carriers using these and similar systems asserted that the costs of installing and maintaining EOBRs would be counterbalanced by savings from operating efficiencies and reduced paperwork.

Drivers generally expressed concerns about the EOBRs. They objected to the potential purchase and maintenance costs, and questioned the potential for improved accuracy of EOBR-generated RODS over paper RODS, because AOBRDs (and EOBRs) cannot automatically distinguish between ''off-duty'' and ''on-duty not-driving'' status requiring manual input from the driver. Other commenters questioned the prospect of potential cost savings from automated recordkeeping, the potential for improving motor carrier HOS compliance and FMCSA's oversight activities, and the relationship between HOS compliance and highway crashes. Both drivers and motor carriers expressed concern about the potential for ''scope creep''—the potential use of EOBRs to collect data unrelated to HOS compliance for use in enforcement and litigation actions likewise unrelated to HOS.

B. Key Research Factors

As noted under *EOBR Performance Requirements,* the ANPRM specifically requested comments on the seven key research factors initially discussed in the April 2003 HOS final rule and in the Executive Summary of this preamble.

Commenters suggested a number of additional research factors. For example, the Specialized Carriers and Rigging Association (SCRA) and the Owner-Operator Independent Drivers Association (OOIDA) stated that FMCSA needs to gather data to establish whether a correlation exists between the use of EOBRs (both § 395.15-compliant devices and other systems, such as that used by Werner) and improved truck safety.

The American Trucking Associations (ATA) recommended FMCSA consider maintenance and inspection of systems; performance certification and compliance of new systems; product assurance and validation; interoperability; and existing or future system evolution. ATA also encouraged FMCSA to expand the list by fostering an open stakeholder dialogue beyond the docket submission period.

Advocates supported the Agency's research criteria with the exception of driver acceptance, contending this ''cannot be used as a barometer for the mandatory adoption of this important safety technology'' because drivers face pressure to accept schedules that cannot be met without violating speed limits and the HOS regulations. Advocates suggested adding three other criteria: High levels of crash damage resistance; the capability to track real-time geographic location to ensure compliance with CMV weights-and-dimensions laws and hazardous materials routing regulations; and interoperability of all EOBR data and data retrieval ''in accordance with the protocols that have been issued by the Intelligent Transportation Systems consensus positions of the ITS America Committee and constitute a baseline for interoperability in the U.S. Department of Transportation.''

IIHS commented on FMCSA's methods of gathering information rather than on its choice of research criteria. IIHS thought FMCSA should conduct a field operational test of EOBR devices and conduct formal surveys to gather data on EOBR benefits, costs, and use in HOS enforcement.

Motor carriers also suggested additional research factors. J.B. Hunt suggested ease of use, restrictions on use while a vehicle is in motion (for solo operations only), driver distraction, and device durability. Schneider recommended comparing the effectiveness of EOBRs, paper RODS, and existing compliance programs in reducing motor carrier crash rates. FedEx cited the ability of a device to produce documents for review at roadside as a key technical requirement, and called on FMCSA to assess categories of motor carrier operations for which an EOBR mandate would be appropriate.

One equipment vendor suggested researching EOBR physical durability and system architecture, including two-way communications and GPS capabilities.

A number of commenters stated that FMCSA needs to gather additional information through discussions with stakeholders. They believe this would provide a better means of exchanging information with the Agency than responding to a rulemaking docket. Only IIHS suggested FMCSA has enough information to craft a ''workable'' EOBR mandate. Other commenters urged FMCSA to move deliberately and obtain more information from motor carriers, law enforcement personnel, and drivers.

With respect to EOBR performance standards, ATA recommended a facilitated dialogue among motor carriers, FMCSA, and enforcement personnel as the most effective way to develop standards serving the interests of all. Such a process could decrease ambiguities in interpretation between and among manufacturers and service providers, increase EOBRs' usefulness to trucking companies, and improve the efficiency of the HOS records auditing process.

Schneider said the ''continued instability'' of the Federal HOS regulations and the interrelationships between the HOS regulations and HOS records make it difficult to answer the questions posed in the ANPRM. Schneider and other commenters suggested FMCSA move forward deliberately, promulgate tentative minimum functional specifications, request comments regarding the costs and benefits of compliant EOBRs, and consider a general EOBR mandate only after performing a more precise and comprehensive benefit-cost analysis. Overnite Transportation stressed the need for additional input from the motor carrier industry and the law enforcement community.

Werner asserted that many motor carriers have reviewed its system and expressed an interest in implementing a similar system, but are unwilling to move forward given the open status of the EOBR rulemaking. Werner recommended that FMCSA assure motor carriers that their systems (including ones similar to the Werner paperless logging system) would still be considered acceptable alternatives to EOBRs should new rules be implemented.

Many commenters (chiefly individuals) expressed concerns about other HOS compliance and motor carrier safety matters. These included excessive and unpaid delays at loading and unloading docks contributing to driver fatigue and unsafe driving, the relationship between the HOS regulations and driver pay, unsafe driving behavior by non-CMV drivers contributing to highway crashes, inadequate training of new drivers, anti-idling rules, and lack of legal truck parking.

Agency Response

FMCSA agrees with many of the commenters' recommendations, which are reflected in several elements of the proposed rule. For example, we are proposing a performance standard concerning geographic location tracking of the CMV as well as providing for interoperability between EOBRs and support systems and compliance-assurance systems, as recommended by Advocates and other commenters. We conferred with FHWA concerning Advocates' recommendation on interoperability of EOBR data and data retrieval. FHWA is not aware of any ''ITS America consensus protocols'' in existence. We intend to develop the EOBR performance specifications in accordance with ITS America's ''ITS/CVO [Intelligent Transportation Systems Commercial Vehicle Operations] Interoperability Guiding Principles'' and DOT's Commercial Vehicle Information Systems Network [CVISN] Architecture.

In response to a recommendation by ATA, Schneider, Overnite, and others, we are providing a longer than normal public comment period for this proposal to allow commenters ample time to develop their responses and ensure careful consideration of a cross-section of opinion. The Agency believes this deliberate approach, encompassing extensive analysis of public comment and the available research, is essential to provide the foundation for the ''workable'' rule to which IIHS referred.

In response to Werner Enterprise's comment, we would continue to allow Werner to operate under the exemption granted on September 21, 2004 (69 FR 56474) for vehicles manufactured prior to 2 years after the effective date of an EOBR final rule. EOBRs installed in vehicles manufactured after that date would be required to comply with requirements under an EOBR final rule.

C. Comments on the Requested Subjects

The Agency also requested comments on 15 subjects, denoted as A through O in the ANPRM. The comments to those subjects are addressed below.

1. Synchronization of Recorder to a Vehicle Operating Parameter

Commenters disagreed about whether it is necessary to synchronize an EOBR to the CMV to capture data necessary to establish a driver's ''on-duty, driving'' status. Seven of the 10 equipment and systems providers commenting on this topic believe that EOBRs should be integrally synchronized to the CMV, either directly to the engine control module (ECM) or via the vehicle's electronic network (databus). Several stated that their products also support CMV location tracking via GPS or other means.

XATA, an EOBR vendor, asserted that integral synchronization is not only more cost-effective than GPS and other technologies but provides EOBR manufacturers a standard interface method to ensure accurate tracking of vehicle motion and other operational data. Tripmaster stated ''electronic engine control modules (ECM) are calibrated during the manufacturing process with the proper odometer pulse per mile value,'' and that EOBRs connected to the ECM ''are in effect self-calibrated.'' Tripmaster supported GPS as an alternative distance measurement, rather than as the primary source of such measurement. PeopleNet supported synchronization with the databus, using ECM data to determine travel distance and GPS to confirm location. Qualcomm recommended that ''integrally synchronized'' refer to an EOBR system in which at least one component is directly connected to the engine of the CMV in which it is installed, to enable the EOBR to collect and record CMV functions as they occur. Siemens stated its experience in other countries is that most falsifications are based on a tampered speed signal. It recommended tracking CMV speed through vehicle sensors combined with a GPS speed signal. Darby Corporate Solutions believes an EOBR should record only vehicle information, not duty status, which it contended should be recorded by a separate device. Karta Technologies described how its vehicle-tracking product could incorporate an EOBR function.

In contrast, three commenters, LinksPoint, Nextel, and CPS, supported a GPS-only system without integral synchronization to the CMV. LinksPoint asserted that a combination of driver-reported status and GPS-sensed data (such as vehicle motion) would permit an economical ''semi-automated'' and ''minimally compliant device'' approach to HOS recording, and believes current mobile computing technology would allow for error checking to improve data accuracy and protect against fraud. CPS contended the databus standards are ''out-of-date and rely on input from engine sensors that may be inaccurate and need regular calibration,'' whereas a GPS-only system would be self-contained, stand-alone, and tamper resistant. Nextel advocated integrated GPS technology as more accurate and providing near-real-time reporting.

Motor carriers generally supported retaining a requirement for integral synchronization of the EOBR with the CMV. Greyhound, J.B. Hunt, Maverick, and Schneider contended that synchronization is essential, but also noted EOBRs depend upon human input to record duty status accurately. J.B. Hunt supported concurrent use of GPS-enabled location tracking and recording. Schneider believes synchronization of EOBRs with vehicle electronics ''would require significant filtering to avoid data overload and misleading results.'' Schneider suggested FMCSA request comments on the new European Union (EU) digital tachograph, specifically concerning how it records CMV movement. Schneider stated it is concerned FMCSA may be considering use of handheld GPS devices, a technology it does not consider appropriate. ATA generally supported development of reliable data parameters and standards. However, ATA did not support revising the current regulations, as it believes the problems cited in the ANPRM pertain to systems that do not comply with these rules.

The Santa Clara Valley Transportation Authority, a public agency not subject to the FMCSRs for most of its operations, opposed continuing the synchronization requirement. The transportation authority uses automated vehicle location and GPS capabilities and has incorporated HOS rules into the Santa Clara bus schedules.

Advocacy organizations supported maintaining the synchronization requirement. IIHS asserted the most important capability is the accurate recording of driving time, a feature most of today's systems provide. Citing FMCSA's past studies, Advocates and Public Citizen opposed GPS-only systems and supported a combination of GPS technology and recording of on-board vehicle operating parameters.

Law enforcement interests also supported the notion of an EOBR providing a combination of location tracking and vehicle data. The Commercial Vehicle Safety Alliance (CVSA) cited a need for redundancy to minimize errors and falsification. The California Highway Patrol (CHP) thought synchronization among multiple data sources and the EOBR is vital to overcome the shortcomings of any one system.

One commenter stated that an EOBR should record only data, should not be programmed to ''make assumptions'' as to duty status, and should record GPS data continuously. Another commenter said an EOBR should record data from the vehicle databus in real time. The International Foodservice Distributor Association opposed any rule requiring

use of GPS and engine data to track HOS compliance.

Agency Response

The purpose of an AOBRD or EOBR is to accurately record a driver's sequence of duty statuses, the time the driver is engaged in a given duty status category, and the sequence of dates, times, and locations that make up a trip. Historically, the only information available from a source not directly controlled by the driver was the driving time and distance, both of which were obtained from a source on the vehicle. Change-of-duty status locations had to be entered manually. In the 20 years since AOBRDs were first used, communications and logistics management technologies have evolved to enable a more fundamental item of information—vehicle location—to be tracked and recorded. The precision and accuracy of this recording has come to rival that of distance-and-time records from the CMV.

FMCSA believes it is appropriate to offer an alternative, performance-oriented approach that allows motor carriers and EOBR developers to take advantage of emerging technologies. Specifically, FMCSA now believes that an EOBR does not necessarily have to be ''integrally synchronized'' with the CMV to provide an accurate record of driving time, equivalent to that of an electronic odometer or the time function contained in an ECM. The Agency is proposing to allow two ways to record distance traveled and time: (1) Via sources internal to the vehicle (i.e., the ECM with an internal clock/calendar) to derive distance traveled, or (2) via sources external to the vehicle (i.e., location-reference systems—GPS, terrestrial, or a combination of both) recording location of the CMV once per minute and using a synchronized clock/calendar to derive distance traveled (''electronic breadcrumbs''). This approach has the potential advantages of removing a restrictive design requirement, providing an opportunity for innovation, and allowing use of less expensive hardware (e.g., GPS-enabled cell phones), without making existing synchronized devices obsolete.

Regardless of the communications modes (wireless or terrestrial) and the method used to synchronize the time and CMV-operation information into an electronic RODS, FMCSA would require the records from EOBRs to record duty status information accurately. The difference proposed between actual distance traveled and distance computed via location-tracking methods over a 24-hour period would be ±1 percent. EOBR developers would need to test their devices thoroughly to ensure they meet or exceed these tolerances.

2. Amendment of Records

2.1 Should FMCSA Revise Its Definition of ''Amend'' in the Regulatory Guidance for § 395.15 To Include or Exclude Certain Specific Activities?

Nearly all commenters who addressed this question supported a regulatory provision to allow drivers to amend or annotate in some way the duty status records captured by an EOBR. However, commenters did not, for the most part, directly address the question of whether FMCSA should revise its definition of ''amend'' in the Regulatory Guidance. Several stated that drivers should have the opportunity to amend on-duty not-driving, off-duty, and sleeper-berth status entries to ensure they are accurate, while others opposed allowing drivers to amend any driving time entries. A few opposed any provisions for drivers to amend or annotate EOBR records.

All motor carriers addressing this issue said FMCSA should allow drivers to make amendments or add remarks in some circumstances, although three opposed allowing amendment of on-duty driving time. J.B. Hunt recommended against allowing amendments of driving time entries, but supported allowing drivers to add information in a Remarks section. J.B. Hunt suggested employee drivers might request their company to correct driving time errors, while independent owner-operators might make these requests through a ''compliance consortium'' similar to those used to manage random drug and alcohol audits. Maverick Transportation recommended allowing drivers to amend records and enter explanatory remarks. Roehl Transport recommended prohibiting modification of a record ''if the truck is moving.'' Greyhound Lines' support for allowing amendments was based upon its contention that an EOBR cannot distinguish between a vehicle idling in traffic (on-duty/driving) and idling at a terminal (on-duty not-driving or off-duty). Greyhound also pointed to the need to correct errors when a new driver takes over a vehicle but the previous driver has forgotten to log off. Werner Enterprises noted its current system explicitly measures only driving time, with all other duty status entries requiring driver input. Based upon its experience in training thousands of drivers, Werner contended that prohibiting corrections of nondriving-time errors would render the records meaningless.

The International Brotherhood of Teamsters (IBT) stated that FMCSA should allow drivers to amend any electronic record and add informational remarks to note traffic conditions and indicate on-duty not-driving or off-duty status.

CHP suggested FMCSA continue to prohibit amendments of any permanently recorded entry or data parameter, but allow comments regarding entry omissions and inadvertent errors as ''corrections'' in line with the current regulatory guidance for 49 CFR 395.8, Question 8. CVSA supported this position.

Advocates stated that FMCSA should allow drivers to make separate annotations in certain circumstances, but should not allow alteration of any data captured by an EOBR. It opposed the idea of allowing drivers to use the Remarks section to provide details of on-duty not-driving activities, reasoning that certain drivers would misrepresent some on-duty not-driving time as off-duty time. Advocates noted FMCSA did not include in the ANPRM any discussion of how to accurately verify work and rest time periods that an EOBR could not capture.

Most of the vendors commenting on this issue supported allowing drivers to make amendments or annotations to the duty status recorded by an EOBR. For example, PeopleNet stated that without a process to allow drivers to amend records, motor carrier personnel would have to be available around the clock to respond to drivers' requests for annotations. It recommended requiring that drivers enter remarks describing the reason for the amendment, requiring the amendment to be visible to safety officials and motor carrier back-office staff, and prohibiting drivers from making amendments after the RODS has been certified. Siemens and CPS opposed any alteration or annotation of EOBR data. According to CPS, a system should provide function keys to allow the driver to record events. Other vendors commented that drivers' annotations or entries in the Remarks section would provide adequate documentation of non-driving time activities, trips of short duration, circumstances when a CMV may be stopped in traffic upstream of a crash, use of a CMV as a personal conveyance, and other situations. However, Siemens believes permitting any modification of recorded data would encourage falsifications.

2.2 Should Drivers Be Allowed To Amend the Duty Status Record if the System Maintains Both the Original and Amended Records?

As with their responses to the previous question, most of the commenters addressing this issue thought drivers should be allowed to amend the duty status record if the EOBR maintains both the original and amended records. However, several commenters opposed allowing drivers this privilege, while others raised questions without taking a stance.

Four of the five motor carrier commenters took an affirmative position. Schneider believes such a provision would be necessary for an EOBR system to be workable, particularly in instances of EOBR malfunction or misreadings. J.B. Hunt favored allowing drivers to add on-duty not-driving time, requiring them to request company approval to reduce prior on-duty time entries, but not allowing amendments of driving time. Roehl Transport believes drivers should not be allowed to amend their HOS records while in transit, contending that only a supervisory motor carrier official should be allowed to amend a driver's RODS. As noted under its response to the previous question, Greyhound supported allowing drivers to amend records. Greyhound suggested that drivers would have to review their electronic logs from fixed locations and carriers would have to provide a network of computer workstations.

One owner-operator saw no need to allow drivers to amend records, contending that EOBRs should prompt for an entry at each change in vehicle status. Another supported the idea of allowing amendments by drivers.

CHP and CVSA both recommended FMCSA consider a requirement for a permanent record of both original and amended entries. They acknowledged, however, that this could complicate enforcement because it would leave open the question of which version is accurate.

Advocates supported allowing a driver to enter addenda to an EOBR record, but opposed the idea of EOBRs recording ''a separate version of the RODS that has been manipulated by the driver.'' With regard to non-driving time, it had no objection to a driver's using a ''supplementary electronic logbook'' to enter non-driving work time and non-driving rest or end-of-duty-tour time. However, Advocates stressed this supplementary logbook should be matched against engine and GPS data for verification of compliance with the HOS rules.

IBT recommended allowing drivers to amend the duty status record if the EOBR maintains both the original and amended record. However, like CHP and CVSA, IBT was concerned this approach could complicate compliance assurance processes.

All but one of the vendors addressing this issue expressed qualified support for allowing drivers to amend the RODS generated by an EOBR. XATA said EOBRs could be designed to keep an original and amended copy of records or a single copy with an audit trail of the changes. Nevertheless, XATA recommended FMCSA limit drivers' amendment of records. LinksPoint echoed XATA's comments, adding that its system could flag instances when entered or amended data do not match a vehicle's GPS travel history. Tripmaster described an EOBR using GPS data to record location, vehicle movement to determine the duty status of the driver (on-duty/driving or on-duty not-driving), driver input to distinguish on-duty from off-duty status, and an internal time clock to record the time of each change in status. Provided such a system were in place, Tripmaster supported allowing a driver to alter ''clock in'' and ''clock out'' time to correct legitimate errors. PeopleNet suggested FMCSA require drivers to enter remarks describing the reason for any change and to make any amendments visible to law enforcement through in-cab and back-office reporting. It also reminded FMCSA that drivers must enter hours worked for a non-motor-carrier entity as on-duty time. Qualcomm said that drivers should be able to correct non-driving duty status as long as an audit trail is maintained, but only before a driver certifies the correctness of the daily log. In contrast, CPS contended drivers should not be allowed to amend the duty status record.

2.3 Should the Agency Maintain the Blanket Prohibition Against Drivers' Amending RODS Generated by an AOBRD?

As their comments to the previous questions indicated, most carriers supported allowing drivers to amend or annotate non-driving duty status records.

The few drivers who responded to this question were divided. One said that no one should be able to change the data recorded by an EOBR, and that drivers would soon become familiar with EOBRs and no longer need to amend their entries. Another asserted FMCSA should remove the blanket prohibition, but did not explain his position. A third driver commented that allowing drivers to check HOS records leads to improved efficiency. One opposed allowing EOBR users to erase or change any data from EOBR memory, but proposed to allow amendments using preset entries from menus.

IBT contended a blanket prohibition against amending records would lead to inaccurate records, which would be contrary to the goal of mandating EOBR use.

Public Citizen, Advocates, and CVSA urged FMCSA to maintain its blanket prohibition against drivers amending records. Public Citizen stated that allowing manual entry of duty status and revision of records would effectively undermine the purpose of an automated recorder. It believes EOBRs should be designed to eliminate any need to amend records or enter duty status manually.

CHP recommended against allowing drivers to amend records, but proposed allowing annotation of the records with comments. CHP believed the motor carrier should make the decision on whether its drivers may amend EOBR records.

Most of the equipment providers favored allowing drivers to make amendments. XATA would allow a driver to amend a RODS to revise off-duty time to on-duty. It stated that many edits are not critical because motor carriers using EOBRs audit and edit the RODS to ensure accuracy. XATA said owner-operators would have to use a service provider to process the data or purchase supporting software to edit and record changes. LinksPoint also recommended FMCSA remove the blanket prohibition on driver amendments, because it has required device providers to develop complex and expensive systems and discouraged carriers from adopting tracking technology. Tripmaster and Qualcomm asked FMCSA to reconsider the prohibition. Qualcomm pointed out that since there is no way to automatically detect non-driving duty status, there would be no net safety benefit to imposing severe restrictions on drivers' correcting their RODS. PeopleNet said that this requirement would require motor carriers to have safety managers on call around the clock to revise records at a driver's request.

Nextel recommended FMCSA prohibit EOBRs that allow edits to be entered via the device. Nextel's system, based on a wireless handset, would allow authorized management to make edits in the main office system and transmit the edited record back to the handset in near-real-time. As it noted in its responses to the other questions, CPS

strongly believes that FMCSA should maintain the prohibition.

Agency Response to Comments Concerning the Amendment of Records

Some of the comments suggest there may be confusion regarding the terms ''edit,'' ''amend,'' and ''annotate.'' FMCSA does not intend to allow edits or amendments that would erase duty status records, delete an on-duty-driving entry, or allow software-generated defaults to be used to mask on-duty driving or on-duty not-driving (ODND) time.

One EOBR systems provider, PeopleNet, contacted FMCSA in 2002 requesting guidance on interpreting § 395.15(h)(2): ''The driver must review and verify that all entries are accurate prior to submission to the employing motor carrier.'' The vendor was concerned that any alteration of data would be prohibited under § 395.15(i)(3) and suggested a ''ship's log'' approach, in which the driver would make a corrective entry and note the date, time, and location of the entry correction and the reason it was being made. These corrections would be flagged, and the original record would not be modified. FMCSA agrees with this approach because the original record would be retained and the annotation would be clearly delineated as such. This is consistent with Question 2 of the Regulatory Guidance for § 395.15, which states, ''No. 395.15(i)(3) requires automatic on-board recording devices, to the maximum extent possible, be tamperproof and preclude the alteration of information collected concerning a driver's hours of service. If drivers, who use automatic on-board recording devices, were allowed to amend their record of duty status while in transit, legitimate amendments could not be distinguished from falsifications * * *.''

For an AOBRD designed and operated in compliance with § 395.15, or an EOBR designed and operated to comply with proposed § 395.16, FMCSA would retain the prohibition against any revision of on-duty driving records. Treatment of the electronic RODS reflecting non-driving duty status entries is discussed under the section concerning duty status categories.

In response to CHP's comment, we note that the Agency's Regulatory Guidance to § 395.15 describes a procedure whereby the driver would submit a revised RODS page marked ''Corrected Copy,'' and the motor carrier would retain both the original and corrected RODS pages. This would be similar to the ''ship's log'' approach.

In response to Advocates' concern about verification of work and rest time periods, FMCSA refers to its Supplemental Notice of Proposed Rulemaking (SNPRM) on supporting documents (69 FR 63997, Nov. 3, 2004). In that document, FMCSA proposed to (1) add definitions for the terms ''supporting document,'' ''employee,'' and ''driver'' to § 395.2, and provide examples of supporting documents; (2) add new § 395.10 entitled ''Systematic verification and record retention''; (3) modify the record retention requirements in §§ 390.29 and 390.31; and (4) clarify the motor carrier's responsibility to monitor drivers' compliance with the HOS regulations and verify the accuracy of drivers' RODS. Among other things, the SNPRM would explicitly require the motor carrier to have a self-monitoring system to verify the accuracy of the driver's entries for times and locations for each working day on each trip as well as the accuracy of mileage for each trip. The Agency anticipates publishing a final rule on supporting documents in the near future.

FMCSA agrees with the commenters that to facilitate motor carrier review of EOBR records, it will be necessary to clearly mark any revisions of duty status entries as amendments. FMCSA would continue to prohibit any amendment of on-duty driving status. Any annotation, including an entry in the Remarks section, would need to carry the date and time the entry was made. This is particularly important to flag annotations made after the period of time described by the duty status entry. FMCSA agrees with Advocates' comment about recording non-driving duty status information, except that we believe this information would be more appropriately included in the Remarks section of an EOBR record than in a ''supplemental electronic logbook.'' In response to Greyhound, we note that drivers have many options available to review their records without using carrier-specific workstations sited at fixed locations. AOBRDs and other on-board devices commonly record data locally—that is, on the device itself. If a motor carrier adopted an operational model that required drivers to log in to a central computer, use of contemporary database software, communications, and security protocols allows communication via any workstation with access to the Internet.

FMCSA agrees with Greyhound's concern about the need to correct errors when a new driver takes over the vehicle after the previous driver has forgotten to log off. We are therefore proposing to require a revision to the performance specification at § 395.15 to allow drivers to amend a record immediately before and after a trip or work period. Drivers would be permitted to annotate a record (such as by adding remarks), so long as the entry is time stamped and indicates who made it. The driver could make such an annotation only before submitting the day's record to the motor carrier.

3. Duty Status Categories When the CMV Is Not Moving

If a Driver Is Away From a Parked CMV But Has Not Entered a Change in Duty Status Immediately Upon Stopping the Vehicle, How Might the Driver Correct the Entry?

Some commenters contended an EOBR should automatically switch to ODND status either immediately after or shortly after a driver stops the vehicle. Others said that EOBRs should prompt drivers to enter a change of duty status when the driver stops the vehicle. A few asserted that a CMV should not start until the driver's duty status is up-to-date. As to correcting an erroneous record, some commenters believe the driver should get management's approval first, while others said drivers should be able to make the correction.

One owner-operator suggested the EOBR should set the duty status to ODND within a predetermined amount of time after stopping the vehicle, and neither the driver nor the carrier should be able to change that entry. Another suggested an EOBR system should include an alarm linked to the parking brake to remind the driver to record a duty change.

J.B. Hunt echoed the comment recommending the EOBR default to ODND after a specified time. An employee driver wishing to correct the record would be required to get management's approval. In contrast, Schneider did not think an EOBR should default to ODND if a driver fails to enter a change of duty status; instead, the driver should be given 30 minutes to correct the record retroactively.

Roehl Transport suggested allowing drivers to correct specific duty status errors, adding that the original and revised records should both be retained and the motor carrier should note and approve them. Roehl believes, however, that drivers should not be allowed to change driving time. Another motor carrier, referencing the ''driver's own handwriting'' provision of the current regulation, remarked it would not be practical to have printers attached to EOBRs in long-haul or medium-haul operations, and suggested drivers be allowed to make duty status changes

electronically provided the EOBR maintains an audit trail.

IBT believes this question illustrates that EOBRs would still require driver input for duty status changes. IBT said this continued reliance on driver input would not achieve the goal of eliminating fraudulent logbook entries, the primary purpose of using an EOBR.

CHP said EOBRs could be designed to alert drivers if they inadvertently omitted a manual duty status change. It also suggested EOBRs could be designed to prevent vehicle engine start-up unless all EOBR entries are current and permanently recorded. CHP would limit the time for correcting entries to the time of the last recorded change of duty status and require drivers to explain the oversight. CVSA expressed similar views.

Advocates opposed allowing an EOBR to default to ODND, preferring a ''standby'' mode with no data entry. Public Citizen also asserted ''the Agency must favor recorders that can accurately record non-driving duty status, rather than allow drivers to amend records.'' As an example, it cited EOBRs that signal when driver input is needed, contending this would reduce the need for later revisions.

According to XATA, most EOBRs currently in use allow the motor carrier to select a default duty status to be entered if a driver steps away from a parked CMV without entering a change in duty status. The EOBR could prompt the driver for input when he returns for information on his status after the vehicle is parked. LinksPoint's comment was similar: Although the system would rely on driver input, it would still eliminate the ability of a driver to drive while another status is chosen.

Qualcomm stated that the default duty status when a vehicle is not moving should be ODND. It asserted that, under certain circumstances, drivers should be able to make changes to any records of non-driving status directly on the EOBR; the changes should be allowed only before certification of a daily log; and the EOBR should maintain an audit trail of the original and edited data accessible to both the motor carrier and enforcement officials. Siemens recommended EOBRs automatically switch to ODND after a preset interval when the CMV is parked. In Siemens' experience, drivers quickly learn how to switch their duty status to off-duty or sleeper berth when necessary.

Agency Response

Many commenters' statements reflect the current state-of-the-practice of HOS monitoring, while some would expand the requirements to have the EOBR prompt the driver to enter information when it is apparent his or her duty status is changing (e.g., when the vehicle is parked). FMCSA agrees with the latter approach, as reflected in this proposed rule. Based on the comments as well as on extensive research findings, FMCSA recognizes that EOBRs can accurately measure driving time only when a CMV is moving.

FMCSA proposes that the ''default'' status for an EOBR be ODND when the vehicle is stationary (not moving and the engine is off) for 15 minutes or more. When the CMV is stationary and the driver is in a duty status other than the ODND default setting, the driver would need to enter the duty status manually on the EOBR.

The proposed performance requirements of § 395.16 add a provision for automatically recording the location of the CMV. The Agency believes this proposed requirement strikes an appropriate balance to improve the accuracy and reliability of ODND and off-duty information without intruding unnecessarily upon the privacy of the driver.

Drivers would still be required to record the location of duty status at each change of duty status, as currently required under §§ 395.8 and 395.15. FMCSA does not propose to specify the process (e.g., entering data via a keyboard or drop-down menus) for accomplishing this but would leave the implementation to the EOBR manufacturers.

4. Ensuring Drivers Are Properly Identified

Many commenters discussed how drivers could be properly identified. Some favored using a password or PIN number for identification, while others believe these methods would not adequately protect drivers against fraud and falsification. Technologies advocated by commenters include smart cards and biometrics, although some were concerned that biometric technology would be too expensive or unreliable.

The National Private Truck Council (NPTC) maintained that before requiring EOBRs, FMCSA must ensure the devices will accurately identify drivers and be resistant to tampering.

Advocates strongly recommended implementation of systems of codes or computer activation: ''No system of passwords or smart cards alone would deter and prevent attempts at unauthorized access and operation of a vehicle. Only unique bio-identifying driver characteristics can provide sufficient corroboration of identity for authorized access.'' Public Citizen also supported use of biometric technology such as fingerprint readers, and stated the driver should be required to log into such a system before the CMV could be started.

CVSA said driver data must follow a driver from vehicle to vehicle as well as be auditable and verifiable at roadside. It stressed the value of redundancy, suggesting that various methods of driver identification and verification could be used in combination.

ABF Freight System, Inc., a less than truckload (LTL) carrier, uses a slip-seat operation, in which drivers are not assigned to specific power units. This approach is common among LTL carriers. ABF currently uses a handset-type device providing time and location data in its city pick-up and delivery operations and asks FMCSA to consider approving such portable EOBRs, which could be assigned to specific drivers instead of vehicles. A towing company also suggested a driver-oriented approach, noting its drivers use two or three different vehicles per shift. U.S. Telecom Association offered a similar comment.

IBT and J.B. Hunt were among several commenters noting the need for the HOS record to follow drivers who operate several CMVs daily, work for more than one motor carrier, or operate as team drivers. J.B. Hunt asserted that use of smart cards would be impractical in an industry with high driver turnover. Both commenters asserted that issuing drivers a standardized Federal identification card, such as the Transportation Workers Identification Credential (TWIC) under consideration by the Department of Homeland Security, would allow them to carry their data from motor carrier to motor carrier. This would also address the needs of drivers who work part-time at multiple carriers. Of course, EOBR manufacturers would need to ensure their devices accept the standardized card and identification protocols.

J.B. Hunt said that, barring use of a standardized card, PIN numbers would be the next-best method of identification. Wireless communications systems could validate the identity of the driver against dispatch information. J.B. Hunt stated that biometric identification systems likely will be cost-prohibitive until they are generally accepted in markets unrelated to transportation. Schneider also commented that biometric technology would provide the greatest level of assurance about the driver's identity but noted it is significantly more expensive than passwords or smart cards. A private citizen also favored use of

biometrics for identification and as an antitheft device.

United Motorcoach Association (UMA) claimed there would be no way to ensure the integrity of EOBR data, including driver identification. UMA cited the lack of a national standard biometric identifier for the commercial driver's license. It also contended that smart cards would need to rely on driver identity verification at a much higher level than has been implemented to date. Greyhound also emphasized the criticality of properly identifying the driver. While supporting biometric identifiers in principle, it was concerned about high costs. In addition, Greyhound opposed a system that would preclude a vehicle from operating unless the driver were identified, as it would hinder maintenance operations.

CHP suggested using several methods of data transfer and driver identification, singly or in combination, including smart cards, PIN numbers, and associated communications systems. CHP described a card capable of recording all pertinent data about the driver that would be inserted and removed from a reader installed in each vehicle. It also described a hypothetical EOBR system using wireless communication methods to transfer data and ''biological positive driver identification.''

Vendors suggested various methods to identify drivers: Passwords or PINs, smart cards, and biometric technology. Scanware commented on the difficulties of designing EOBRs to handle team-driving situations.

Agency Response

FMCSA recognizes the diversity of motor carrier operations and acknowledges commenters' concerns about the potential costs of advanced driver identification methods such as biometric identifiers and smart cards. Various approaches to identification currently exist, while others are being developed, and carriers may have different needs and standards regarding an acceptable level of risk. Rather than limiting carriers' ability to adopt technically advanced systems or imposing duplicative requirements on carriers desiring more secure systems, FMCSA proposes to adopt a general requirement that driver identification be part of the EOBR record, without prescribing a specific approach. An EOBR would require the driver to enter self-identifying information (e.g., user ID and password, PIN numbers) or to provide other identifying information (e.g., smart card, biometrics) when he or she logs on to the EOBR system.

In response to commenters who suggested that FMCSA require use of the Department of Homeland Security's proposed TWIC to identify the CMV driver and possibly serve as a portable data record, FMCSA does not presently anticipate using TWIC for EOBR HOS data storage. There are several reasons for this. While the amount of memory required has yet to be specified, it is expected to be less than what would be needed for an EOBR application. Furthermore, FMCSA acknowledges several commenters' concerns about driver and motor carrier privacy; some information contained on the TWIC would not be relevant to an HOS record.

5. Reporting and Presentation (Display) Formats

5.1 Visual Record

Most comments on reporting formats focused on visual displays available to drivers and roadside enforcement. Commenters favored standardized visual displays because they would make EOBRs easier for both drivers and law enforcement officers to learn to use.

Commenters generally supported a potential requirement for a ''standardized'' EOBR display showing the driver's current duty status and also highlighting when noncompliance occurred. Commenters also favored providing methods for enforcement officials to download archived HOS data records. PeopleNet stated, ''EOBR manufacturers, carriers, and law enforcement should work together to develop a user-friendly reporting standards for all parties using or reviewing EOBRs.'' CVSA asserted that ''* * * standardized screen-based digital displays should be readily accessible from inside or outside the vehicle, and should provide summary and complete information upon demand.''

Agency Response

There may be a fine line between allowing flexibility in complying with a performance specification and requiring safety officials to be proficient in understanding many types of displays. The fundamental need is to provide a clear record of the sequence and progression of duty status.

Although the majority of the proposed provisions are performance based, FMCSA must consider the needs of people who will review duty status records and who are accustomed to working with the traditional graph-grid format. Both to address drivers' concerns and allay concerns that EOBRs could be difficult to monitor, FMCSA proposes a visual output file providing a graph-grid format. FMCSA recognizes this requirement could be difficult to apply to some EOBR devices because of the limited size or character density of the displays. We intend to provide as much flexibility as possible to EOBR manufacturers by recognizing alternative methods to enable display of the information.

5.2 Data Interchange Standards for Hardwired and Wireless Communications

Some commenters asserted that the RS–232—the serial communication standard required in § 395.15(b)(3)—is outdated. Siemens, IBT, and others noted that data communications technologies, formats, and protocols are evolving rapidly. Several commenters favored an open standard. For example, the Minnesota Trucking Association recommended development of ''an open-architecture system that will allow transmittal of data between motor carrier, driver, law enforcement and various other accountable entities.'' Some commenters suggested avoiding the issue of data interchange with outside entities by requiring HOS records to be uploaded to centralized file servers for query via the Internet or downloaded to the CMV for a safety official's review.

Agency Response

There is a need to set forth performance standards to support two types of communications: EOBR-to-motor-carrier and EOBR-to-roadside-enforcement-official support systems. FMCSA proposes an ASCII, comma-delimited, flat-file format for the EOBR data output record, and multiple industry-standard hardwired and wireless communications protocols. The technical specifications for the data files would be provided in a new Appendix A to Part 395.

6. Audit Trail/Event Log

Commenters generally agreed on the necessity for maintaining an audit trail. Some commenters recommended using location data (GPS or other) to compare against the EOBR data, but others thought this would be cost-prohibitive. A few suggested a requirement for a ''smart chip'' in a driver's ID card or license as one way to provide an auditable record that would verify the identity of the driver operating the CMV. Some commenters raised concerns about tradeoffs between allowing use of lower cost communications modes and adequately monitoring the systems and the data and information they contain.

PeopleNet and Qualcomm recommended the audit trail be maintained at a central office rather than onboard the vehicle.

In response to the ANPRM question about the system providing a gateway for electronic or satellite polling of CMVs in operation, four commenters opposed such polling while one carrier inquired what the interval between pollings would be.

Commenters supported continuing the requirement to use a RODS if an EOBR is not functioning. One commenter suggested a maximum time limit of 14 days.

Agency Response

FMCSA proposes a general requirement for auditability based upon the text of Section F of the ANPRM preamble (69 FR 53386 at 53392, Sept. 1, 2004):

> An audit trail must reflect the driver's activities while on duty and tie them to the specific CMV(s) the driver operated. Its design must balance privacy considerations with the need for a verifiable record. The audit trail should automatically record a number of events, including (1) Any authorized or unauthorized modifications to the duty status records, such as duty status category, dates, times, or locations, and (2) any ''down'' period (e.g., one caused by the onset of device malfunction). In addition, the system should provide a gateway for electronic or satellite polling of CMVs in operation, or for reviewing electronic records already downloaded into a central system. This capability would permit reviewers to obtain a detailed set of records to verify time and location data for a particular CMV. The presentation should include audit trail markers to alert safety officials, and personnel in the motor carrier's safety department, to records that have been modified. The markers would be analogous to margin notes and use highlighted code.

FMCSA would continue to focus on a performance-based regulation, while providing guidance to develop workable and verifiable record generation and recordkeeping systems. Regardless of the communications modalities (satellite or terrestrial) and the method used to synchronize the time and CMV-operation information into an electronic RODS, we would require EOBR records to record duty status information accurately and to maintain the integrity of that information.

This NPRM includes a requirement that EOBR records—both original entries and any revisions—be viewable. The viewable record would encompass any modifications from the original entries, the identities of people who entered and amended data, and the date and time the original entries and any amendments were made.

As discussed earlier in this document, FMCSA proposes requiring drivers to enter identifying information but will not specify the use of a particular technology (such as removable smart cards or biometric identifiers).

With regard to a ''gateway'' for satellite polling of CMVs in operation, FMCSA would require that the HOS information be available immediately upon request by a roadside safety official. Under FMCSA's standard operating procedures, those records would also need to be made available upon request by a safety official performing a CR, safety audit, or safety investigation. We propose to require the system records to be as accurate as those from systems that are integrally synchronized with the CMV's operations. Specifically, EOBR data for CMV location would need to provide an auditable record of the vehicle's location within +/−1 percent distance accuracy on a daily basis.

7. Ability To Interface With Third-Party Software for Compliance Verification

Several commenters noted the potential benefits and limitations of using third-party systems. Although third-party systems could provide an extra layer of compliance verification, the variety of systems on the market and their limited current usage by small motor carriers could present obstacles. These commenters recommended FMCSA adopt a standard method and format for data transfer, such as Extensible Markup Language (XML).

Most vendor commenters said that third-party compliance verification software would not be necessary for EOBR systems, particularly if vehicle location information were derived from GPS data. Qualcomm noted, ''Currently available third-party compliance tools audit the driver's RODS [paper record] by using supporting document information * * * such as fuel and toll receipts and miles driven.'' Motor carriers reported mixed experience with third-party software. Two respondents have developed their own systems for compliance verification; others cited lack of an available interface with current auditing software and concerns about the accuracy of ''point-to-point'' software. Qualcomm urged FMCSA to establish performance standards for EOBR-collected data. CVSA recommended the Agency develop a self-certification program for third-party vendors.

Several commenters, in contrast to their responses to the previous question, indicated carriers have used third-party software for HOS review and auditing or have experience with dispatch and routing software packages. One industry group expressed concerns about costs to small motor carriers.

Agency Response

In keeping with our performance-based approach to this rulemaking, FMCSA proposes that EOBRs be required to provide output data in a file format described in an appendix to the proposed regulation (new Appendix A to Part 395). We will not propose a requirement for compatibility with specific third-party software.

8. Verification of Proper Operation

Many commenters supported a requirement for EOBRs to perform self-tests and internal monitoring and to notify drivers, dispatchers, and roadside enforcement officials of device failures. IBT stated that a system ''must maintain a record of and report out all malfunctions, calibrations, and be capable of performing self-tests on demand.'' CPS considered this feature unnecessary.

Several commenters asserted that drivers should be able to verify EOBR operation and suggested various methods. ATA pointed out that drivers, supervisors, or safety officials could require different levels of verification. Qualcomm suggested that determination of system failure should not be restricted to on-board data. In contrast, Roehl suggested the EOBR should generate an electronic audit on demand, with past records made available by the motor carrier. Siemens suggested that an EOBR be required to display the results of its last calibration check. PeopleNet said an EOBR should provide a current duty status summary, as well as a summary of the last certified 7, 8, or 14 days' worth of records.

Agency Response

FMCSA believes that having a current picture of the operational status of an EOBR will increase the confidence of drivers, motor carriers, and safety officials that the device is performing properly. Therefore, the NPRM includes a requirement for EOBR self-tests and recording of successful and unsuccessful results. The CMV driver or motor carrier official would be required to initiate a power-on self-test at the request of a motor carrier safety official. FMCSA also would require motor carriers to obtain and retain records of EOBR initial calibration, as well as any recalibrations necessary after EOBR repair or after any CMV repair that could affect the recording of distance traveled. We would anticipate conducting detailed audits of EOBR or

support system performance during CRs rather than at roadside.

FMCSA intends to require motor carriers subject to an EOBR remedial directive to accomplish timely repair or replacement of a malfunctioning EOBR, without placing the driver in an untenable position. Consistent with FMCSA's proposed requirement for the CMV driver to submit records no more than 13 days after completion, and the continuing requirement that the driver have a supply of blank paper RODS forms to record duty status and related information for the duration of the current trip, we would require a malfunctioning EOBR to be repaired or replaced within 14 calendar days. Drivers would be required to keep handwritten RODS until the EOBR is repaired or replaced. Carriers using EOBRs voluntarily would likewise be required to maintain paper RODS during any period an EOBR is malfunctioning, but would not be subject to the 14-day time limit within which to accomplish repair or replacement of the EOBR.

9. Testing and Certification Procedures

Most commenters, except manufacturers, favored certification by FMCSA. Most manufacturers believe FMCSA should continue to allow manufacturers to self-certify their EOBRs and support systems. The few comments on maintaining a list of certified products generally opposed such a list because of concerns it could discourage the introduction of new products. Generally, the EU database specification received low marks from commenters.

Siemens said, ''There is a basic difference in the attitude of transport companies towards on-board-computers (OBC) used for fleet management and EOBRs designed to record personal activities of drivers as basis for enforcement officers to verify compliance with hours of duty regulation: OBCs are likely to be treated carefully whereas EOBRs are more likely to be subject to tampering.'' Nextel advised FMCSA to consider a requirement for hardware and software to be designed and tested in accordance with existing protocols.

9.1 Who Should Perform Certification Tests?

Many commenters favored having FMCSA establish criteria, with testing conducted by FMCSA in conjunction with CVSA, NHTSA, or other parties. Others preferred manufacturer self-certification. CVSA stated, ''Governmental or third-party verification and certification of EOBRs presents proprietary concerns, add costs, and provides limited value added.''

Advocates preferred a Federal role: ''Without either direct Federal certification or Federal criteria for accepting certification affidavits, the Federal government has no way of securing threshold manufacturer compliance.'' Tripmaster favored FMCSA certification, provided the appropriate staffing and funding resources were available. A motor carrier also stated FMCSA should be responsible for certification. A driver contended that any third-party involvement could lead to fraud.

Several commenters recommended that independent laboratories conduct testing for manufacturers, noting the extensive use of third-party assurance systems in other settings. Others expressed no preference for the type of entity performing the testing, but emphasized it must be done before an EOBR enters the marketplace. ATA pointed out that the appropriate entity to conduct the test ''is dependent upon what is required to be certified.''

9.2 Should FMCSA Continue To Allow Manufacturer Self-Certification?

Some commenters opposed continuing the status quo, citing drivers' heavy reliance on the devices and the burden on carriers associated with determining which systems comply with the regulations. As Tripmaster explained, ''The current system of self-certification is open to interpretation and dishonesty and pushes the responsibility of determining a system's compliance on to roadside inspectors, auditors, and carriers.'' J.B. Hunt added that carriers ''should not be placed in a 'buyers beware'' situation when making such a large investment.'' PeopleNet stated it self-certifies but works closely with FMCSA to ensure regulatory compliance. Some commenters would favor self-certification if FMCSA imposed requirements on manufacturers and either verified the manufacturer's compliance or conducted spot checks. ATA asked whether FMCSA had concerns based on the experience of other self-certification programs.

Other commenters favored continuing self-certification. They believe this would keep the process manageable and that manufacturers are in the best position to develop compliance tests.

9.3 Should FMCSA Develop a List of Approved Devices?

Many commenters favored this concept, especially if patterned after NHTSA's Conforming Products List. EOBR manufacturers would benefit by being able to supply customers with a certification number to prove compliance, and carriers could be held accountable for using nonconforming products. A motor carrier suggested developing two lists, one for CMVs equipped with an ECM and the other for CMVs without electronics. However, a few commenters thought FMCSA should not be relied upon to provide a list of certified devices because of the costs and the likely delay.

9.4 Should FMCSA Adopt the EU Electronic Tachograph Design Specification?

Most commenters stated that adopting the EU design specifications would be too complex and costly. These commenters argued instead for performance requirements in tandem with market-driven flexibility in EOBR design and delivery. A few commenters asserted adopting the design specifications would not be prohibitively costly, but offered no rationale for that conclusion. ATA recognized the fundamental differences between the EU design-oriented standard and a performance-based standard, noting that the former would add significant text to the FMCSRs. J.B. Hunt suggested FMCSA consider methods to ''improve uniformity and portability of carrier support technology, including calibration and diagnostics. This would permit carriers to operate a mixed fleet of EOBR units without being required to have redundant proprietary diagnostic and calibration equipment and thus should increase competition in the EOBR market and reduce costs.'' It believes specific aspects of the EU regulations, among them calibration, diagnostics, and testing, could provide guidance to FMCSA in developing its EOBR regulations. IBT believes FMCSA should discontinue reliance on performance standards and establish detailed specifications similar to the EU specifications.

Agency Response

FMCSA proposes to continue the requirement for manufacturers to self-certify AOBRDs and EOBRs. The alternative would be to have an independent entity certify each EOBR as well as any support systems. Based on the Agency's experience in developing procedures for device self-certification (''Guidelines for Development of Functional Specifications for Performance-Based Brake Testers Used to Inspect Commercial Motor Vehicles'' [65 FR 48799, Aug. 9, 2000]), as well as our knowledge of the challenges faced by the European Union in developing

and implementing its type-certification program for the new digital tachograph, we believe this alternative would be far too costly, burdensome, and time-consuming for FMCSA.

FMCSA and its predecessor agencies have the benefit of approximately 20 years' experience with AOBRDs and alternative methods for recording and reporting HOS information. Although FMCSA receives notice of deficiencies with certain AOBRDs, we address these on a case-by-case basis and reach satisfactory resolution with the device manufacturers.

We believe prospective EOBR users would be motivated to demand that the devices record duty status information accurately. Many EOBR manufacturers contact FMCSA for assistance in understanding the HOS regulations. Some have requested, and received, formal regulatory guidance concerning new features to ensure compliance while reducing the need to enter information into the devices—for example, the use of location-description algorithms in place of a location code sheet. Drivers, carriers, stakeholders, and citizens are quick to inform FMCSA about any motor carrier's attempts to obtain an economic advantage through collection of fraudulent HOS records. We take these complaints very seriously and address them through timely CRs.

In sum, FMCSA considers it appropriate to continue its requirement for AOBRD/EOBR self-certification. This NPRM proposes the EOBR performance criteria that manufacturers would follow. We would continue to require manufacturers to perform tests to ensure their EOBRs and support systems comply with these criteria.

We propose this approach for three reasons. First, it makes the EOBR manufacturer—which has the most knowledge about its hardware and software design—responsible for compliance with the Agency's performance criteria. Second, it responds to the overall excellent history of AOBRD/EOBR compliance with FMCSA requirements. Third, it allows FMCSA to devote its compliance-assurance resources to those rare situations in which motor carriers or drivers misuse EOBRs or the records they generate. Based on our 20-year history of working with AOBRD/EOBR manufacturers and motor carriers using these devices, we believe a more complex, comprehensive, and costly certification program could be marginally more effective, but at a disproportionately higher cost.

Finally, we would not maintain a list of devices self-certified by manufacturers as complying with the Agency's requirements. Although such a list could potentially be useful for informational purposes, it also would need to be continually updated to reflect accurately the latest makes and models of EOBR devices and systems. The creation and upkeep of such a list would lie outside the Agency's expertise and require the expenditure of significant resources.

10. EOBR Maintenance and Repair

Because several questions under this heading were similar, they are summarized for brevity. Most commenters responding to the first two questions, concerning automatic capture of malfunction event data in EOBR memory, asserted that all, or nearly all, malfunction events could be captured in EOBR memory. IBT supported making malfunction data accessible to enforcement personnel. Most commenters thought EOBRs should have minimal maintenance requirements.

10.1 Are Current Maintenance and Calibration Regulations Adequate?

The United Motorcoach Association was concerned EOBR repair requirements could disrupt passenger service. Tripmaster stated the current regulations concerning EOBR/AOBRD maintenance and calibration are sufficient because they require maintenance and calibration according to manufacturer's specifications, adding that EOBR maintenance should be performed in the same manner as any other safety system on a CMV. Other commenters agreed, asserting that the manufacturer should be responsible for EOBR compliance. Some supported a requirement for work to be performed by an approved source, but there were differences of opinion as to whether repair stations should be certified by FMCSA, the manufacturer, or both. PeopleNet recommended that certified vendors and carriers continue to have the ability to repair units independently of Agency oversight. Advocates said that FMCSA and NHTSA need to monitor EOBR repair facilities ''to ensure that repairs are being done properly and to detect any fraudulent manipulation of EOBR recordation capabilities and the accuracy of captured data. Such oversight can be based on a system of self-certification coupled with Agency random inspections of facilities * * *.''

Commenters disagreed on the need for recalibration. Siemens pointed out that certain changes in vehicle parameters, such as different tire sizes, motors, or gearboxes, could require EOBR recalibration. CPS maintained that solid-state electronic devices would not need recalibration.

10.2 Documentation for Installation, Repair, and Recalibration

Most commenters agreed installation, repair, and recalibration activities should be documented, and that FMCSA should have access to those facilities and documents. However, opinions differed on who should maintain the records. Several commenters believe the documentation should be maintained by the technician performing the work, while others consider the motor carrier responsible. TCA was concerned about calibration and performance standards for EOBRs; who would be responsible for EOBR calibration; and whether the driver or the motor carrier would be cited if an EOBR were found to be out of calibration.

Agency Response

The comments suggest that the current requirements for maintenance and recalibration of the devices in accordance with the manufacturer's specifications are producing the desired outcomes. As noted in the Agency response to comments on testing and certification procedures, we generally do not interact directly with EOBR manufacturers or system providers unless potential noncompliance situations are brought to FMCSA's attention. Additionally, Agency resources would not permit development of a comprehensive oversight program on EOBR repair facilities, nor does FMCSA have the legislative authority to undertake such a program.

In response to commenters' assertions that nearly all malfunctions could be captured in EOBR memory, FMCSA notes that although a sudden loss of power might not be recordable as an ''event,'' the data on the EOBR record should be self-explanatory.

In response to comments on maintenance and recalibration records, FMCSA would treat those records much like other vehicle repair and maintenance records. The motor carrier would be responsible for maintaining its EOBRs. In answer to TCA's comment, the imposition of a penalty or fine would depend upon the specific circumstances of the violation.

Finally, as noted in the Agency response to comments on verification of proper operation, FMCSA proposes to require that malfunctioning EOBRs used by carriers subject to the proposed Remedies provisions be repaired or replaced within 14 days. During the time an EOBR is not functioning and a

spare device is not available, the Agency would continue to require preparation of a paper RODS. The latter requirement would also apply to carriers using EOBRs voluntarily.

Therefore, FMCSA proposes to apply the provisions of the current AOBRD regulation, both by requiring EOBRs to record malfunction events and by requiring recalibration and repair. We would clarify that the motor carrier is responsible for producing maintenance records (whether prepared by the motor carrier or a third party) upon demand. See proposed §§ 385.511(c) and 395.16(p).

11. Development of ''Basic'' EOBRs To Promote Increased Carrier Acceptance

Commenters were divided over whether FMCSA should develop specifications for a single type of EOBR or a family of EOBRs ranging from minimally compliant to more sophisticated devices. Commenters favoring a single standard, among them CPS, argued that a provision allowing the use of ''basic'' EOBRs by certain categories of carriers could provide these carriers with a competitive advantage. Others supported a more inclusive approach under which FMCSA would issue FMCSR specifications for a minimally compliant EOBR yet allow or encourage use of devices with more advanced capabilities, such as GPS and wireless communications.

Opinions on potential requirements for minimally compliant EOBRs generally focused less on recommended specifications than on what features to exclude. Three vendors, PeopleNet, Nextel, and LinksPoint, recommended that a ''basic'' EOBR not be integrated to receive data from the CMV's engine or other systems. PeopleNet added that a basic EOBR of this description would be appropriate for CMVs not placing ECM data on their electronic networks. Nextel and LinksPoint supported running an HOS records application on a handheld computer or cellular handset.

Some commenters opposed potential requirements for location-tracking and wireless communications capabilities. Tripmaster favored specifications for EOBRs to perform ''the sole function of automating HOS recording and reporting.'' The company contended a requirement for two-way communications would be unwarranted because of gaps in coverage, coupled with Tripmaster's perception that local and regional fleets may have little need for such communications. In contrast, PeopleNet favored systems that capture location information, allow the driver to select duty status and enter information in a Remarks section, calculate HOS, and wirelessly transfer the driver's HOS back to a server.

Qualcomm contended the regulatory standards for EOBRs should be no stricter than those for paper records in terms of driver identification, ability to correct records, and data accuracy. Qualcomm recommended that EOBR records be made accessible to the dispatcher to ensure data integrity, prevent tampering, and permit safety management oversight. The company also recommended that the EOBR notify the driver and dispatcher of any potential HOS violation. It viewed a minimally compliant EOBR as possibly combining several pieces of equipment (e.g., a black box synchronized to the engine plus a GPS-enabled phone). The synchronized system would use engine on/off to record the beginning and end of driving time. Qualcomm reasoned that carriers and drivers would be more open to the electronic recording of HOS if they could simply add an application to their existing mobile communications system, and cited one of its products as an example.

XATA and Siemens recommended that the FMCSRs require a ''basic'' EOBR, with the Agency providing incentives for motor carriers electing to add features. As examples, carriers using GPS-enabled EOBRs would not be required to carry location codebooks, while carriers using EOBR systems with wireless communications capability might be exempted from requiring drivers to carry their RODS for the prior 7 days, since the data could be downloaded from the motor carrier's home base. Siemens suggested that EOBRs minimize manual inputs. It recommended that a ''basic'' EOBR record location of duty status changes as longitude and latitude coordinates using a simple GPS module. Siemens held that the coordinates would provide sufficient information for enforcement officials without requiring translation to named places (cities, towns, or villages) by the EOBR.

TACS recommended that a ''basic'' EOBR system record the identity of the driver, time of day, direction of travel, vehicle location, speed, and driver inputs regarding duty status.

SCRA stressed the need for EOBR stakeholders to work together to develop acceptable minimum standards and uniform format. SCRA and ATA advocated flexibility and interoperability, cautioning against proprietary systems with potentially higher costs. OOIDA was also concerned about EOBR costs, particularly if EOBRs have uses or capabilities beyond what is needed for HOS compliance assurance. ATA favored uniform minimum performance standards: A ''basic'' EOBR should not require GPS or wireless technologies, but FMCSA should consider offering incentives for their adoption.

IIHS favored a relatively simple system providing features for driver identification and accurate recording of driving time and other duty status categories, but without additional vehicle performance monitoring functions. In addition to its recommendation to add several items to the ''key research factors,'' Advocates stressed the need for interoperability of data acquisition and retrieval in accordance with ITS protocols, as well as the need to include geographic position information as a component of EOBR data. Similarly, Public Citizen stated that a minimally compliant EOBR must record CMV engine status and location data.

Werner Enterprises contended FMCSA should focus its requirements on the recording of data and information required for the RODS, and not extend them beyond what is needed for HOS compliance assurance. FedEx agreed that an EOBR requirement should address only the basic and specific requirements of the HOS rules. Overnite favored technology to allow automatic data capture when a CMV passes through a weigh station. Roehl supported a requirement for a minimally compliant EOBR to deliver the electronic equivalent of an accurate RODS, at a cost small motor carriers could afford.

Schneider referred FMCSA to the European digital tachograph specification. At the same time, Schneider noted its considerable investment in communications and operations management technology, and asserted that functional specifications must be compatible with existing technologies or ''reasonable extensions'' of existing technologies.

J.B. Hunt called for minimal EOBR requirements to balance safety outcomes and implementation costs. It considers the following features necessary: Synchronization with the vehicle, with noneditable drive time; connectivity for roadside officers; GPS for position locations; and self-diagnostics. J.B. Hunt, Schneider, and other commenters opposed the notion of different requirements for larger and smaller motor carriers.

CVSA recommended that EOBR requirements be phased in over several years to minimize impacts to both the motor carrier industry and safety officials. CHP contended performance

requirements compatible with a range of devices (minimally compliant to state-of-the-practice) could be difficult to devise. It suggested retaining manual records during a phase-in, while recognizing that this could be costly. Finally, CHP stated that requiring EOBRs only on new CMVs would help mitigate cost concerns.

11.1 Performance-Based Specifications vs. Detailed Functional Specifications

Commenters generally favored performance-based over design specifications. Some noted FMCSA could set performance standards for most features yet achieve a measure of uniformity by requiring standardized reporting or display formats. Overnite recommended FMCSA concentrate on performance specifications and a standard format for EOBR readout capabilities. ATA asserted FMCSA could set performance requirements through minor revisions to § 395.15 and recommended the Agency do so before requiring EOBR use. TCA also supported performance standards, adding that they should be subject to notice-and-comment rulemaking.

IIHS, in addition to its comment (mentioned previously under *Key Research Factors*) that FMCSA has enough information to craft a workable mandate, stated that FMCSA is not required to design a system and has not explained why a performance-based system would be problematic for enforcement. It recommended FMCSA incorporate a design component into the overall system requirements and specify a uniform method of accessing the data and a uniform output record.

Qualcomm and PeopleNet reasoned that design specifications, as opposed to performance standards, would limit innovation, reduce competition among suppliers, and hinder motor carriers' adoption of new features. Qualcomm stated that FMCSA could achieve uniformity via standardized reporting or display formats of RODS, and recommended that determination of system failure be based on a performance standard. Finally, a motor carrier stressed the need to establish standards to ensure interoperability.

Agency Response

As noted in the section titled *Reporting and Presentation (Display) Formats*, the fundamental need is to provide a clear record of the *sequence and progression* of duty status. FMCSA's review of the docket comments, as well as the March 2005 Volpe Center study findings, suggest it would be appropriate to propose a single set of new performance requirements for EOBRs rather than several sets of requirements for devices with varying degrees of sophistication and complexity. These proposed performance requirements reflect what FMCSA believes the EOBR development community can currently provide to the marketplace at an affordable cost.

At the same time, FMCSA recognizes that many motor carriers have used, and will continue to use, AOBRDs that meet the definition at § 395.2 and comply with the performance requirements of § 395.15. FMCSA proposes to allow motor carriers to continue to use these devices in CMVs manufactured before the implementation date of this rule. FMCSA encourages motor carriers to adopt newer versions of on-board recording devices, but at a pace that avoids causing hardship either to carriers or to device providers. FMCSA proposes to allow AOBRDs voluntarily installed in CMVs manufactured up to 2 years after the effective date of a final rule to be used for the remainder of the service life of the CMVs in which they are installed.

As noted in the Agency response under *Key Research Factors*, FMCSA would continue to allow Werner to operate under the exemption granted on September 21, 2004 (69 FR 56474) for vehicles manufactured prior to 2 years after the effective date of an EOBR final rule. Vehicles manufactured after that date would be required to comply with the new requirements for EOBRs. Because the Agency is not proposing to require integral synchronization of the EOBR with the CMV engine, Werner's system would likely meet the proposed requirements either in full or with minor modifications.

In proposing under § 395.16 a single set of performance-based EOBR specifications, as opposed to different specifications for EOBRs with varying levels of functionality and using different communications methods, FMCSA is focusing the proposed rule on the accuracy of records of duty status rather than on the methods used to collect, store, and report the data.

FMCSA's preference is to allow flexibility in how HOS data are collected and information is derived, so long as the data accurately reflect the driver's sequence of duty status periods and the CMV's location at each change of duty status. Emerging technologies may well allow this information to be collected in ways not envisioned today, or improve the efficiency, accuracy, and cost-effectiveness of gathering and recording data.

In response to commenters who urged that the scope of the current requirement be revised, FMCSA notes that the data recorded on these systems, and the information derived from that data, relate to compliance with the HOS regulations. The data requirements are therefore limited, and the technological challenges to collecting, recording, and retaining the data on the EOBR and support systems are generally well known to, and met by, many manufacturers. With the exception of an advocacy organization's suggestion to use EOBRs for crash reconstruction, commenters did not recommend expanding the scope of EOBR data collection.

In response to IIHS's comment concerning uniformity of data output formats, FMCSA proposes to require a specified data output file format to promote improved data interchange between EOBRs and portable microcomputers used by roadside enforcement officials. This is discussed in depth under *Agency Proposal*.

12. Definitions—Basic Requirements

Most comments on the issue of definitions concerned the ability of GPS-based products to meet the requirements of the EOBR regulations.

AOBRD

CHP, Tripmaster, Nextel, and ATA agreed with the definition. PeopleNet pointed out that older CMVs (those manufactured before the advent of electronically controlled engines) would require costlier AOBRDs because the earlier engines do not broadcast engine use, road speed, or miles driven over the CMV's electronic network. Qualcomm contended that the key requirement should center around the ability of an AOBRD to detect the movement of a CMV and use that information to capture driving time.

EOBR

Several commenters agreed with the definition. However, Advocates would support only a performance specification requiring GPS. CHP and CVSA recommended adding an explicit requirement that EOBRs record drivers' duty status and HOS information. They also recommended a requirement for information attributable to a single driver. In contrast, the American Moving and Storage Association and Darby Corporate Solutions pointed out that an EOBR cannot identify a specific driver or distinguish whether a driver is off duty or on duty, and they believe the definition should more accurately reflect these limitations. IIHS suggested FMCSA consider adopting the EU electronic tachograph regulation.

Qualcomm offered several suggestions for the definition. In its view, the

definition should encompass the EOBR's ability to continuously monitor and record CMV functions and to notify the driver and dispatcher of malfunctions. Qualcomm believes the definition also should reflect that an EOBR has several components, but should not include a requirement to record engine status and road speed. One commenter thought FMCSA should expand the definition to allow an in-cab system of computers, scanners, and printers.

Various commenters asserted the definition should include references to date and time, engine on/off status, location, distance traveled, and road speed data.

Agency Response

FMCSA has carefully examined the need for EOBRs to capture operating or ''road speed'' data. Ensuring that drivers operate their CMVs within the posted speed limits, while important, is outside the scope of this rulemaking. EOBRs (and AOBRDs) are intended to ensure accurate information about duty status time, rather than the speed at which a CMV is operated. Furthermore, ''driving time'' means all time spent at the driving controls of a commercial motor vehicle in operation. Drivers' duty status includes all the time the driver is at the controls of the CMV, regardless of whether the CMV is moving or is paused in heavy, slow-moving traffic. Therefore, FMCSA is not proposing that EOBRs record road speed.

13. Potential Benefits and Costs

Only a few commenters based their responses on tangible experience using EOBRs and support systems. Although some motor carriers noted benefits from the use of the devices, others considered them too costly or questioned EOBRs' ability to capture the operations typical of their industry sector.

13.1 Safety, Operational, and Compliance Benefits Experienced by Motor Carriers With Actual Use of AOBRDs or EOBRs

Werner Enterprises, which has piloted a GPS technology approach for HOS monitoring, noted evidence of safety improvements as measured by driver out-of-service rates related to HOS compliance. Its driver out-of-service rate is 1.2 percent, far lower than the national average of 6.8 percent. United Natural Foods noted both compliance and operational improvements since it began using EOBRs in the CMVs based at some of its facilities.

EOBR vendors XATA and PeopleNet noted that their customers see improved HOS compliance as one of the benefits of using their products, but XATA noted ''it has been difficult for fleets to justify technology based on HOS compliance alone.'' Siemens asserted that European motor carriers' experience with HOS recording has led not only to acceptance of conventional tachographs but also to improved designs for ''reduced possibilities of cheating the system.'' According to Tripmaster, its customers' drivers saved 15 to 30 minutes per day and believed the safety and compliance assurance benefits justified the EOBRs' cost.

The International Food Distributors Association (IFDA) stated that its members' experience with AOBRDs varied. Some found the devices to be excellent and consistent tools, while others reported greater than anticipated AOBRD failure rates. The National Ready Mixed Concrete Association noted its members already employ ''sophisticated electronic fleet monitoring equipment.'' Moreover, as most of its members operate under the 100-air-mile-radius provision and use timecards rather than RODS, they would be unlikely to realize any new compliance benefits from EOBRs.

OOIDA questioned the safety history of Werner during the first 4 years of the carrier's GPS Technologies Pilot Program. OOIDA's analysis of crash statistics (crashes per power unit per year) for the period 1998–2002 for Werner and several other large truckload motor carriers indicated an increase in Werner's crashes relative to its peers. OOIDA wondered whether this diminished safety performance was related to the use of the HOS recording devices.

Public Citizen cited several reports, some written under FHWA and FMCSA sponsorship and included in the docket, suggesting benefits of EOBRs related to improved safety and HOS compliance.

13.2 Driver HOS Violation Rates, Out-Of-Service Rates, and Crash Experience of Motor Carriers Using AOBRDs or EOBRs

J.B. Hunt reported that its use of an electronic monitoring system (which does not use AOBRDs) has helped the carrier achieve a driver out-of-service rate well below the national average. In contrast, another carrier that tested EOBR technology saw no noticeable improvement in safety outcomes. One driver for a carrier using electronic RODS has noted a decline in crashes and out-of-service orders. A Werner driver thought the EOBR system works well, keeping drivers in compliance and preventing dispatchers from asking drivers to exceed HOS limits. An owner-operator driving for Werner found the EOBR system ''an excellent way of logging,'' noting its integration with the vehicle logistics system already in place.

CVSA and CHP cited a lack of data linking EOBRs and safety outcomes. CVSA requested that FMCSA consider a pilot program to monitor EOBR-equipped and non-EOBR-equipped vehicles to assess differences in compliance and safety performance.

OOIDA contended research has failed to show a statistically significant improvement in crash reductions as an outcome of EOBR use. OOIDA also cited the 2002 Cambridge Systematics study sponsored by FMCSA, which noted the inability of EOBRs to automatically capture non-driving duty statuses.

In contrast, Public Citizen cited positive CMV crash rate data from Germany. In 1975, the year mechanical tachographs were first mandated, the injury crash rate for CMVs was one crash per 790,000 km traveled. Ten years later, the injury crash rate for CMVs had dropped 54 percent, while the injury crash rate for passenger cars fell only 22 percent. These changes were viewed as notable, even when one considers that mechanical tachographs are ''highly susceptible to tampering.''

Siemens asserted EOBR-equivalent technology has been widely accepted in Europe and is perceived as effective for promoting road safety. Tripmaster also noted its customers had experienced safety improvements; one tank carrier reduced its overall crash rates nearly 50 percent the first year it used an EOBR system. Qualcomm reported that carriers using its system were able to monitor driving behavior and quickly take remedial action, in some cases reducing liability insurance costs.

Agency Response

FMCSA recognizes that comprehensive research data regarding the safety benefits of EOBR deployment are sparse. However, many EOBR vendors and carriers, as noted earlier, filed comments asserting that deployment of EOBRs resulted in greater HOS compliance in addition to other benefits (e.g., economic efficiency and security benefits). These comments are generally consistent with case studies and other anecdotal information from both the United States and abroad showing improved HOS compliance with EOBR deployment. As was extensively analyzed in the regulatory impact analysis for the 2003 and 2005 HOS final rules, increased compliance with HOS regulations correlates with reduced CMV driver fatigue, thereby reducing the incidence of CMV-involved crashes.

FMCSA considered the potential for EOBRs to reduce or eliminate specific types of HOS violations, such as exceeding daily driving time limits, exceeding daily duty limits, exceeding weekly duty limits, false logs, ''no log'' violations, form and manner log violations, and non-current logs. We believe that carriers using EOBRs under an FMCSA remedial directive would significantly reduce, and in some cases virtually eliminate, several types of HOS violations including driving time violations, form and manner violations, and false-log violations. Requiring EOBR use by carriers with recurring HOS violations could also reduce at least a portion of these carriers' ''no log'' and non-current-log violations. As discussed in the 2003 and 2005 HOS final rules, these reductions in HOS violations would yield safety benefits for CMV drivers and the traveling public.

The Agency sponsored a 2004 study entitled ''Hazardous Materials Safety and Security Technology Field Operational Test'' [2] (HM FOT), which examined the effectiveness of technological system solutions to enhance safety, security, and operational efficiency. This study found that deploying particular types of technology, including EOBR-related technology, potentially leads to significant gains in operational efficiency by reducing vehicle miles traveled. By eliminating unnecessary exposure to CMV highway traffic, this increased operational efficiency would improve safety and security.

In developing the Regulatory Impact Analysis (RIA) for this NPRM, the Agency considered data submitted by several vendors and carriers commenting on the ANPRM. However, because the Agency was unable to independently verify the analyses conducted by these commenters, we did not use this information directly in our economic analysis.

In the case of the HM FOT, we did consider the potential efficiency gains from deployment of EOBR-related technology, and used this information when considering tertiary (non-safety) benefits of installation of EOBRs on CMVs. Given the limited scope of the study, however, we evaluated only the findings related to efficiency benefits. Additionally, because this was the only study available to us that quantified estimates of the efficiency benefits of EOBR technology, FMCSA undertook a sensitivity analysis in which we varied the level of these potential efficiency benefits to examine the effects on our benefit-cost analysis results.

Based on a review of 2003 and 2004 HOS compliance rate information from the Agency's Motor Carrier Management Information System (MCMIS), FMCSA concludes that mandated EOBR deployment has the potential to significantly reduce or practically eliminate several of the specific HOS violations noted previously, resulting in a 50 percent reduction in HOS-related violations for carriers using the devices. This is supported by a qualitative analysis by FMCSA enforcement personnel of HOS violations likely to be eliminated as a result of implementing EOBRs for HOS compliance. The assumption of a 50 percent reduction in HOS violations is further supported by an FMCSA case-study analysis of a motor carrier in the Southeast that implemented EOBRs for HOS compliance and experienced a 79 percent reduction over a 3-year period.

We used the 50 percent-reduction assumption in the benefits analysis of the RIA for this proposed rule. However, because of a lack of comprehensive data on EOBR safety benefits and the qualitative nature of the assumption, FMCSA subjected it to a sensitivity analysis similar to that performed on the estimated efficiency benefits in the HM FOT. In the RIA sensitivity analysis, we varied the assumption concerning the effects of EOBR deployment on compliance rates. That analysis is contained in the RIA, available in the docket.

13.3 Cost Savings From Paperwork Reduction, Reviewing RODS, and Other Efficiencies

PeopleNet, @Road, Tripmaster, and Qualcomm stated that their motor carrier customers enjoy significant improvements in operational efficiency when they add communications and logistics modules to a basic EOBR system. Their customers see improvements in communicating timely information to drivers, automating fuel tax data collection, reviewing odometer readings and engine usage, and performing billing and payroll functions. PeopleNet said its customers attain a return on investment of 100 percent or more, often within the first year, and an aggregate savings in driver and back-office administrative staff time ranging from 10–15 minutes per driver per month. CPS said that automation of recording and reporting industrywide ''can be provided without any increase to current costs.''

Other commenters, including advocacy organizations, contended that EOBRs would reduce compliance costs and generally pointed to improved carrier operational efficiency. Public Citizen noted many carriers already use electronic scheduling and tracking systems, ''making the additional HOS tracking function a relatively simple matter.'' They cited studies of EOBR use and discussed the positive responses of drivers, unions, and carriers in Europe to EOBRs used there. IIHS cited several FMCSA studies that discussed potential benefits of EOBR use. However, Public Citizen criticized FMCSA's failure to mention driver health in its ANPRM discussion of the benefits of EOBRs.

CVSA noted EOBRs ''can do little to reduce this risk [of HOS violations to highway safety] without rigorous monitoring by both law enforcement and the industry itself.'' CVSA predicted larger carriers would tend to gain the greatest productivity benefits from EOBR use.

Motor carriers and industry associations expressed greater skepticism regarding the benefits of EOBRs. As IFDA noted in its response to the previous question concerning safety, operational, and compliance benefits experienced by motor carriers, its members reported mixed experiences. Yellow Freight was concerned that a transition to a new system could adversely affect its current high level of HOS compliance. Schneider believes the current cost of EOBRs cannot be justified and noted its crash rate already compares favorably to the crash rates of motor carriers using EOBRs. Werner cautioned that a basic EOBR system might not achieve the same level of benefits as its own comprehensive system. Greyhound expected that paper backup documents would still be required for EOBRs, and thus disagreed with FMCSA's estimates of time savings associated with EOBR use.

ATA, MFCA, and the American Bus Association (ABA) stated their members that have experimented with EOBRs have seen little or no savings in administrative costs. ATA indicated that motor carriers are currently using EOBRs for maintenance and fleet management, not HOS recording, and are deriving benefits from those applications. ABA reported that its EOBR-using members have had to invest extra resources into double-checking EOBR records and backup RODS. UMA predicted carriers would continue to maintain paper RODS, in tandem with EOBR records.

OOIDA conjectured that drivers' other tasks would absorb any time savings

[2] Hazardous Materials Safety and Security Technology Field Operational Test Final Report, November 11, 2004, *http://www.fmcsadot.gov/Safety-Security/hazmat/fot/index.htm.*

from completing electronic records and that reconstructing RODS from a malfunctioning EOBR would take a significant amount of time. Citing a 1998 UMTRI study (Campbell and Smith, ''Electronic Recorder Study: Final Report,'' 1998, page 37; see docket entry FMCSA–2004–18940–7), OOIDA stated there is no evidence EOBRs are cost-effective in small fleets, and motor carriers would not derive benefits from any savings in drivers' time if they pay drivers by the mile. Several other commenters offered similar viewpoints.

Specialized carrier services were especially skeptical about EOBR benefits. Petroleum Marketers Association of America stated that because its members are already subject to close regulation, EOBRs are unlikely to improve their compliance and would offer no additional benefits. The North Carolina Forestry Association asserted that RODS falsification is ''not the norm by any means,'' and doubted EOBRs would improve HOS compliance. The Colorado Ready Mixed Concrete Association stated EOBRs would have few benefits for its members because most are currently exempt from RODS under the 100-air-mile radius exemption, are already using advanced technology, and are committed to HOS compliance.

U.S. Telecom Association (USTA) said that because telecom drivers have no motivation to violate the hours-of-service regulations, EOBRs would not benefit this industry sector. USTA noted that utility service vehicle drivers are allowed to exceed HOS in situations of a declared emergency.

IBT was skeptical of any productivity benefits from EOBR use. It echoed several other commenters in pointing to the need for a driver to interact with an EOBR and to resort to paper RODS should the device malfunction.

Agency Response

Several studies have documented the efficiency benefits of EOBR-related technologies, including time savings from logbook recordkeeping. Most notably, the previously mentioned HM FOT discussed efficiency benefits in the form of vehicle routing changes. The 1998 UMTRI Study, also mentioned earlier, noted that ''Electronic HOS records obviously offer administrative efficiencies through ease of access to and management of these records.'' This study found that carrier respondents to a survey cited ''vehicle operating cost management'' as the most frequent reason carriers install EOBRs on their vehicles. Additionally, numerous commenters to the ANPRM docket pointed to benefits from paperwork savings. Therefore, FMCSA believes it is plausible to anticipate that carriers would experience cost savings from reduced paperwork as well as other gains in operational efficiency. The potential savings would of course vary depending on the operational characteristics of the carrier and other factors. As discussed in the Incentives section below, FMCSA seeks comment on whether paperwork savings and operational efficiencies from EOBR use also reduce driver fatigue or otherwise mitigate crash risk sufficiently to justify affording motor carriers that use EOBRs relief from some of the HOS rules.

In the RIA for this proposal, FMCSA estimated average cost savings to affected carriers based on reduced paperwork burden associated with EOBR deployment. Our estimates for time savings were conservative. For instance, it was assumed that time savings would equal 6.5 minutes saved per day per driver, much lower than reported in several studies as well as by commenters to the ANPRM. In contrast to OOIDA, the Agency believes that, for small carriers whose drivers are paid by the mile, this reduced paperwork burden would indirectly benefit the carrier by increasing net income. The time savings would have a small tendency to increase the supply of drivers at any given rate of pay, or to reduce the pay needed to realize any given level of supply. See section 3.3 of the RIA for a general discussion.

We also used conservative estimates for cost savings from paper reduction and paper storage. A third conservative assumption incorporated into the RIA by the Agency was that EOBR deployment would not produce back-office savings, even though some carriers would in fact reap such savings. Details of the assumptions and cost savings analyses are available in the RIA.

In response to Public Citizen's comment that the Agency's ANPRM failed to analyze the benefits of EOBR use for CMV driver health, it is important to note that we did conduct such analysis for the current notice. Specifically, FMCSA analyzed the NPRM to ensure its conformance with the requirements of 49 U.S.C. 31136(a):

> At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

Our review revealed little scientific documentation regarding the health effects on commercial motor vehicle operators of monitoring driving time. Overall, however, since we expect the proposal to increase compliance with the HOS regulations, thereby reducing fatigue, it would not have a deleterious effect on the physical condition of drivers. On the other hand, there is substantial literature regarding the health effects of electronic monitoring of workers, as well as on the general health effects of operating commercial motor vehicles.

A review of the available literature suggests that monitoring an employee is likely to increase stress levels in certain cases. Those cases appear to be limited to people who must work harder to meet quantitative performance expectations as a result of being monitored. This may not apply to commercial motor vehicle operators, who would be monitored to ensure compliance with safety regulations. However, some functions of EOBRs may enable fleet managers to monitor the performance of their drivers as well as their compliance with hours-of-service regulations and could therefore have similar effects to the studies described here. A November 2005 report by ICF Consulting, ''Literature Review of Non-Safety Health Effects of Electronic On-Board Recorders,'' describes the range of available literature. This study, which we relied upon to assess the potential direct health effects of monitoring drivers' duty status with EOBRs, is available in the docket. As noted in Appendix A of the RIA for this NPRM, the literature search found no material regarding the relationship between driver health and the use of driving time recorders, ''or indeed between driver health and any form of monitoring of truck drivers.'' There were, however, a few articles on the health effects—particularly stress-induced effects—of being electronically monitored at work.

13.4 Training for Drivers, Dispatchers, and Other Motor Carrier Employees

United Natural Foods, an EOBR user, estimated that training required to use EOBR and EOBR-generated records was 3 hours per driver and 3 days for office staff at $900 per day plus expenses; Maverick, which also uses EOBRs, estimated 4 to 5 hours or an average of $150 per person. Two motor carriers not currently using EOBRs, Schneider and Ralph Meyers Trucking, estimated training costs of $1,500,000 (Schneider based its estimate on the costs of retraining staff to comply with the April

2003 HOS final rule; the company believes the rulemaking would increase ongoing training costs by $130,000) and $165 per hour (Ralph Meyers Trucking's estimate for the cost of training, maintenance, and support).

ATA estimated 2½ to 3 hours per driver for EOBR training, plus additional training on completing paper RODS if they were required as backup documents. UMA estimated total costs of $6.4 million for motorcoach carriers, assuming a fleet size of 40,000 vehicles. Smaller companies needing to upgrade their back-office computer systems could see additional costs. ATA and the Minnesota Trucking Association (MnTA) both pointed out that field enforcement officers would also require training on EOBRs. MnTA was concerned that creating a new EOBR audit system would ''further remove the focus of the industry and FMCSA from promoting safe driving.''

PeopleNet estimated their ''train-the-trainer'' modules would take 2 days. Qualcomm provided detailed estimates of training time for drivers (30–60 minutes online, 1 classroom hour, and 1 hour for hands-on exercises), dispatchers (30–60 minutes online, 2.5 classroom hours, and 1 hour for hands-on exercises), and information technology staff (30–60 minutes online and 4–6 classroom hours). XATA estimated 2.5–3 hours training for drivers and 3–4 days for back-office staff. CPS and Siemens said training would be ''minimal,'' although Siemens advised that dispatchers may need ''some hours'' of software training. Tripmaster estimated 1 hour for driver training and 16 hours or more for supervisor training.

Agency Response

FMCSA received an abundance of information regarding training costs associated with EOBR deployment, from both vendors and carriers. We incorporated driver and back-office worker training costs into the RIA for the NPRM. (We did not calculate costs for training drivers to prepare backup paper RODS if the EOBR malfunctions, as training in record of duty status preparation is already required under § 380.503, Entry-level driver training requirements.) We estimated high, median, and low equipment purchase and installation costs, depending upon which types of units are most likely to be purchased and installed as a result of this rule. For instance, the factor most affecting per-unit EOBR purchase and installation costs was whether or not the unit would be integrally synchronized with the truck engine; integral synchronization correlates with a high cost estimate. In this way we could account for the entire range of EOBR deployment costs likely to result from the rule.

Next, we calculated driver and back-office worker training costs corresponding with the type of unit to be installed (high, median, or low estimate); this information was supplied by vendors or carriers in comments submitted to the docket or gathered from production information in manufacturers' sales or marketing packets. In the case of the high estimate (integrally synchronized units), driver training was assumed to take 3 hours per driver, while back-office worker training was assumed to require 12 hours per employee. For the median cost estimate, FMCSA assumed 1 hour of driver training would be required, while 10 hours would be required for back-office staff.

Finally, for the low cost estimate, FMCSA assumed only 30 minutes of driver training would be required, with 2 hours required to train back-office staff. Again, these estimates were based either on comments filed to the docket by equipment vendors or carriers or on EOBR information provided by vendors or manufacturers. Evaluating training costs in this way enabled us to test the sensitivity of these cost assumptions on the cost-benefit analysis results.

13.5 Typical Cost of a Minimally Compliant EOBR

Commenters' estimates are shown in the following table:

TABLE 1.—EOBR COST ESTIMATES

Association commenter	Cost for units and back-office support	Total cost to industry sector (estimate)
United Motorcoach Association	$1,500–$3,000 per unit	$60,000–$120,000 for units.
American Bus Association	$1,500–$3,000 per unit, $10,000–$80,000 computer costs.	$120 million for units, $280 million for system upgrades.
National Propane Gas Association	$1,000 per unit, $15,000 per office unit	$35,000,000 for units, $52,500,000 for back offices.
Colorado Ready Mixed Concrete Association	$1,000–$3,000 per unit..	
American Trucking Associations	$1,000–$2,000 per unit, not including back office and communications..	
Truckload Carriers Association	$1,000–$3,000 per unit, more for retrofit on older trucks..	
National Solid Wastes Management Association	$500 for new trucks, $3,000 for old	Up to $333 million for retrofit (private sector). Up to $75 million for retrofit (public sector).

	Cost for units and back-office support
Carrier:	
United Natural Foods (using XATA's system).	$4,100 per unit, $150 installation per unit.
Windy City	$700 per unit, $20–$40 monthly fee.
Golden Plains Trucking, Ralph Meyers Trucking.	$4,000 per unit.
Schneider National	Total cost to business $14–$15 million including installation (for 13,000 tractors).
Vendor:	
XATA	Current: $1,000–$2,000 per unit.
TACS	$1,000–$3,000 based on sophistication, $30–$500 for driver identification, $3,000 and up for management software.
Siemens	$300 per unit (original in vehicle), $450–$700 per unit (after-market installation).
Karta Technologies	$500 per unit (purchase), $20–$25 per unit per month (leased).
PeopleNet	$1,000–$1,500 per unit.
Tripmaster	$1,200 per unit (basic), $2,000–$3,500 per unit (advanced).

	Cost for units and back-office support
Qualcomm	$500 per unit (minimal phone and black box technology), $8 per unit per month for web-based back office (not including wireless costs).
GPS-based systems:	
Scanware	$3,000 per unit, not including data acquisition and auditing. If ruggedized, $6,000–$7,000.
LinksPoint	$3,200 per unit (incl. computer, GPS receiver and software).
CPS	$2–$3 per day per unit.
Vendor:	
Karta Technologies	$40 per vehicle per month.
PeopleNet	$20 per vehicle per month; up to $55 including communication costs (Back-office costs negligible, system is Web-based.).
Tripmaster	$10 per vehicle per month (or $20,000 to purchase software for carrier's use).
Scanware	$1 per driver per month (assuming carriers provide software and hardware support).
CPS	''Minimal or nil'' because the units should be compatible with existing systems.

A few commenters provided estimates of EOBR operating costs. ATA estimated $60 to $75 per unit/month for communications, depending on the frequency of contacts with satellite or other centers; recalibration at $45 per ''event'' plus technician travel and CMV downtime; and additional costs for record storage and retrieval. United Natural Foods, a Xora client, estimated start-up costs of $4,100 per truck and $20,000 for software upgrade and technical support. Operational costs run $24 unit/month for satellite tracking and communications. Schneider estimated its operating costs for RODS would go up from $1.1 to $5.8 million per year, for a net annual increase of $4.7 million. CT Transportation Services and Ralph Meyers Trucking each estimated training, maintenance, and support at $165 per hour. First-year costs were estimated at $175,000 and annual operations costs at $25,000.

Agency Response

In developing the cost analysis for the RIA, FMCSA considered the docket comments, conducted its own research regarding which type of unit would be minimally compliant with the proposed rule, and then developed ''low estimate'' cost figures for this minimally compliant device. We defined a minimally compliant device as one not integrally synchronized to the ECM but capable of recording the truck's location at least as often as required by the performance standards outlined in this NPRM. For the purposes of developing this ''low'' cost estimate, FMCSA considered certain cell-phone-based products without engine synchronization to be a reasonable proxy for a minimally compliant device. As detailed in the RIA, we used the costs associated with installing and operating that device to develop the ''low'' cost estimate.

13.6 Typical Cost To Incorporate EOBR Capabilities Into On-Board Computer and Communications Systems

XATA estimated that installing its units in existing trucks would cost $1,000 to $2,000 per vehicle, not including communications support. Qualcomm estimated a monthly cost of $8 per CMV to add an HOS application to a current Qualcomm subscription. Depending upon the system and features selected, a Qualcomm subscription costs $20 to $65 per vehicle per month. Older Qualcomm in-cab units might require upgrades ranging from $80 to $400.

For its fleet of 13,000 power units, Schneider estimated equipment and system licensing and installation costs of $1 million; $2.8 million for installation labor, mileage, routing, and downtime; $2 million for enhancing fleet management software; and $5 million for increased satellite data communications. ATA estimated EOBR unit costs of $3,500, including communications and GPS. Other commenters expressed concerns about costs but did not provide quantitative estimates.

ATA and four other motor carrier association commenters listed a variety of potential cost items, including development and execution of training programs for drivers, office, and information technology staff; communications costs (airtime); enhancements to computer system capabilities; EOBR inspection, maintenance, calibration, repair, and recordkeeping; CMV downtime; and future equipment and system upgrades and replacements, including costs for replacing existing systems to comply with new regulatory requirements. ATA stated that EOBR performance criteria would generate lower priced solutions, and advised FMCSA to carefully consider costs for replacements and upgraded devices.

Many commenters addressed broader concerns about potential EOBR costs. ATA, TCA, the Tri-State Truckers Association, and the Kansas Motor Carriers Association questioned whether carriers could sustain economic viability in the face of EOBR costs added to the costs of current regulation. They also contended an EOBR mandate would exacerbate the CMV driver shortage. In addition, these commenters recommended that an EOBR mandate be partly offset by eliminating the requirement to maintain paper RODS.

TCA, PMAA, the North Carolina Forestry Association, and the Kansas Motor Carriers Association asserted that small carriers would bear an undue burden if required to install EOBRs. Gases and Welding Distributors Association stated EOBR costs are high relative to the limitations of EOBR technology. SCRA pointed to increasing costs of training, computer upgrades, replacement, maintenance, inspection, and equipment calibration. USTA calculated that if EOBRs cost $3,000 each, the organization's four largest members would incur a total cost of $75 million.

TCA drew an analogy between the costs of complying with the rules on controlled substances abuse and alcohol abuse prevention as revised in the early 1990s and the proposed EOBR regulations, asserting that complying with a mandate costs twice as much as operating under a voluntary regime. MnTA contended that Minnesota law enforcement agencies have difficulty interfacing with various State and FMCSA databases. SCRA called attention to the need for proper training for law enforcement officials.

Individual drivers and owner-operators also expressed concerns about what they considered to be the significant potential costs of EOBRs. OOIDA contended the potential costs of EOBRs and related accessories, communications equipment, and back-office systems would ''dwarf [EOBRs']

de minimus, if any, contribution to public safety.'' IBT thought any time savings would be more than consumed by training time. In addition, IBT contended EOBRs are unreliable and thus would produce few benefits. Many drivers and owner-operators painted a grim economic picture for small motor carriers required to comply with any new regulation mandating EOBR use, raising concerns about the impact of such a rule upon the current driver shortage and questioning the potential cost savings and safety benefits. One in this group predicted any carrier with fewer than 20 vehicles would go out of business.

Some drivers offered a more optimistic view. A few said EOBR cost estimates were not as high as they had feared, and they could foresee possible safety and operational benefits. One driver predicted costs would go down if the devices were manufactured in bulk; however, another was concerned costs would remain high without adequate competition among vendors.

Advocacy organizations also were more optimistic. IIHS asserted cost is not a significant factor. It cited two studies showing that affordable EOBRs are available and that prices would drop even further if EOBRs were mandated.

Vendors, too, were generally optimistic about their ability to provide low-cost solutions to carriers. They suggested several potential areas for cost savings in system hardware and software. For example, Nextel expected costs for its potential EOBR product to be negligible because their solution is based on cell phones. PeopleNet stated it currently offers an EOBR/HOS product, and aftermarket installation takes 1.5 hours or less. IBM recommended an industrywide mandate to lower costs through economies of scale. Qualcomm asserted that minimizing EOBR cost would be key to motor carriers' acceptance of an EOBR requirement. The company recommended that road speed not be recorded because retrieving such data at frequent intervals is not otherwise necessary and would increase the EOBR memory requirements. Qualcomm maintained that recording malfunction events, third-party documentation on installation, repair, and calibration, and smart cards would add costs and be unduly burdensome.

The Santa Clara Valley Transportation Authority said that its buses already have a GPS/Automatic Vehicle Location system providing location updates at 2-minute intervals, and that any requirement to synchronize this system with the engine would be very costly. Santa Clara noted that its current HOS compliance system is working well overall, and that installing EOBRs would involve high costs without significant benefits.

Agency Response

It is difficult to estimate all of the initial and ongoing EOBR costs reliably. Costs to the motor carrier would vary depending both on the system currently installed and the prospective new system. Rather than addressing these variables, many commenters focused on the potential costs of an industrywide mandate to install EOBRs. FMCSA has estimated the effects and concluded that the cost of universal EOBR installation would not justify the benefits at this time. Therefore, the NPRM focuses on the highest risk carriers, a targeted approach that allows FMCSA to concentrate its resources (and EOBR use) on the most serious violators of the HOS regulations. In the RIA, FMCSA made the assumption that all carriers subject to an EOBR mandate would be installing these units and supporting equipment and software for the first time. This is a conservative estimate intended to ensure we do not underestimate the costs associated with this rulemaking. The Agency believes the population of high-risk carriers, which appears to be less than 1 percent of the overall carrier population, is the group least likely to have EOBRs at present. These are the carriers most likely to be affected by the rule. Because they represent such a small percentage of the total carrier population, costs are unlikely to be large overall.

14. Incentives To Promote EOBR Use

Commenters were generally in favor of incentives to promote EOBR use. Federal tax relief was the most common incentive mentioned. Motor carriers including J.B. Hunt, Maverick Transportation, Roehl Transport, and Schneider suggested that Federal tax relief would serve as an incentive to promote EOBR installation. Motor carrier associations, an EOBR manufacturer, and an individual driver made the same point.

Four EOBR vendors recommended specific design specifications they believe would make EOBRs more appealing to motor carriers. For example, LinksPoint suggested FMCSA allow systems that do not need to be integrated with the vehicle and could be used with current mobile computing and GPS technologies. Qualcomm recommended EOBR specifications that allow the rounding of driving time to the nearest 15-minute increment. Otherwise, Qualcomm reasoned, drivers using EOBRs could be at a disadvantage, in terms of HOS compliance, compared with drivers using paper RODS. For example, if a driver drove 11 hours and 7 minutes using an EOBR without a rounding feature, the driver would have an HOS violation identified. However, in Qualcomm's view, most drivers using paper logs would round down the time to 11 hours. Allowing EOBRs to be programmed to ignore intervals of 15 minutes or less would serve as an incentive by leveling the playing field between EOBR-using carriers and those using paper records of duty status.

Vendors also suggested regulatory incentives that FMCSA could offer to encourage EOBR use. For example, Qualcomm specifically recommended that FMCSA relieve motor carriers using EOBRs from the requirement to maintain supporting documents other than the information collected by the EOBR that supports the automated RODS recordkeeping.

Many commenters suggested that one of the most significant deterrents to voluntary EOBR installation was the fear of post-crash litigation based upon the extensive operational data EOBRs are capable of producing. They recommended limiting the data elements EOBRs would be required to produce and restricting access to the data as incentives for voluntary installation. For example, ATA recommended that future EOBR regulations specify that EOBR data accessed by government officials would be restricted to information required to enforce the HOS regulations, and that access to the data be restricted to the motor carrier and its agents, FMCSA officials, authorized State enforcement personnel, and representatives of the NTSB for purposes of post-crash investigations. The ATA also suggested that an FMCSA commitment to work with the industry to seek enactment of statutory protections for data beyond that required under part 395 would significantly alleviate a major impediment to acceptance of EOBRs.

Agency Response

FMCSA finds merit in vendor comments that appealing design specifications would serve as incentives to EOBR installation. Toward that end, the performance specifications proposed in this rulemaking address many of the design proposals recommended by commenters. For example, as recommended by LinksPoint, the proposed EOBR performance specifications do not require ''integral synchronization'' to the vehicle engine and thus allow for both innovation and potentially reduced costs.

FMCSA does not agree, however, with Qualcomm's suggestion to establish specifications that allow for rounding of driving time to the nearest 15-minute increment. The current regulations concerning paper records of duty status do not provide for rounding, and FMCSA's question-and-answer guidance indicates that periods of less than 15 minutes may be identified by drawing a line to the Remarks section of the RODS and entering the amount of time, such as 7 minutes.

FMCSA sees some merit in Qualcomm's comment that motor carriers using EOBRs should not have to maintain supporting documents other than those produced by the EOBR. This NPRM proposes adopting a new 49 CFR 395.11 to provide partial relief from the current supporting document requirements under 49 CFR 395.8(k) for motor carriers that install a device compliant with proposed § 395.16. EOBRs meeting the requirements of § 395.16 produce regular time and CMV location position histories sufficient to verify adequately a driver's on-duty driving activities. However, additional supporting documentation, such as driver payroll records, is still necessary to verify on-duty not-driving activities. Therefore, the proposed § 395.11 does not provide a blanket exemption from supporting document requirements for carriers using EOBRs compliant with § 395.16. Rather, it would limit the volume of required supporting documents to those necessary to verify on-duty not-driving time and off-duty status. FMCSA issued a supplemental notice of proposed rulemaking concerning HOS supporting documents on November 3, 2004 (69 FR 63997) and expects to publish the final rule in the near future. The Agency will consider public comments to today's NPRM in determining whether adjustments to the supporting documents exemption procedures may be necessary.

We recognize commenters' concerns regarding legal protection and access to EOBR data, and believe the performance specifications and regulations proposed in this rulemaking help to mitigate these concerns. For example, the proposed EOBR performance specifications do not require that non-HOS data, such as vehicle speed, be recorded. While FMCSA agrees that statutory protections against access to data from EOBRs beyond what is required to determine HOS compliance would further acceptance of the devices, legislative efforts toward that goal are outside the scope of this proposed rule. FMCSA seeks comment, however, on data access protections that could be provided under current statutes.

15. Miscellaneous Questions

As many responses to the questions in this section are similar to those discussed earlier, we will summarize them here. Commenters generally consider EOBRs highly reliable, with equipment vendors estimating them to have a useful life of 7 to 10 years or longer. Motor carriers agreed.

Agency Response

FMCSA's analysis of the data and further consultation with equipment vendors suggest a more conservative estimate for the useful life of EOBRs than that provided in equipment vendors' comments to the ANPRM. Vendors we consulted estimated the devices to have a useful life of 3 to 5 years, if technological obsolescence is factored in. Please see the RIA, available in the docket, for further discussion.

15.1 Should FMCSA Propose To Require That Motor Carriers in General, or Only Certain Types of Motor Carrier Operations, Use EOBRs?

Mandate EOBRs for some motor carriers. The National Private Truck Council and two other commenters said that any requirement to use EOBRs should apply only to long-haul trucking companies, reasoning that the cost of installing and using EOBRs would not be justified for local distribution operators.

Several commenters stated FMCSA should exempt motor carriers operating under the 100-air-mile-radius exemption. The Colorado Ready Mixed Concrete Association noted that the 100-air-mile-radius exemption is based on the recognition that short-haul operators are at reduced risk of excessive driving time and resulting driver fatigue; requiring these carriers to use EOBRs would be tantamount to rescinding the exemption. The Highway Safety Committee of the International Association of the Chiefs of Police suggested that if FMCSA requires EOBRs for interstate carriers, it should avoid penalizing States that choose not to require EOBRs for intrastate carriers using the 100-air-mile-radius exemption.

The Motor Freight Carriers Association (MFCA) and several LTL carriers said that FMCSA should exempt the LTL sector because its systems for managing driver fatigue and ensuring compliance with the HOS rules already make it one of the safest segments of the trucking industry. They asserted that LTL carriers locate their facilities and dispatch their drivers in ways that ''virtually eliminate'' HOS violations. Yellow Roadway Corporation added that its drivers are in personal contact with supervisory personnel at the beginning and end of the workday, and the company uses software to flag any dispatch that would cause an HOS violation. ATC Leasing Company, a provider of driveaway services, noted that its drivers operate a given CMV only once and would therefore need to use portable EOBRs. The company believes that, in general, the marketplace demand for portable EOBRs would be low, resulting in high per-device costs.

Several commenters asked for operational-based exemptions from any future EOBR requirement for particular types of short-haul operations. These included the National Solid Wastes Management Association (100-air-mile-radius exemption or solid waste collection trucks); PMAA (short-haul drivers delivering gasoline); NRMCA and its Colorado State association (ready-mixed concrete industry); NPGA (local propane delivery operations); the National Rural Electric Cooperative Association (utility service vehicles in general); and the USTA (utility service vehicles, particularly those operating under the 100-air-mile-radius exemption); and the National Ground Water Association (well drillers whose CMVs travel less than 5,000 miles annually). ATA recommended FMCSA assess whether drivers and operations not currently required to keep RODS (100-air-mile-radius drivers, drivers in the State of Hawaii, and certain drivers in agricultural operations) should be exempted from an EOBR requirement.

Motor carriers of passengers and their industry associations asserted that FMCSA should not require EOBR use by carriers in this industry segment, in part because of its already strong record of safety and HOS compliance. The United Motorcoach Association added that 95 percent of such companies registered with FMCSA meet the Small Business Administration's definition of a small business. Greyhound Lines noted that its drivers have considerably different work patterns from those of truck drivers and operate on fixed, published schedules that are designed to comply with HOS requirements. The National School Transportation Association (NSTA) argued against an EOBR requirement for its members because only about 1 percent of school bus operations are interstate activity trips subject to the FMCSRs. Similarly, the Santa Clara Valley Transportation Authority argued that FMCSA should not require EOBRs for local public transit agencies using the 100 air-mile-radius exemption.

One commenter argued that EOBRs must remain voluntary for owner-operators but did not provide supporting rationale. Two commenters, citing the potential financial impact on small businesses that operate CMVs, requested FMCSA consider limiting the requirement for EOBRs to those carriers operating CMVs requiring a commercial driver's license.

Five of the seven carriers commenting on this issue said that lack of a broad EOBR mandate would create an uneven playing field, while noting that their own potential costs to add EOBRs could be considerable. ATA pointed out that motor carriers exempt from a requirement to use EOBRs would derive a competitive advantage because they could more readily attract independent contractors (which presumably would also be exempt). The few drivers favoring a universal EOBR requirement also expressed concerns about competition. EOBR vendors XATA, PeopleNet, and Qualcomm made a similar point. Another EOBR vendor stated that homeland security considerations should be the sole reason to exempt a carrier from an EOBR requirement. CHP said that FMCSA could apply an EOBR requirement only to particular segments of the trucking industry, but expressed concerns about economic equity.

Mandate EOBRs for all motor carriers. Public Citizen and Advocates supported mandatory EOBR use for all CMVs over which FMCSA has jurisdiction. They contended FMCSA should require States to mandate EOBRs for intrastate CMVs as a condition of a State's receiving Motor Carrier Safety Assistance Program funds. Advocates added that NHTSA should issue a complementary regulation requiring EOBRs on all newly manufactured vehicles subject to the prohibition on making safety equipment inoperative (49 U.S.C. 30122). CTA recommended requiring EOBRs in commercial motor vehicles for which the driver is required to hold a CDL.

J. B. Hunt commented that if FMCSA determines EOBRs would provide an enhanced level of compliance and improved safety outcomes, the Agency should mandate EOBR use in all operations subject to the HOS regulations, including 100-air-mile-radius operations. Schneider expressed a similar view, asserting it would be irrational to exempt small carriers that typically have less sophisticated compliance programs and higher crash rates than large carriers. One carrier predicted that political considerations would lead to a universal EOBR mandate.

Mandate EOBRs only for motor carriers with poor safety or compliance records. Seven commenters suggested that if FMCSA chooses to mandate EOBRs for any motor carriers, it should do so only for carriers or industry segments that have shown poor compliance with HOS regulations. Three in this group—a motor carrier, a trade association, and an owner-operator—noted that such an approach would relieve carriers already in compliance with the HOS rules of the financial burden of purchasing and installing EOBRs. United Motorcoach Association stated that it ''would endorse the mandatory implementation of EOBRs only for chronic offenders.'' CVSA suggested that EOBRs could be used as ''punishment'' for carriers that show continued violations of HOS rules or are found to have falsified their RODS. The Motor Freight Carriers Association and the Yellow Roadway Corporation encouraged FMCSA to adopt a rule requiring individual companies or industry sectors to demonstrate a proven record of HOS compliance and to subject carriers not meeting that compliance rate to ''more strenuous requirements, including the possible imposition of recording devices.''

Agency Response

FMCSA agrees that focusing first on motor carriers with significant HOS compliance problems is a sound approach. The Agency believes this is the strategy most likely to improve the safety of the motoring public on the highways in the near term and to make the best use of resources, both those of enforcement agencies and of the motor carrier industry. We are therefore proposing procedures for issuance of remedial directives requiring EOBR installation, maintenance, and use by only those motor carriers with serious and repeated HOS noncompliance. By focusing on this narrow carrier population, we would increase highway safety while minimizing the cost to the motor carrier industry, giving the Agency maximum return on the investment of its enforcement resources.

As discussed in the *Remedies* section of this preamble, FMCSA examined a variety of possible parameters that might be used to establish subpopulations of poor-HOS-compliance carriers to which an EOBR mandate might apply. Agency CR results indicate that a substantial number of motor carriers do not routinely violate the HOS rules, and thus (based on the RIA for the proposal) the benefits of an industrywide EOBR mandate do not outweigh the costs. In focusing first on the most severe violations and the most chronic violators, we are proposing a mandatory-installation ''trigger'' designed to single out motor carriers that have a demonstrated history of poor hours-of-service compliance. The trigger for a notice of remedial directive and proposed unfitness determination would be a ''final determination'' of one or more ''pattern violations'' of any regulation in proposed new Appendix C to Part 385 (''Appendix C regulations''), followed by the discovery of one or more pattern violations of any Appendix C regulation during a CR completed within 2 years after the closing date of the CR that produced the first determination. A pattern violation of Appendix C regulations is a violation rate equal to or greater than 10 percent of the number of records reviewed. For example, 25 violations out of 100 records reviewed would be a 25 percent violation rate and therefore a pattern violation. Based on data concerning HOS violation from CRs conducted between June 2001 and June 2005, this trigger, if adopted, would result in the issuance of approximately 465 remedial directives to install EOBRs annually.[3] The Agency believes this relatively small carrier population, with its severe and recurring HOS compliance deficiencies, poses a disproportionate risk to public safety. Therefore, mandatory EOBR installation and use by this narrow subset of carriers is an appropriate and resource-effective means of promoting motor carrier safety.

FMCSA recognizes that there may be other factors that bear consideration in determining the potential application of an EOBR requirement, such as risks to passengers or to the general public from a release of hazardous materials. The Agency requests public comment on whether EOBRs should be required of passenger carriers and carriers transporting hazardous materials in quantities requiring placarding.

15.2 Other Comments

IIHS recommended that FMCSA conduct a field operational test of EOBR devices and conduct formal surveys to gather data on EOBR benefits, costs, and use in HOS enforcement.

ATA and IIHS asked how FMCSA would determine that EOBRs would achieve the intended results. ATA believes the Agency should provide evidence that EOBR use will reduce

[3] FMCSA considered, but is not proposing to adopt, CVSA's suggestion that EOBR installation be required as a ''punishment'' for part 395 violations. The current civil and criminal penalties authorized under 49 U.S.C. 521 for violations of the FMCSRs would remain unchanged under the proposed rule.

fatigue-related crashes and thereby improve truck safety, arguing that any correlation between electronic recording and crash reduction is merely speculative unless documented. ATA added that a study of motor carriers' experiences with automated recording devices could be useful in determining whether they contribute to safer driving performance and crash prevention.

Agency Response

In response to IIHS's recommendation for a field operational test of EOBRs and surveys to gather data on EOBR benefits, costs, and use in HOS enforcement, FMCSA conducted such a survey and published the results in 1998 (the UMTRI study, docket entry number 7). The study results were limited because of a very low (12 percent) response rate. Another field operational test, the FMCSA-sponsored HM FOT discussed previously in section 13.2, found that use of EOBR-related technology led to potential increases in operational efficiency, which could benefit safety indirectly.

However, as also noted in section 13.2, there is little research data linking EOBR deployment directly to safety benefits. A study such as ATA suggested, in which data on many potential contributors to driving safety would be tracked and analyzed statistically, could certainly shed useful light on the relative contributions of factors such as CMV driver selection, in-service training, motor carrier oversight, and use of HOS recording devices. Such a study would likely be extremely challenging to design, given that: (1) Highway CMV-involved crashes are statistically rare events, so that several years' worth of data might be needed before a statistically valid comparison could be drawn; (2) motor carriers may make changes to several of these areas concurrently; (3) the ''before'' data might not have been maintained in a way that allows for direct comparison with the ''after'' data; and (4) participants' awareness of and involvement in an active study could influence their data (i.e., a ''Hawthorne effect'').

As noted previously, in the absence of comprehensive research data in this area, the Agency infers from motor carriers' comments to the ANPRM, case studies, and anecdotal information that EOBR installation and use correlates with increased HOS compliance and reduced driver fatigue. This in turn could reduce the incidence of crashes involving CMVs.

The HOS compliance of motor carriers subject to remedial directives under the proposed rule could improve even more as a result of EOBR installation and use. These are motor carriers that FMCSA has determined to have hours-of-service violations in 10 percent or more of the records of duty status examined during two or more CRs within a 2-year period. Such carriers have already demonstrated repeated noncompliance with the HOS regulations after being afforded an opportunity to improve. The Agency's existing compliance oversight processes would already have singled out these carriers for FMCSA's attention because violations found during roadside inspections, crash involvement, or both, placed them statistically well outside the norm at the time of the second CR. The Agency would also have provided recommendations to these carriers to guide them toward improving their safety performance and regulatory compliance. These carriers would be offered a choice: Install a tool—the EOBR—to enable the carrier to gather and use more accurate data than are contained in a paper RODS and provide more specific information on areas of noncompliance the carrier must address, or cease operations. As discussed in detail in section 13.2, HOS compliance rate information in the MCMIS, an FMCSA case-study analysis of a particular carrier, and analysis by Agency enforcement personnel support an inference that compliance with an EOBR remedial directive could reduce a carrier's HOS-related violations by 50 percent.

V. Agency Proposal

As noted in the Executive Summary and the discussion of public comments, FMCSA proposes a comprehensive rule to increase EOBR use within the motor carrier industry. The proposed regulation has three elements: (1) Performance-oriented standards for EOBR technology; (2) the mandatory use of EOBRs by certain motor carriers in a safety remediation context; and (3) incentives to promote voluntary EOBR use. FMCSA believes this approach strikes an appropriate balance between promoting highway safety and minimizing cost and operational burdens on motor carriers demonstrating strong and consistent compliance with the HOS regulations. We seek public comment on these proposals, discussed in what follows.

A. Technology

FMCSA proposes a new set of performance-based standards for EOBRs that reflect the significant advances in recording and communications technologies since introduction of the first AOBRDs in 1985.

In developing this proposal, we also considered findings related to the seven key research factors discussed in FMCSA's April 2003 HOS final rule and the September 2004 ANPRM on EOBRs. Equally important, as noted previously, we considered several additional factors recommended by commenters to the ANPRM, including interoperability with other commercial motor vehicle intelligent transportation system (ITS) applications and the use of standardized file formats. The latter criteria are directly related to the factors discussed in the preamble of the April 2003 HOS final rule. Following is a discussion of the seven research factors with consideration of interoperability and standardized file formats.

Factor 1: Ability To Identify the Individual Driver

FMCSA proposes to correct an apparent gap in the existing AOBRD regulation. The current rule includes no explicit requirement for driver identification beyond requiring the driver's signature on hard copies of the record of duty status (§ 395.15(b)(5)). Commenters suggested a broad range of identification methods—PINs, removable smart cards, assignment of EOBR handsets to individual drivers, and biometric systems. FMCSA's proposed approach takes into consideration the operational realities of EOBR use, including potential cost or operational burdens upon drivers and motor carriers.

The NPRM includes a proposal for a requirement for driver identification, without prescribing a specific method. Motor carriers could use either data entry approaches, such as PINs or user ID and passwords, or methods such as smart cards that carry identifying information or biometrics. This proposed approach would allow motor carriers to use identification systems they may already employ in their fleet management systems, allow adoption without regulatory change of newer and possibly more secure technologies as they become feasible, and accommodate future use of credentials currently being developed for transportation workers.

Additionally, the EOBR would be required to display the driver's name or employee ID number, if applicable, on all EOBR records associated with that driver. This requirement would also apply when the driver serves as a co-driver.

Factor 2: Resistance to Tampering

The broad term ''resistance to tampering'' denotes that the EOBR and its support systems cannot be manipulated to produce inaccurate

information. The intent is to prevent tampering both at the input stage (for example, a driver enters a keystroke sequence and presses a reset button to erase the last 2 hours of data) and the output stage (for example, a motor carrier's central file server uses an algorithm to replace all driving time over the 11-hour limit with an ''off-duty'' status entry). Thus it encompasses EOBR certification and testing; self-diagnosis of failures in hardware, software, and communications; and in-service maintenance and calibration.

Because myriad possible methods exist to meet data integrity and auditability requirements, FMCSA proposes a performance-oriented, outcome-based regulation. The EOBR and associated support systems must be tamper resistant to the maximum extent practicable. They must not permit alteration or erasure of the original information collected concerning the driver's hours of service, or alteration of the source data streams used to provide that information.

A RODS, whether in paper or electronic form, provides a record of the sequence of duty status events—date and time they began, date and time they ended, and location of each change of duty status. Although the 1988 final rule on AOBRDs (53 FR 38666, Sept. 30, 1988) offered one approach to generating an electronic record, it was limited by the recording and communications technologies that were state-of-the-practice at that time. Date, time, and driving status information had to be obtained from on-vehicle sources. Most of the requirements promulgated by the 1988 rule, found under § 395.15, are logical candidates for a proposed EOBR regulation. These include requirements concerning driver interaction with the AOBRD, tamper resistance, ability to record duty status for each driver in a multiple-driver operation, and ability to identify sensor failures and edited data.

However, several of the § 395.15 requirements warrant revision. Rather than amending § 395.15, the NPRM proposes a new § 395.16. The proposed performance specifications in § 395.16 reflect the need for and expectation of a high degree of reliability in 21st century electronic devices and the data and information they record. For example, language concerning the device's ability to ''identify sensor failures and edited data when reproduced in printed form'' (as currently set forth in § 395.15(i)(7)) would be revised in proposed § 395.16(i)(2)–(5) to include electronic as well as paper output records. Table 2 compares the similarities and differences between the § 395.15 and § 395.16 requirements.

TABLE 2.—COMPARISON OF §§ 395.15 AND 395.16 REQUIREMENTS

[The twelve items listed below are contained in ''Notice of interpretation; request for participation in pilot demonstration project,'' published by FHWA on April 6, 1998 (63 FR 16697 at 16698).]

49 CFR § 395.15	Proposed § 395.16
1 Sec. 395.15(a)(1) permits use of ''Automatic on-board recording device'' (OBR) as defined at 49 CFR 395.2: capable of recording driver's duty status accurately and automatically * * * must be integrally synchronized with specific CMV functions * * * must record engine use, road speed, miles driven (axle revolutions), date and time of day (internal clock).	The EOBR does not have to be integrally synchronized to the engine or other vehicle equipment. The EOBR does have to use GPS or other location tracking systems that record location at least once a minute; EOBRs could still use sources internal to the vehicle to record distance traveled and time. Requirement to record road speed is removed.
2 Sec. 395.15(b)(3) Support systems: Must provide information about on-board sensor failures and identify edited data.	Sec. 395.16(i)(6) Support systems: Must provide information about on-board sensor failures and identify edited data. Support systems must provide a file in the format specified in Appendix A of this part. The system must also be able to produce a copy of files on portable storage media (CD–RW, USB 2.0 drive) upon request of authorized safety assurance officials.
3 Sec. 395.15(f) Reconstruction of records of duty status: Drivers must note any failure of automatic OBRs and reconstruct records of duty status (RODS) for current day and past 7 days * * * must prepare handwritten RODs until device is operational.	Same requirement. See § 395.16(k)(2).
4 Sec. 395.15(h)(1) Submission of RODS: Driver must submit, electronically or by mail, to motor carrier, each RODS within 13 days following completion of each RODS.	Sec. 395.16(m)(1): Driver must submit electronically, to the employing motor carrier, each record of the driver's duty status. (2) For motor carriers not subject to the remedies provisions of part 385 of this chapter, each record must be submitted within 13 days of its completion. (3) For motor carriers subject to the remedies provisions of part 385 of this chapter, each record must be submitted within 3 days of its completion.
5 Sec. 395.15(h)(2): Driver must review and verify all entries are accurate before submission to motor carrier.	Same requirement. See Sec. 395.16(m)(4).
6 Sec. 395.15(h)(3): Submission of RODS certifies all entries are true and correct.	Same requirement. See Sec. 395.16(m)(5).
7 Sec. 395.15(i)(1): Motor carrier must obtain manufacturer's certificate that the design of OBR meets requirements.	Sec. 395.16(q)(2): The exterior faceplate of the EOBR must be marked by the manufacturer with the text ''USDOT–EOBR'' as evidence that the device has been tested and certified as meeting the performance requirements of § 395.16 and Appendix A of this part.
8 Sec. 395.15(i)(2): Duty status may be updated only when CMV is at rest, except when registering time crossing State boundary.	Sec. 395.16 (o)(1): The EOBR must permit the driver to enter information into the EOBR only when the commercial motor vehicle is at rest.
9 Sec. 395.15(i)(3): OBR and support systems must be, to the maximum extent practicable, tamperproof.	Sec. 395.16(o)(2) The EOBR and associated support systems must be, to the maximum extent practicable, tamperproof and not permit alteration or erasure of the original information collected concerning the driver's hours of service, or alteration of the source data streams used to provide that information.
10 Sec. 395.15(i)(4): OBR must warn driver visually and/or audibly the device has ceased to function.	Sec. 395.16(o)(6) The EOBR must warn the driver via an audible *and* visible signal that the device has ceased to function.

TABLE 2.—COMPARISON OF §§ 395.15 AND 395.16 REQUIREMENTS—Continued

[The twelve items listed below are contained in "Notice of interpretation; request for participation in pilot demonstration project," published by FHWA on April 6, 1998 (63 FR 16697 at 16698).]

49 CFR § 395.15	Proposed § 395.16
11 Sec. 395.15(i)(7): OBR and support systems must identify sensor failures and edited data.	Sec. 395.16(o)(9) The EOBR device/system must identify sensor failures and edited and annotated data when downloaded.
12 Sec. 395.15(i)(8): OBR must be maintained and recalibrated in accordance with the manufacturer's specifications.	Same requirement. See Sec. 395.16(p)(1) specifications.

Integral synchronization. The matter of integral synchronization is probably the most critical element of this rulemaking action, in the context of regulatory obstacles to the voluntary use of on-board recorders. Recent research and assessments indicate that devices providing frequent reports of location and time information, obtained from signals not under the direct control of the driver or carrier, have the ability to provide a record of equivalent or greater accuracy than data from an internal CMV data source. Therefore, although the requirement for integral synchronization with the CMV was fundamental to the definition of AOBRD in § 395.2, it would not apply to EOBRs. The proposed regulation would instead require accurate and frequent reporting of the CMV's physical location, whether through a device installed on the CMV or one worn (as a cellular telephone might be) by the driver.

Unlike a conventional AOBRD (i.e., one meeting, but not going beyond, the definition in § 395.2), the EOBR specified in proposed § 395.16 would be required to autonomously record the CMV's physical location at intervals no greater than once per minute. The EOBR could use GPS, terrestrial, inertial guidance, or a combination of methods to accomplish this. For a GPS-enabled EOBR or a cellular telephone, gaps in coverage can be expected to be brief—generally on the order of minutes. The EOBR record of distance traveled must be accurate to within 1 percent of actual distance traveled by the CMV within a 24-hour period. Furthermore, regardless of the communications mode—wireless or terrestrial—and the method used to synchronize the time and CMV-operation information into an electronic RODS, FMCSA would require the EOBR records to maintain and display duty status information (including distance traveled per day +/−1 percent) accurately and to maintain the integrity of that information.

This change serves two purposes. It frees EOBR developers from the necessity of connecting to the CMV, and it opens the door to more accurate recording of non-driving duty status categories. The proposed regulation would not prohibit the use of internal (on-CMV) sources to record CMV distance traveled and time. An EOBR may still use sources internal to the vehicle, such as an ECM with internal clock/calendar, to derive distance traveled.

Self-tests and self-monitoring. Several commenters supported FMCSA's consideration of a requirement for EOBRs to perform self-tests and self-monitoring, with the driver and dispatcher receiving notification of test failures. Many commenters also indicated that verification by a roadside safety official or FMCSA compliance officer would be a very simple process. Taking these concerns into account, FMCSA proposes that EOBRs be capable of performing a power-on self-test upon demand. The display screen must provide an audible and/or visual signal as to its functional status. The EOBR would also be required to warn the driver by visual and audible means that it has ceased to function, and to record a code corresponding to the reason for cessation and the date and time of that event.

FMCSA proposes maintenance and recalibration requirements similar to those currently provided for AOBRDs under § 395.15(i)(8): "The on-board recording device is maintained and recalibrated in accordance with the manufacturer's specifications." We propose to broaden this requirement only slightly by requiring that the EOBR record malfunction events and that the motor carrier retain EOBR recalibration and repair records.

Although today's electronic devices are generally highly reliable, they do occasionally malfunction. As with many electronic devices, losing access to an EOBR can present a range of operational and recordkeeping challenges for drivers and motor carriers. While commenters agreed that the driver should be allowed until the "next reasonable opportunity" to repair or replace a defective EOBR, they defined a "reasonable" period as anywhere from 13 to 90 days. FMCSA must strike a balance between requiring timely repair or replacement of an EOBR and imposing requirements that could place a driver in an unworkable position. Therefore, we propose to require that drivers keep handwritten RODS until the EOBR is replaced or repaired. In addition, motor carriers using EOBRs under the proposed "Remedies" provision (see discussion below) would be required to repair or replace a malfunctioning EOBR within 14 days. We believe this would not place an unreasonable burden on motor carriers or drivers.

EOBR certification. At issue is how motor carriers and FMCSA would ensure EOBRs meet the specifications set forth in regulation. The basic choices are self-certification by manufacturers—the status quo—or independent certification by FMCSA or a third party.

Commenters were divided between the alternatives of continuing to allow self-certification and a move to testing and certification by FMCSA, possibly in conjunction with NHTSA, CVSA, and other agencies or organizations. Many commenters, particularly motor carriers, supported the idea of a list of "approved" devices, while recommending against the type-certification process used by the European Union for the new electronic tachographs (the EU standard is highly design specific and prescriptive, and several commenters believe it would be too complex and costly to implement).

FMCSA proposes to continue allowing manufacturers to self-certify EOBRs (as they have with AOBRDs), to provide assurance to their motor carrier clients that the EOBR and support systems have been sufficiently tested, under representative conditions, to meet the requirements of the FMCSRs. EOBR manufacturers would be required to ensure their devices and support systems meet or exceed the set of performance criteria presented in proposed new § 395.16 and Appendix A of this NPRM. Under this self-certification program, the EOBR manufacturer would certify the device conforms with certain pass/fail criteria including:

- Accuracy of recording of CMV distance traveled
- Frequency of recording location position

- Output display requirements
- Data interface requirements for hardwired and wireless transfer
- Data file format requirements
- Power-on self-test
- Ambient temperature functional limits
- Vibration and shock requirements
- Operator safety requirements

FMCSA believes this approach would provide improved guidance to EOBR manufacturers regarding the Agency's expectations for device performance. It would address motor carriers' and safety compliance officials' concerns about whether an EOBR had indeed been tested for regulatory compliance, and whether it passed the tests.

Factor 3: Ability To Produce Records for Audit

FMCSA acknowledges drivers' and motor carriers' comments that the current blanket prohibition against amending AOBRD records places unnecessary operational obstacles to wider adoption of electronic HOS recording devices. The proposed regulation would allow drivers to amend a non-driving record immediately before and after a trip or workday. This would provide operational flexibility to drivers to correct duty status errors arising because the driver forgot to log out of the system. The limitation would prevent attempts at amendments to ''update'' the EOBR record in anticipation of a roadside inspection. FMCSA recognizes this proposal significantly changes the status quo and places responsibility on EOBR designers to safeguard against fraudulent entries.

FMCSA agrees with commenters that some type of audit trail is useful and necessary. Although various elements of § 395.15 speak indirectly to auditability of AOBRD records, we believe the requirement needs to be strengthened. Therefore, we propose to require ''parallel data streams'' (sequences of original and modified data entries) to clearly indicate the content of original records, any revisions and amendments to the records, the identities of people who entered and revised or amended data, and when the original entries and amendments were made.

Recording interval: In order to specify an appropriate interval for an EOBR to record information, we must consider the way the information is to be used, not simply the capabilities of the various technologies to sense and record it.

Historically, CMV drivers have been required to record information on the RODS graph-grid in 15-minute increments and to note shorter periods (less than 15 minutes) in the ''Remarks'' section of the document. A series of rounding errors—deliberate or otherwise—could easily result in errors of several hours of duty time over the course of a long trip. Drivers have been required to record location only when there is a *change* in duty status. This has the effect of increasing the complexity and time needed for a motor carrier or enforcement official reviewing the records to reconstruct a trip to determine compliance, particularly if the supporting documents are incomplete or missing.

The current definition of AOBRD at 49 CFR 395.2 states: ''The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven * * *.'' When the regulation was published, it was necessary to include this requirement because integral synchronization and engine information were essential to enable verification of when a driver was in an on-duty driving status. Since that time, advances in object-location technologies and communication of location information are such that it may no longer be necessary to require integral synchronization.

However, in order to ensure that time and travel distance information is recorded accurately, the vehicle location information must be recorded at frequent intervals. The longer the recording interval, the less accurate the travel distance information, simply because the location will be computed as a straight line between points. On June 10, 1998, Werner Enterprises entered into a Memorandum of Understanding (MOU) with the agency to use GPS technology and related safety management computer systems as an alternative to handwritten driver RODS. Over the course of the pilot demonstration project, FMCSA conducted onsite reviews and investigated a complaint. FMCSA's reviews confirmed that the inability of Werner's original electronic logging system to accurately measure distance traveled and average speed was caused not by any limitations of GPS positioning but rather by the infrequent updates of vehicle position being recorded by the system. In March 2002, Werner and FMCSA entered into a revised MOU to amend the terms of the June 1998 agreement. FMCSA granted Werner a 2-year exemption in September 2004 to allow the carrier to continue to use its system. The Agency renewed the exemption for another 2-year period in September 2006 (71 FR 52846, Sept. 7, 2006). The terms and conditions of the exemption are described in that notice at FMCSA Docket No. 2003–15818.

The key concern is that travel distance—and the associated driving time—be recorded and reported at a level of accuracy appropriate to ensure HOS compliance. Specifically, it is critical that the device not ''undercount'' distance (or the associated travel time) because that could mask HOS violations. By the same token, an ''overcount'' of distance traveled could suggest HOS violations where none exist. FMCSA proposes to require that the difference between actual distance traveled and distance per day (i.e., a 24-hour period) computed via location-tracking methods be +/−1 percent, with a 1-minute interval for the EOBR to record location data. FMCSA believes this will keep the technology affordable for motor carriers while still providing an appropriate level of accuracy for location-based verification of RODS.

FMCSA requests comments on the technical requirements and associated costs of recording CMV location across a range of time intervals (1, 3, and 5 minutes) and accuracies (1, 3, and 5 percent).

The Agency stresses that it is not the intent of the NPRM to require the EOBR to transmit location information from the device (or the CMV in which it is used) to a tracking system maintained by a motor carrier or another party working on a motor carrier's behalf. We recognize that although there are no operational costs to receive satellite-generated location information (such as from the GPS array), transmitting that information from the EOBR to another location would entail costs. Because FMCSA does not propose to require the EOBR to transmit information at specific intervals to the motor carrier or anyone else, the location update intervals would not increase the cost of the EOBR or affect how it is used. The update intervals are simply a matter of programming or menu selection for the device.

FMCSA requests comments on the question of transmitting location information from the EOBR to the motor carrier.

Factor 4: Ability of Roadside Enforcement Personnel To Access the HOS Information Quickly and Easily

Data presentation (display) format. The presentation requirements for HOS data on an AOBRD are fundamentally different from those for paper RODS: AOBRDs do not require the familiar graph-grid output format, and devices

lacking electronic displays have no output presentation. This presents a challenge to roadside safety officials. Most commenters supported a standardized, simple EOBR display format showing the current driver-related status and highlighting any noncompliance.

The data file format for an output display must facilitate review by roadside safety officials using handheld computers. The current regulation requires only a hardware interface between the AOBRD and the motor carrier's back-office system. Some commenters believe the current hardware standard (RS–232) for serial communications is outdated. Others maintained that manufacturers should develop data interchange standards. Still others pointed to the wide range of standard data interchange methods available (e.g., USB) but emphasized the importance of having standardized data formats and communications protocols.

FMCSA's proposed performance-based approach to standards for EOBRs would provide several options for information transfer and display. EOBRs would be required to produce upon demand a driver's HOS chart using a graph-grid format in either electronic or printed form and a digital file in a flat file using a specified format. The graph grid and digital file must show the time and sequence of duty status changes including the driver's starting time at the beginning of each day.

The option for providing the RODS data via a flat file would serve two purposes. It would allow the use of smaller and less costly electronic displays on the EOBR itself and also permit the data to be transferred to a safety official's laptop computer, PDA, or similar device.

With respect to options for hardwired and wireless data transfer methods, the Agency's intent is to allow only a one-way transfer—the enforcement official's computer would not transfer data to the EOBR. In addition, the use of a standard file format for EOBR data transfer could permit an extra layer of motor carrier compliance verification through automated screening of the records. A standard file format could also reduce the cost of EOBRs and support systems, particularly for small motor carriers using desktop-computer-based back-office recordkeeping systems. The reduction in support system costs would flow from the ''few to many'' relationship between the back-office systems and EOBRs; according to some industry estimates, there are more than 400,000 EOBRs and ''EOBR-ready'' devices in use today. This same equation holds for the motor carrier safety compliance assurance community—there are perhaps 10,000 laptops and handheld computers in use by FMCSA and State commercial vehicle safety officials today.

In addition to requiring the graph-grid and flat file output of the full record on a 24-hour basis, the proposed rule requires duty status summary information similar to that currently required under § 395.15(i)(5). This information would immediately indicate to the enforcement official whether a more detailed review of the records might be appropriate.

Reportedly, many safety enforcement officials are apprehensive about entering the cab of a commercial motor vehicle to check HOS records on an AOBRD. They perceive their physical presence in the driver's workspace as being potentially unsafe. To address this concern, FMCSA proposes to require that information displayed and stored on the EOBR be made accessible to authorized Federal, State, or local enforcement officials for review without the official's having to enter the CMV. This proposed requirement could be met in a variety of ways—by using various hardwired and wireless communications methods; by copying the EOBR information to removable media and handing the media to the official; or by simply handing the EOBR to the official.

Factor 5: Level of Protection Afforded Other Personal, Operational, or Proprietary Information

The existing information collection requirements for paper RODS and AOBRDs, as well as those proposed for EOBRs, are intended to produce an accurate HOS record. The record must accurately disclose the amount of time the driver spends in each of the four duty status categories, the date, and the location of each change of duty status. The information is recorded and reviewed by FMCSA and its government Agency partners to determine compliance with the HOS requirements of part 395. Location information is limited to city and State, the level of detail required to enable reconstruction of the sequence of events for compliance-assurance purposes. The level of detail that would be required for EOBR records is the same as for paper RODS.

As discussed under Factor 1, driver identification requirements would be geared to verification of the driver's identity on an HOS record. This rulemaking would not require disclosure of a driver's proprietary information.

Other uses for data. Drivers and motor carriers opposing an EOBR mandate also expressed concerns about the potential for ''scope creep''—collection by EOBRs of data for use in enforcement and litigation actions unrelated to hours-of-service compliance. It is FMCSA's intent that the data recorded on EOBRs and support systems, and the information derived from those data, relate solely to compliance with the HOS regulations. The data requirements are therefore limited, and the technological challenges of collecting, recording, and retaining the data on the EOBR and support systems are generally well known and are met by many manufacturers. As discussed in the Agency's response to comments about the development of a ''basic'' EOBR to promote increased carrier acceptance, one reason for proposing to eliminate the requirement for recording road speed is that § 392.6, Schedules to conform with speed limits, addresses road speed in a broader safety context. Notwithstanding these deliberate measures to narrow the scope of today's rule, FMCSA reserves the right to adopt enforcement policies and practices to take advantage of continuing technological advances. Any future proposals to use EOBRs or other electronic monitoring for enforcement, compliance, or other Agency purposes will be evaluated on their merits.

We recognize industry concerns regarding the potential use of electronic monitoring data in litigation. For the Agency to withhold such data in response to a Freedom of Information Act request, a court order, or another legal process, however, would require statutory amendments. FMCSA emphasizes that, under the proposal, the vast majority of motor carriers would have full discretion as to whether to use EOBRs that comply with proposed § 395.16 (or AOBRDs compliant with § 395.15) or to continue using paper RODS. Only those motor carriers with significant and recurring HOS noncompliance would be required to install and use EOBRs.

Data security of EOBRs. The September 2005 Volpe Center report, *Recommendations Regarding the Use Of Electronic On-Board Recorders (EOBRs) for Reporting Hours Of Service (HOS)* and the July 2005 National Institute of Standards and Technology (NIST) report, *Technical Review and Assessment: Recommendations Regarding the Use of Electronic On-Board Recorders (EOBRs) for Reporting Hours of Service (HOS),* address data security in terms of physical security for portable storage media devices and data security for the RODS information.

As discussed in the NIST report, although data stored on the portable media are not encrypted, they are written in binary code. This non-text format renders the data unintelligible to a person attempting to view or edit the log file using a personal computer with a text editor. This approach offers an improved level of data tampering protection. If text files are used, they can be made ''read only'' to prevent alteration except by authorized personnel. This would allow drivers to review their logs, but not to alter them.

Finally, NIST noted that although encryption provides a high level of privacy and security, the technologies involved can be complex and costly to administer. NIST's assessment is that data security, rather than privacy of personal information, is probably the principal concern. Thus, data encryption may provide a higher level of security than that required for RODS applications. FMCSA agrees with this assessment and therefore is not proposing use of encryption for EOBR data for wired data transfers between EOBRs and roadside enforcement computers, or between motor carrier back-office systems and safety enforcement computers during CRs.

However, for wireless data transfers between EOBRs and roadside enforcement computers via Bluetooth or Institute of Electrical and Electronics Engineers, Inc. (IEEE) 802.11g ''Wi-Fi'' standards, FMCSA plans to specify a standard for data security and encryption. We have not identified an optimal standard, and request comments on which existing industry standards for data security and encryption should be required to cost-effectively prevent the hacking of both EOBRs and roadside enforcement computers. Such attacks would include unauthorized access to data and device functions as well as denial of service.

EOBRs and privacy. This NPRM does not change the treatment of HOS records with respect to privacy matters. FMCSA's predecessor agencies have had the authority to review drivers' and motor carriers' documents since 1937, when the first HOS regulations were promulgated (3 MCC 665, Dec. 29, 1937; 3 FR 7, Jan. 4, 1938).

From the Motor Carrier Act of 1935 onward, Congress has recognized the Federal Government's interest in providing a higher level of safety oversight to CMV drivers than to drivers of other motor vehicles. CMV driver licensing, assessment of physical qualifications, training, and performance of driving and other safety-sensitive duties are subject to Federal regulation. The regulations also require records to document the results of various types of assessments (such as a driver's physical qualifications) and compliance with regulations concerning CMV operations (such as a RODS to document HOS).

FMCSA's commitment to promoting highway safety and preventing crashes involving CMVs is compatible with requiring records to determine the number of hours CMV drivers drive, are on duty, are off duty, or are using a sleeper berth, and the location of changes in duty status. Except in the context of an investigation of a crash or a complaint of alleged FMCSR violations, when the Agency might inquire into off-duty time to learn if a driver was working for another motor carrier or performing other work during an alleged off-duty period, FMCSA generally does not inquire into a driver's off-duty activities. The Agency's interest in records of duty status that identify the date, time, and location at each change of duty status is based on its need to reconstruct the sequence of events for trips to determine compliance with the HOS regulations, including whether the driver was afforded an off-duty period and had the opportunity to obtain restorative sleep. If during this enforcement process FMCSA found evidence of vehicle activity during a claimed off-duty period, we would inquire further to establish the veracity of the RODS.

Finally, as stated in the September 2004 ANPRM (69 FR 53386, at 53392, Sept. 1, 2004) and reiterated under *Audit Trail/Event Log* in this NPRM preamble, the Agency recognizes that the need for a verifiable EOBR audit trail—a detailed set of records to verify time and physical location data for a particular CMV—must be counterbalanced by privacy considerations. See also the discussion on FMCSA's Privacy Impact Assessment later in this preamble.

Factor 6: Cost

The ANPRM requested public comments on development of requirements for a ''basic'' EOBR to promote increased motor carrier acceptance of the technology. At issue was whether the Agency should propose requirements for ''minimally compliant'' EOBRs that would provide the electronic-data equivalent of an accurate RODS yet be more affordable for small motor carriers and independent drivers (69 FR 53386, at 53394); propose a performance-based specification in the spirit of § 395.15; or propose a detailed design specification similar to the European Union 2135/98 requirement for electronic tachographs and their support systems.

FMCSA proposes a single set of performance-based specifications for EOBRs under a new § 395.16. This has the advantage of being simpler and more straightforward for motor carriers to use, for manufacturers and system providers to develop, and for safety officials to enforce. It would promote the use of advanced technologies as they become more affordable and appropriate for motor carrier applications.

Several of the proposed performance requirements discussed earlier—such as the removal of the ''integral synchronization'' requirement and substitution of a requirement for accuracy of information on distance traveled by the CMV, the requirement for flat-file output, and the provision to allow communications via several alternative hardwired and wireless methods—have in common the potential to decrease the cost of EOBRs. The proposed elimination of the integral synchronization requirement opens the door to using a large variety of commercial off-the-shelf telecommunications devices as the EOBR, for a significant reduction in EOBR hardware costs. Another potential change in performance requirements would be the elimination of any requirement for the EOBR to accept keyboard input for State border crossing information. This AOBRD requirement, which facilitated motor carriers' compliance with fuel tax reporting procedures, reflected a design feature common to 1980s-era recorders. FMCSA does not propose to remove from § 395.15 the requirements for integral synchronization, for recording of State border crossing information, and for the capability to transfer data to a ''back-office'' system.

Under this NPRM, motor carriers now using AOBRDs compliant with § 395.15 would not be required to invest in § 395.16-compliant EOBRs. These carriers could continue to use the AOBRDs for the life of the CMVs in which they are installed. Any devices used for recording HOS installed or used in CMVs manufactured on or after 2 years following the effective date of an EOBR final rule would be required to comply with the new requirements.

Factor 7: Driver Acceptability

Drivers' comments to the ANPRM docket (as well as to the dockets of the 2000 NPRM on hours of service, the 2003 HOS final rule, and the 2005 HOS NPRM and final rule) reflect mixed feelings about EOBRs. Some drivers appreciate that use of these devices can significantly reduce the time and effort

of preparing and filing paper RODS. They also value the accurate and timely duty status information an EOBR provides the motor carrier, which removes an incentive for a dispatcher to ask a driver to drive longer or take less off-duty time than the regulations require. Other drivers view the prospect of using an EOBR as an unwanted and unwarranted intrusion. These drivers value their independence and self-reliance, and resent the notion of oversight by their supervisors or Government authorities.

In August 1995, FHWA conducted a survey of truck and motorcoach drivers to gauge potential acceptance of commercial vehicle operations (CVO) user services *(User Acceptance of Commercial Vehicle Operations Services, Task B Final Report, Penn and Schoen Associates, Inc., August 8, 1995).* On the whole, commercial vehicle drivers were receptive to and supportive of the use of CVO technologies and user services on the road and in their vehicles. Technologies garnering the most support were seen by survey respondents as having the potential to ''make my work easier,'' be ''useful for me,'' and ''* * * work [in my vehicle]/I would rely on it.'' See page 9 of the report.

At the same time, drivers expressed concern that certain of the technologies would constitute an invasion of driver privacy by either the government or the driver's company. Another concern was that the systems would rely too much on computers and diminish the role of human judgment. Drivers were wary of services that might overpromise, leaving them dependent on unproven technology. They wanted systems that would be consistently reliable, workable, and useful yet pose no threat to the driver, his vehicles, his privacy, or his livelihood.

On the whole, drivers tended to evaluate the commercial vehicle operations services from the perspective of personal experience rather than focusing on the industry as a whole. For example, independent owner-operators, who have historically been more skeptical of technology and wary of intrusion by either the government or trucking companies, reacted more negatively toward the technologies than did other drivers.

A second study, required by Congress under the Fiscal Year 1995 U.S. Department of Transportation Appropriations Act, assessed technological, economic, and institutional factors requiring consideration if smart-card applications were to be implemented. The study found that smart-card applications were feasible for driver's licenses, operations- and maintenance-oriented vehicle cards, and electronic toll collection, but not for international border crossing (telecommunications protocols were already in place) and drivers' records of duty status. The researchers noted the lack of a requirement for motor carriers to automate the RODS, and believed ''any proposed regulation specifying the use of smart cards would almost certainly encounter fierce opposition.'' (*Smart Cards in Commercial Vehicle Operations* [Report FHWA–MC–97–022, Dec. 1996], page 51).

It is clear that any type of technological innovation must be introduced in a forthright way. Users must be aware of the technology and understand the HOS regulations with which they must comply. Users must be provided appropriate training, and the technology should not distract them from their primary tasks. For most motor carriers, the decision to use EOBRs (or AOBRDs) would continue to be voluntary under the proposed rules. Motor carriers operating in compliance with the HOS regulations may continue to choose between paper or automated RODS systems, according to what works best for them and their drivers. Only those motor carriers demonstrating recurrent, significant noncompliance with the HOS regulations would be required to use EOBRs. However, all drivers used by those carriers would be required to operate vehicles equipped with EOBRs.

FMCSA believes the EOBR remedial provisions must, to be effective, apply to carriers using owner-operators and to the owner-operators' equipment. We recognize that a carrier leasing equipment from owner-operators could argue that those CMVs are outside the scope of the remedial provisions because ownership remains in control of the lessor, and the carrier has no control over whether the owner-operator installs the equipment. However, 49 CFR 376.12(c)(1) requires a motor carrier using leased equipment to assume ''exclusive possession, control, and use of the equipment'' for the duration of the lease. Therefore, FMCSA proposes that the remedial directive apply to all vehicles used by the carrier to perform transportation services on the carrier's behalf. If a motor carrier is issued an EOBR remedial directive, then it must install (or have installed) EOBRs in all vehicles it uses. Owner-operator vehicles leased to such a remediated carrier would be required to have EOBRs installed even if the owner-operator holds separate operating authority. Before leasing to a particular carrier, an owner-operator should ask the carrier whether it is operating under an EOBR remedial directive.

As discussed elsewhere in this notice, FMCSA proposes to encourage motor carriers, and owner-operators leased to motor carriers, to consider using EOBRs by offering incentives in the form of an alternative process of reviewing HOS records. In addition, the performance specifications under proposed § 395.16 include a number of enhancements that take advantage of the significant advances in monitoring, recording, and communications technologies since the § 395.15 requirements were developed. These features should improve the usefulness of EOBRs to drivers.

We are proposing that an EOBR be required to provide an audible and visible signal to the driver at least 30 minutes in advance of reaching the driving time limit and the on-duty limit for the 24-hour period. EOBRs would also be required to provide an audible and visible signal to the driver at least 30 minutes in advance of reaching the 60/70-hour limits for on-duty time. The visual signal must be visible to the driver when seated in the normal driving position. The audible signal must be capable of being heard and discerned by the driver when seated in the normal driving position, whether the CMV is in motion or parked with the engine operating.

FMCSA acknowledges there is room to improve the accuracy of recording non-driving duty status categories. Comments to the docket by several EOBR manufacturers suggested methods for noting on-duty not-driving status. Generally, these required a driver to annotate the record or to select a different duty status if on-duty not-driving was not appropriate. FMCSA proposes that EOBRs be required to select on-duty not-driving as the default status when the vehicle is not moving for a certain period of time. The EOBR would also advise the driver via audible and visible means to enter a new duty status when the transmission is placed in park, the parking brake is engaged, or the ignition is turned off. The driver would still need to enter the duty status on the EOBR manually if his or her duty status differed from the on-duty not-driving default setting. We believe this requirement would reduce direct driver interaction with the EOBR, as recommended in comments provided by the IBT and advocacy organizations. Although some commenters recommended FMCSA mandate EOBRs that would record duty status categories accurately without driver-EOBR interaction, FMCSA is not aware of any such devices in the commercial marketplace at this time. We request

public comment on the availability of such devices in the near future.

This NPRM also includes a provision requiring an EOBR to provide for the driver's review of each day's record before submitting it to the motor carrier. As noted previously, the driver would be allowed at that time to make annotations and amendments to the electronic RODS, but not to amend driving-status information. The EOBR must be designed so that if a driver or any other person annotates a record in the device or a support system for the device, the annotation does not overwrite the original contents of the record. This would preserve the auditability of EOBR records.

B. Remedies

FMCSA, based on its safety research, believes that motor carriers whose drivers routinely exceed HOS limits or falsify their HOS records have an increased probability of involvement in fatigue-related crashes and therefore present a disproportionately high risk to highway safety. Based on the Agency's analysis of its Motor Carrier Management Information System (MCMIS) data from CRs conducted since 1995 on motor carriers operating in interstate commerce, carriers to which a remedial directive would apply under this proposal have crash rates that are 87 percent higher than average.

FMCSA selects motor carriers to undergo CRs based in part on data generated during roadside inspections. FMCSA and enforcement personnel in States receiving Motor Carrier Safety Assistance Program funds under 49 U.S.C. 31102 enforce motor carrier HOS rules through roadside inspections and CRs. Unlike CRs, which usually are conducted at a carrier's principal place of business, roadside inspections are performed at a fixed or mobile roadside facility. Inspectors may perform any of six categories, or levels, of inspection. Level I, II, and III inspections include examination of the driver's HOS compliance, commercial driver's license, medical certification, and hazardous materials (HM) requirements. Level I and II inspections include additional factors such as examination of parts and accessories necessary for safe operation, motor carrier operating authority and financial responsibility, and applicable HM inspection items. These roadside inspections are intended to assess the compliance of a company's motor vehicles and drivers with FMCSA safety, economic, and hazardous materials regulations. Where certain serious violations are discovered, the driver or vehicle may be placed out of service.

In prioritizing among carriers for CRs, FMCSA investigators consider a number of factors, including whether the carrier has crash involvement, the carrier's vehicle and driver out-of-service rates, Safety Status (SafeStat) information system results, the date and result of the previous CR, non-frivolous complaints the Agency has received concerning the carrier, and whether the carrier is seeking an upgrade to its existing safety rating. During CRs, FMCSA or State safety investigators examine in detail the motor carrier's compliance with all applicable safety regulations.

In examining HOS records during CRs, safety investigators look at samples of drivers' RODS, checking for violations, accuracy, and completeness. It is worthwhile to note that FMCSA's method of selecting records during the course of a CR has withstood a judicial challenge. *American Trucking Ass'ns* v. *Department of Transportation*, 166 F. 3d 374 (D.C. Cir. 1999). In its decision, the court recognized the distinctive character of HOS regulations and held that the Agency had acted rationally in assigning two points within its Safety Fitness Rating Methodology (SFRM) scheme—a double weighting—for a pattern of HOS violations. The court stressed the importance of controlling driver fatigue and the fact that the HOS regulations are the only ones dealing with driver fatigue. These same patterns of HOS violations are the focus of the EOBR remedial directives proposed in this NPRM.

During that portion of the CR involving HOS records review, safety investigators use uniform sampling standards including the number of drivers to be reviewed, the minimum number of RODS to be checked, and other factors designed to focus the investigation on areas where there has been probable noncompliance. The number of drivers whose RODS are checked varies depending on the size of the carrier (e.g., 0–5 drivers, all drivers' logs; 6–10 drivers, 5 drivers' logs; 16–50 drivers, 7 drivers' logs; etc.). The minimum number of RODS reviewed for part 395 violations also depends on the carrier's driver population (e.g., 1–5 drivers, 30 × number of drivers; 6–15 drivers,150 RODS reviewed; 6–15 drivers, 210 RODS reviewed). Investigators generally look at RODS for the 6-month period prior to the CR.

The investigator prepares a CR report for the motor carrier documenting the sample size used, the number of records reviewed, and the number of violations discovered under part 395. If the violation rate for any ''critical'' part 395 regulation (see 49 CFR Part 385 App. B § VII) is equal to or greater than 10 percent, this pattern of noncompliance will potentially affect the carrier's safety rating.

Traditionally, the Agency has relied on two of its regulatory powers to deter HOS violations and obtain motor carrier compliance: (i) The issuance of civil penalties under 49 U.S.C. 521(b) followed by enforcement proceedings under 49 CFR Part 386; and (ii) the issuance of proposed or final ''unsatisfactory'' or ''conditional'' safety ratings under 49 CFR Part 385. Motor carrier records examined during Agency CRs, however, indicate that some motor carriers routinely violate the HOS regulations despite the Agency's use of these enforcement and compliance tools. Incidents of log falsification continue to be a significant concern, and civil penalties in particular have come to be viewed by some carriers—particularly those with significant and repeated HOS violations—less as a deterrent than simply as a cost of doing business. FMCSA therefore concludes that additional regulatory measures are needed to improve HOS compliance of certain motor carriers.[4]

Proposed Trigger for Remedial Directives

FMCSA proposes that the trigger for an EOBR notice of remedial directive and proposed unfitness determination be the ''final determination'' of one or more pattern violations of any Appendix C regulation, followed by the discovery of one or more pattern violations of any Appendix C regulation during a CR completed in the 2-year period subsequent to the closing date of the CR that resulted in the first final determination. A ''pattern violation,'' for purposes of the remedial directive, is defined with respect to Appendix C regulations as a violation rate equal to or greater than 10 percent of the records reviewed. For example, 25 violations out of 100 records reviewed would represent a 25 percent violation rate and therefore constitute a pattern violation.

If the motor carrier failed to install and use the EOBRs, it would be prohibited from operating in interstate commerce and intrastate operations affecting interstate commerce. Further, if the motor carrier were a for-hire carrier, it would have its registration revoked.

[4] In addition to drawing upon the expertise of FMCSA enforcement and compliance personnel, the Agency solicited and received input from State enforcement officials regarding mandatory EOBR installation for carriers with poor HOS compliance. Representatives from the Nebraska and Washington State Patrols and the Connecticut Department of Motor Vehicles served as members of the Agency's EOBR rulemaking team.

The mandatory EOBR installation period would be for 2 years following issuance of the remedial directive. The two CRs need not be consecutive, so long as they occur within the relevant 2-year period. For the purpose of the remedial directive, FMCSA would focus only on part 395 HOS violations where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a motor carrier's safety management controls and considered relevant to the proposed remedial provisions. All violation calculations would be based on, and all proposed remedial directives would apply to, *motor carriers* rather than to individual drivers.

The proposed EOBR remedial directive would be reserved for carriers whose safety management controls are seriously deficient. FMCSA bases its EOBR proposal on the Agency's authority under 49 U.S.C. 31144 to determine motor carrier safety fitness. This invocation of the Agency's safety fitness authority is in keeping with FMCSA's Comprehensive Safety Analysis 2010 (CSA 2010), a reform initiative launched in 2004. The ultimate goal of CSA 2010 is development of an optimal operational model that will allow FMCSA to focus its limited resources on improving poor safety performers. For more information about CSA 2010, visit *http://www.fmsca.dot.gov/safety-security/safety-initiatives/csa2010listening.htm*.

This proposal thus focuses on HOS violations where noncompliance relates to management and/or operational controls. Violations of only those regulations listed in proposed new Appendix C to Part 385 will be counted toward issuance of a remedial directive and proposed unfitness determination or a notice of potential remedial directive applicability (NPRDA). The Appendix C regulations consist of all the part 395 regulations that currently appear in Part 385 Appendix B, section VII. These 24 provisions, which also are classified as ''critical'' regulations under the current rules, are the HOS violations that FMCSA has determined reflect deficiencies in safety management or operational controls. (See Part 385, App. B, II(c); 62 FR 60035 at 60044, Nov. 6, 1997.) They are therefore well suited to use as part of the EOBR remedial directives trigger. In order to allow maximum flexibility for the work of the CSA 2010 initiative noted previously, however, the Agency is proposing to duplicate and house these 24 regulations in a separate Appendix C. FMCSA intends this approach to permit a significant future revision of the Agency's acute and critical regulatory scheme, if such a change is deemed appropriate, without necessitating an additional rulemaking change to the EOBR remedial directives provisions.

In addition, rather than focusing on single violations, FMCSA is looking for patterns of noncompliance. The focus on these violations as a basis for EOBR remedial directives is consistent with the current safety fitness determination process and logically related to the structure of current part 385. This management and control aspect is an appropriate focus for the EOBR remedial program because patterns of noncompliance with these types of regulations are linked to inadequate safety management controls and higher than average crash rates. As stated in Part 385, App. B II(e), ''FMCSA has used patterns of noncompliance with safety management-related regulations since 1989 to determine motor carriers' adherence to the Safety fitness standard in § 385.5.''

Where a number of documents are reviewed, as with the HOS component of the CR, a pattern of noncompliance can be established when at least 10 percent of the documents examined reflect a violation of any regulation listed in Appendix C to Part 385. FMCSA believes that motor carriers with effective safety management controls should be able to maintain a noncompliance rate of less than 10 percent for the Appendix C regulations.

FMCSA emphasizes that issuance of a remedial directive would not preclude the Agency from also imposing appropriate civil penalties on the carrier for HOS violations, just as all motor carriers would continue to be subject to civil penalties for HOS violations that do not rise to the level of a ''pattern.'' Likewise, the Agency's civil penalty policy under section 222 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 105–159, 113 Stat. 1748) (MCSIA) would remain in effect for all carriers. Under this policy, as explained in ''Section 222 of the Motor Carrier Safety Improvement Act of 1999; Clarification of Agency Policy Statement'' (69 FR 77828, Dec. 28, 2004), the Agency imposes a maximum civil penalty on motor carriers committing three violations of the same regulatory part within 6 years. In proposing a shorter, 2-year period during which discovery of one or more pattern violations by the carrier would trigger a remedial directive, FMCSA intends to supplement, rather than negate, the Agency's civil penalty policy under MCSIA section 222.

The proposed remedial directives are predicated on pattern violations of Appendix C regulations discovered during CRs by FMCSA or State safety investigators. FMCSA considered, but rejected, approaches for a remedial directives trigger based on roadside inspections or other non-CR procedures. Far more roadside inspections than CRs are performed, and these inspections generate a significant volume of HOS compliance data. However, certain of the Agency's algorithms using these data, such as the Driver Safety Evaluation Area (SEA) component of SafeStat scores, incorporate both HOS and some non-HOS violations, such as commercial driver's license violations. In addition, roadside inspections are designed to determine the safety status of a driver or vehicle at a given point in time, not to provide, on the basis of a single examination, a broad assessment of a motor carrier's general operations and safety management controls.

CRs, by contrast, are indeed intended to provide a broad assessment of a motor carrier's general operations and safety management controls. They are ordinarily conducted at a motor carrier's place of business, involve larger samples of records, examine multiple vehicles and drivers' RODS, and typically produce a series of violation findings. Motor carrier safety ratings, as calculated under the SFRM, are based largely on CR data. Given the potential for an EOBR remedial directive to place a serious financial burden on a motor carrier, we believe such a directive should be issued only on the basis of the broad scope of operational examination and extensive record review inherent to the CR process. Although the Agency will continue to compile and use non-CR data as in the past and may consider cumulative roadside data in the future, FMCSA is proposing to use only CR-based violations as direct grounds for issuance of EOBR remedial directives.[5]

Additionally, the Agency proposes not to issue a remedial directive until after the motor carrier has committed a pattern violation of an Appendix C regulation twice within a 2-year period. FMCSA considered the option of imposing the EOBR remedial directive after a single 10 percent violation but rejected this alternative because the Agency believes public safety is best served by placing its focus on repeat violators of Appendix C regulations. The vast majority of motor carriers strive to comply with the HOS regulations. The selected, ''2 x 10'' approach would allow the Agency to strengthen its safety oversight yet avoid

[5] The Agency would continue to capture and make use of this valuable roadside input indirectly by using SafeStart results as a basis for selecting carriers for CRs.

penalizing carriers that demonstrate overall compliance with the HOS rules.

As noted earlier, FMCSA is aware of the potential financial burden the EOBR remedy may place on some motor carriers. By requiring a second ''strike,'' we intend to afford carriers fair warning and an opportunity to adopt new or additional safety management steps, if that is their choice, to improve their HOS compliance and possibly avoid receiving a remedial directive. The two-strike approach is also intended to work in tandem with the proposed EOBR incentives by encouraging carriers to install EOBRs voluntarily following the first final determination that a pattern violation of an Appendix C regulation has occurred.

The Agency also considered, but rejected, a proposal to raise the threshold pattern violation rate for Appendix C regulations to 20 percent. A statistical analysis of motor carriers that would have been affected, over the 3-year period 2003–2005, by a ''2 x 20'' compared with a ''2 x 10'' trigger scheme showed that the former approach would have resulted in approximately 55 percent fewer EOBR remedial directives (577 versus 1,288). As previously noted, MCMIS data indicate that carriers to which a remedial directive would apply under the ''2 x 10'' proposal have a significantly higher crash rate than the average crash rate for interstate carriers that have had a CR since 1995. The Agency believes that significantly lowering the EOBR remedial installation rate among such carriers by adoption of a higher, ''2 x 20,'' threshold would represent an unwarranted missed opportunity to improve motor carrier safety.

Finally, the Agency considered and rejected the option of requiring three 10 percent pattern violations. We determined this protracted trigger, in combination with a 2-year window, would not result in sufficient numbers of EOBR installations to effectively address the problem of recurring noncompliance. Projections of the anticipated findings of pattern violations of Appendix C regulations do not support the use of a 3-year or longer window.[6] As noted previously, the 2-year period is significantly shorter than the 6-year period that the Agency uses for its civil penalty policy under section 222 of MCSIA.

By establishing a 2-year period within which the two CR-based pattern violations must occur, the Agency would create a window wide enough for FMCSA or State enforcement officials to perform at least two CRs, at current CR rates, on over 90 percent of carriers with indicia of poor driver safety. At the same time, a potential 2-year interim between the Agency's initial findings and its issuance of remedial directives would be short enough to preserve the directives' efficacy in remedying repeated noncompliance. The proposed 2-year window for Appendix C violations under the EOBR remedial installation provision should, in addition to its advantages as a compliance improvement strategy, impose lower recordkeeping and related administrative costs on motor carriers than the comparable ''multi-strike,'' 6-year period applied in the civil penalty context under section 222 of MCSIA.

The proposed 2-year window would be measured from the closing date of the first CR in which one or more pattern violations of any Appendix C regulation were discovered. If there is a final determination of any pattern violation of an Appendix C regulation, and if, within 2 years following the first CR, the carrier has any subsequent CRs in which one or more pattern violations of any Appendix C regulations are discovered, the carrier would be subject to issuance of a remedial directive and proposed unfitness determination.

A ''final determination,'' for purposes of part 385 subpart F, would include: (1) An adjudication under new part 385 subpart F upholding an NPRDA or remedial directive and proposed unfitness determination; (2) the expiration of the period for filing a request for administrative review of an NPRDA or remedial directive and proposed unfitness determination under subpart F; or (3) the entry of a settlement agreement stipulating that the carrier is subject to mandatory EOBR installation, use, and maintenance requirements.

Following the first CR in which any pattern violation of an Appendix C regulation is discovered, the Agency would issue the carrier full and fair notice that a repeat of that finding during the subsequent 2 years will result in the issuance of an EOBR remedial directive. (49 CFR 385.507) The NPRDA would afford carriers desiring to avoid a mandatory installation directive an opportunity to improve their HOS compliance practices. It would explain the future circumstances that would trigger issuance of a remedial directive and describe generally the CR findings that prompted the issuance of the NPRDA.

Installation, Use, and Maintenance of Mandatory EOBRs

Under FMCSA's proposal, motor carriers subject to a remedial directive would be required to install § 395.16-compliant devices in all of their CMVs. These carriers would be required to use the EOBRs to record their drivers' HOS, review the EOBR records for HOS compliance, and take appropriate actions with respect to drivers found in violation. They also would be required to submit documentation demonstrating their continued use of the EOBRs for these purposes. Failure or refusal to use EOBRs in this manner during the required period or to document such use would subject the motor carrier to an immediate out-of-service order. Carriers also would be required to maintain the devices in good working order and to repair or replace any malfunctioning devices within 14 calendar days. During any time an EOBR is not functioning, and a spare device is not available, the Agency would require preparation of a paper RODS. Failure to maintain the devices properly could likewise subject the carrier to an immediate out-of-service order applicable to some or all of its vehicles and operations.

Following the same schedule currently applicable to the issuance of proposed and final safety ratings, motor carriers potentially subject to remedial directives would have 60 days (45 days for motor carriers transporting passengers or placardable quantities of hazardous materials) after the date of the notice of remedial directive to install § 395.16-compliant EOBRs in their CMVs and to submit proof of installation to FMCSA. The 45/60-day period would commence upon FMCSA's issuance of an NPRDA or a notice of remedial directive and proposed unfitness determination following the CR. During this period the carrier could seek administrative review of the CR findings under new proposed § 385.517, but no reviews based on corrective action (comparable to current § 385.17) would be permitted.

The proposal would require a motor carrier subject to a remedial directive to verify EOBR installation in all of the carrier's CMVs within the 45/60-day period discussed previously. Verification could be accomplished either through a visual and operational inspection of the carrier's CMVs by FMCSA or State enforcement personnel or by submission of required documentation to FMCSA. The documentation would consist of receipts for device purchases and installation work, if available, digital or

[6] Of 2,457 poor Driver Inspection Indicator motor carriers (those in the poorest 25 percent) that underwent two or more CRs during 1999–2005, 2,386 had their two CRs within a 24-month period.

other photographic evidence of the installed devices, and documentation linking the EOBR serial number with the vehicle identification number of the CMV into which the device has been installed. If no receipt was submitted for an installed device or the installation work, the carrier would be required to submit a written statement explaining who installed the devices, how many devices were installed, the manufacturer and model numbers of the devices installed, and the vehicle identification numbers of the CMVs in which the devices were installed.

Either FMCSA or State enforcement personnel would perform inspections to assess whether the EOBRs were properly installed and are operating correctly. Carriers issued remedial directives could request these inspections instead of submitting the above documentation. The proposed rule would revise 49 CFR Part 350 to add a new requirement that States receiving Motor Carrier Safety Assistance Program funds under 49 U.S.C. 31102 provide such inspection services.

FMCSA proposes that those carriers directed to install EOBRs in their CMVs be required to use and maintain the devices in their vehicles for 2 years. The Agency believes this period would allow affected drivers and motor carrier employees to become familiar with the devices and enable the carrier to begin realizing improved HOS compliance. The Agency also believes that, for carriers wishing to remove the devices and return to use of paper RODS as soon as possible, a 2-year installation period is not unduly harsh. The Agency requests comment on the appropriate duration of mandatory EOBR installation, use, and maintenance under the proposed remedial directives.

Scope

The remedial directives provisions of the proposed rule would apply to all carriers subject to the requirements of part 395, as specified in section 395.1 The regulations listed in Appendix C incorporate all applicable revisions to the hours-of-service rules published in the **Federal Register** on August 25, 2005 (70 FR 49978). All revisions to the critical part 395 regulations (those listed in Part 385, App. B, section VII) that were effected in the August 25, 2005, final rule are included in the proposed Appendix C to Part 385. Thus, pattern violations of any Appendix C regulations arising from violations of the new sleeper berth, short-haul, or other revised HOS provisions could result in issuance of an NPRDA or remedial directive and proposed unfitness determination through citation of the appropriate regulation in Appendix C.

Limited Exemption for AOBRD Users

If a motor carrier currently using monitoring devices that are not compliant with new § 395.16 is issued an EOBR remedial directive, the motor carrier generally would be required to install, use, and maintain devices meeting the § 395.16 requirements. If a carrier with AOBRDs installed in its CMVs demonstrated a pattern of Appendix C regulatory violations sufficient to result in a remedial directive, the carrier's use of the older generation devices would demonstrably have failed to remedy its safety management deficiencies. The Agency therefore starts from the position that the same remedial directive should be issued to an AOBRD-using carrier as to one with no devices installed, and the carrier would be required to install EOBRs compliant with proposed new § 395.16.

In addition, one goal of this proposed rulemaking is to encourage migration, over time, toward use of the newer generation devices. These devices would be designed to meet performance standards that FMCSA concludes are more appropriate for HOS monitoring than the standards adopted under § 395.15 in 1988. Further, the increased uniformity of performance gained by phasing out the older devices would likely make enforcement and carrier personnel more familiar with the monitoring devices. This should improve compliance and enforcement efficiencies.

Notwithstanding these considerations, FMCSA appreciates that some carriers have made a significant investment in monitoring devices that are compliant with current regulations. Indeed, FMCSA in the past has encouraged carriers to install and use these devices. Moreover, the cause of the carrier's persistent HOS noncompliance may be unrelated to the additional features that devices compliant with § 395.16 offer over the § 395.15-compliant AOBRDs. The problem could be more managerial than technical, and use of newer devices might not be the answer.

FMCSA therefore proposes to suspend enforcement of otherwise applicable remedial directives, under certain conditions and at FMCSA's discretion, where motor carriers had installed devices compliant with § 395.15 (or pursuant to waiver of part of all of § 395.15) at the time of the CR immediately preceding the remedial directive. Motor carriers seeking this non-enforcement would be required to apply to FMCSA in writing and to demonstrate that the carrier and its employees understand how to use the AOBRDs and the information derived from them. The carrier's HOS compliance would be subject to strict FMCSA oversight, and the Agency could reinstate the remedial directive at any time if additional significant HOS noncompliance were discovered. This proposed exemption would not apply to vehicles manufactured more than 2 years after the effective date of the proposed rule.

Revised Safety Fitness Determinations Under Part 385

Section 4009 of TEA–21 amended 49 U.S.C. 31144 to require the Secretary of Transportation to maintain, by regulation, a procedure under 49 U.S.C. 31144(b) for determining the safety fitness of an owner or operator of CMVs.[7] The Agency implemented this requirement in its Safety Fitness Procedures final rule, published on August 22, 2000 (65 FR 50919). This rule provided that the Agency will use an ''unsatisfactory'' rating assigned under the SFRM in part 385 as a determination of ''unfitness.''

This NPRM would amend the safety fitness standard at 49 CFR 385.5 and make necessary modifications to the safety fitness determination procedures.[8] The amended fitness standard would provide an additional requirement that CMV owners and operators must meet, independent of their achieving a ''satisfactory'' or ''conditional'' safety rating, in order to demonstrate safety fitness. The Agency's three-part safety rating scheme, as set

[7] Prior to the 1998 TEA–21 amendment, 49 U.S.C. 31144 applied to ''owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers.'' As amended, the section now refers to these entities as ''owner[s] or operator[s]'' of commercial motor vehicles, but not as ''motor carriers.'' Although the congressional committee reports provide no explanation of this change, FMCS believes the change was made to eliminate an anomaly. Under 49 U.S.C. chapter 311, the term ''motor carrier'' appeared only in section 31144; it was not included in the section 31132 definitions. The Motor Carrier Safety Act of 1984, from which chapter 311 was derived, used the jurisdictional term ''commercial motor vehicle.'' ''Motor carrier'' and ''motor private carrier'' were defined separately in those provisions of title 49 of the United States Code administered by the Interstate Commerce Commission; the definition are now codified at 49 U.S.C. 13102. The FMCSRs have long treated owners and operators of CMVs as ''motor carriers'' (*see* 49 CFR 390.5). The regulatory text of 49 CFR Part 385 uses the term ''motor carrier'' as equivalent to ''owners and operators'' specified by amended section 31144.

[8] Current regulations contemplate such revisions to the fitness determinations, and the SFRM ''has the capability to incorporate regulatory changes as they occur.'' Part 385 App. B VI (a).

forth in the SFRM, would remain unchanged.

Under the SFRM, the Agency assigns points to motor carriers within six distinct analytical categories, or ''factors,'' based on the number of regulatory violations and level of compliance with other criteria, as determined in a CR. The ratings for the six factors are then entered into a rating table that establishes the motor carrier's overall safety rating of ''satisfactory,'' ''conditional,'' or ''unsatisfactory.'' Currently, a carrier must maintain either a ''satisfactory'' or ''conditional'' safety rating to continue operating in interstate commerce and intrastate operations affecting interstate commerce. A carrier issued a proposed ''unsatisfactory'' (or ''conditional'') rating may challenge the rating through an administrative review under § 385.15; or the carrier may seek to have the proposed rating changed based upon corrective action under § 385.17. Unless a proposed ''unsatisfactory'' rating is changed under § 385.15 or § 385.17, however, the carrier is prohibited from operating a CMV on the 61st day (or the 46th day for carriers transporting passengers or placardable quantities of hazardous materials) after the date FMCSA issued the proposed ''unsatisfactory'' safety rating. (49 CFR 385.13(a)) Pursuant to section 4104 of SAFETEA–LU, the Agency will revoke the registration of a motor carrier prohibited from operating in interstate commerce, and in intrastate operations affecting interstate commerce, for failure to comply with the safety fitness requirements of 49 U.S.C. 31144. (49 U.S.C. 13905(e))

Nothing in this proposal would change any of the above requirements or procedures. The current procedures for calculation of motor carrier safety ratings, including the three-tier SFRM, would remain unchanged. Motor carriers would continue to be assigned ''satisfactory,'' ''conditional,'' or ''unsatisfactory'' safety ratings under §§ 385.7, 385.9, and the SFRM set forth in Appendix B of Part 385, and carriers rated ''unsatisfactory'' would continue to be prohibited from operating a CMV and engaging in contracts with Federal agencies as provided in § 385.13. FMCSA would continue to issue notifications of safety ratings under § 385.11 [9] and to perform administrative reviews under § 385.15 and corrective-action reviews under § 385.17.

However, as previously noted, FMCSA is proposing to revise the safety fitness standard in § 385.5. If a carrier were operating under an EOBR remedial directive, an overall safety rating of ''satisfactory'' or ''conditional'' under the SFRM, while still necessary to meet the safety fitness standard, would no longer be sufficient. A second condition would also have to be met—that the carrier be in compliance with all applicable requirements of part 385 subpart F, Remedial Directives. Of course, in the absence of a notice of remedial directive and proposed determination of unfitness under subpart F, the Agency's notice of proposed or final safety rating would function, as it currently does under § 385.11, as the notice of safety fitness determination.

Following a CR resulting in findings that potentially subject the motor carrier to a remedial directive, the carrier would be issued a written notice of remedial directive based upon the pattern of violations of Appendix C regulations. The notice of remedial directive would require the carrier to install EOBRs in all of its CMVs, provide proof of installation within 60 days after issuance of the notice of remedial directive (45 days for hazmat and passenger carriers), and provide such other periodic reports as the FMCSA Enforcement Division determines are appropriate. The notice of remedial directive would explain how the carrier could challenge the directive and the time limits within which challenges could be filed.

The proposed unfitness determination would advise the motor carrier that if it failed or refused to install § 395.16-compliant EOBRs and to provide proof of installation as required under the remedial directive, FMCSA would deem the carrier unfit on the 60th day (45th day for hazmat and passenger carriers) after issuance of the notice, and the carrier would be prohibited from operating in interstate commerce, and in intrastate operations affecting interstate commerce, on the 61st (or 46th) day. It would also advise the carrier that, if it was subject to the registration requirements under 49 U.S.C. 13901, its registration would be revoked on the 61st (or 46th) day for failure or refusal to comply with the remedial directive.

If the carrier installed the EOBRs in all of its CMVs and supplied FMCSA with timely and necessary proof of installation, then the proposed ''unfitness'' determination would be conditionally rescinded, provided the carrier met all other terms and conditions of the remedial directive. The directive would remain in effect for a period of 2 years following the date of issuance. If a carrier failed or refused to use EOBRs for HOS compliance during the required period, or failed to document such use sufficiently, the proposed unfitness determination would be reinstated, and the carrier would be subject to an immediate out-of-service order. A carrier could lift the prohibition on its operations at any time by providing proof that the devices had been installed and complying with the other terms and conditions of the remedial directive.

Appeal Rights and Administrative Review

If a motor carrier believed the Agency had committed an error in issuing either an NPRDA or a notice of remedial directive and proposed unfitness determination, the carrier could request an administrative review under § 385.517. Challenges to the NPRDA or notice of remedial directive and proposed unfitness determination should be brought within 15 days of the date of the NPRDA or notice of remedial directive. This timeframe would allow FMCSA to issue a written decision before the prohibitions in § 385.519 go into effect. The filing of a request for administrative review under § 385.517 within 15 days of the notice of remedial directive would stay the finality of the proposed unfitness determination until the Agency had ruled on the request. Failure to petition the Agency within the 15-day period may prevent FMCSA from ruling on the request before the prohibitions go into effect. However, within 90 days of the date of issuance of the NPRDA or notice of remedial directive and proposed unfitness determination, the carrier may still file a request for administrative review, although if such request is not filed within the first 15 days the Agency would not necessarily issue a final determination before the prohibitions go into effect. Challenges to issuance of the remedial directive and proposed unfitness determination would be limited to findings of error relating to the CR immediately preceding the notice of remedial directive.

The proposed rule would not affect current procedures under § 385.15 for administrative review of proposed and final safety ratings issued in accordance with § 385.11. The Agency is proposing non-substantive revisions to § 385.15(a), however, solely to correct two typographical errors.

A motor carrier subject to a remedial directive would not be permitted to request a change to the remedial

[9] The proposed rule would amend the section heading of § 385.11 to clarify that the notices issued pursuant to that section relate only to a motor carrier's ''safety rating'' under § 385.5(a) and not to the Agency's ''safety fitness determination'' regarding the carrier, which encompasses both § 385.5(a) and (b).

directive or proposed determination of unfitness based upon corrective actions. In contrast to § 385.17, under which the Agency considers corrective actions taken in reviewing a carrier's request for a safety rating change, the only ''corrective action'' the Agency would take into account in conditionally rescinding a proposed unfitness determination under subpart F would be the carrier's installation of § 395.16-compliant EOBRs and satisfaction of the other conditions of the remedial directive. The Agency may, nevertheless, consider a carrier's installation and use of EOBRs as ''relevant information'' that could contribute to an improvement of a carrier's safety rating under § 385.17(d). An upgraded safety rating based upon corrective action under § 385.17 would have no effect, however, on an otherwise applicable NPRDA, remedial directive, or proposed unfitness determination. A safety rating upgraded to ''conditional'' would be necessary, but not sufficient, to meet the safety fitness standard in proposed § 385.5.

Continuing EOBR Use, Maintenance, and Documentation Requirements

Motor carriers would have up to 60 days (45 days for hazmat and passenger carriers) following issuance of the notice of remedial directive to install EOBRs compliant with § 395.16. Once a motor carrier had installed the devices, the carrier would be required to maintain the devices in good working order, to document its drivers' use of the devices for recording hours of service, and to review the EOBR records of its drivers for HOS compliance. This documentation requirement would be satisfied by the carrier's ability to present, upon demand, electronic RODS in the format prescribed in proposed new Appendix A to Part 395. If, following receipt of an EOBR remedial directive, a carrier were discovered to be operating without a functioning § 395.16-compliant device in one or more of its CMVs, the carrier would be subject to an immediate out-of-service order until it installed the devices.

Example Remedial Directives Scenarios

FMCSA offers the following four scenarios as examples of how the proposed remedial directive procedures would operate:

Scenario 1

During a 2007 CR on a motor carrier of non-hazmat property (not a hazmat or passenger carrier) [10] an FMCSA safety investigator finds 25 out of 150 logbooks examined reflect a violation of § 395.3(a)(2) (requiring or permitting driving after the end of the 14th hour after coming on duty), i.e., a pattern violation of an Appendix C regulation. FMCSA issues an NPRDA warning the carrier that it will be subject to an EOBR remedial directive if another CR within 2 years again finds a pattern violation of any Appendix C regulation. The motor carrier does not challenge the issuance of the NPRDA. A subsequent CR of the carrier in 2008 discloses a 14 percent violation rate for § 395.8(e) (false logs), another pattern violation of an Appendix C regulation. The carrier is issued a notice of remedial directive to install EOBRs within 60 days and provide proof of installation. Simultaneously, the carrier is issued a proposed unfitness determination. The carrier fails or refuses to install the device(s), or fails to provide proof, and is ordered to cease interstate operations, and intrastate operations affecting interstate commerce, on the 61st day after issuance of the notice of remedial directive and proposed unfitness determination. Moreover, because the carrier is required to be registered under 49 U.S.C. 13901, its registration is revoked on the 61st day.

Scenario 2

As in Scenario 1, a CR in 2007 discloses a pattern violation of an Appendix C regulation. Because, under Part 385 Appendix B § II (h), that same HOS violation also constitutes a ''pattern of noncompliance with a critical regulation relative to Part 395,'' it is assessed two points (and an ''unsatisfactory'' Factor Rating) under the Operational Factor of the SFRM, just as it would be under the current rule. The carrier thus receives an overall safety rating of ''conditional'' and is issued an NPRDA, as in Scenario 1. However, in this scenario the carrier requests an administrative review of both the NPRDA, under § 385.517, and the ''conditional'' safety rating under § 385.15. The carrier prevails on its challenge in the administrative review under § 385.15 but loses its challenge under § 385.517. The Agency changes the carrier's overall safety rating to satisfactory. However, the NPRDA has not been rescinded and becomes a final determination. In 2008, FMCSA conducts a second CR, which also finds a pattern violation of an Appendix C regulation. The Agency issues the carrier a notice of remedial directive and proposed unfitness determination based upon the prior final determination under § 385.517.

Scenario 3

A CR in 2007 finds a 10 percent or greater violation rate for an Appendix C regulation (which is also a critical HOS violation), plus multiple violations of other FMCSRs, resulting in a proposed overall safety rating of ''unsatisfactory.'' As in scenarios 1 and 2, FMCSA also issues the carrier an NPRDA. The carrier takes immediate steps to improve its safety management practices and within 15 days requests a safety rating change under § 385.17. The carrier does not challenge the NPRDA, however. A second CR within 60 days of the first finds improved regulatory compliance, including no HOS violations, and FMCSA upgrades the carrier's safety rating to ''conditional.'' A third CR in 2008, however, again finds a 10 percent or greater violation rate for an Appendix C regulation. The carrier is issued a notice of remedial directive, ordering installation of EOBRs within 60 days in all of the carrier's CMVs, and a proposed determination of unfitness. The carrier installs the devices and provides FMCSA with sufficient proof of installation. The proposed determination of unfitness is conditionally rescinded, and the carrier continues to operate in interstate (and intrastate) commerce.

Scenario 4

As in Scenario 3, a CR in 2007 discloses a 10 percent or greater violation rate of an Appendix C regulation, plus such other FMCSR violations that the carrier is assigned a proposed overall safety rating of ''unsatisfactory'' under § 385.11. The carrier again is issued an NPRDA in accordance with § 385.507(a). The carrier immediately initiates safety management improvements and, in accordance with § 385.17, within 15 days from the date of the notice of proposed safety rating requests a change to its safety rating based on corrective action. The Agency begins another CR 43 days after the date of the notice of proposed safety rating, which shows improvements in non-HOS areas but again discloses a 10 percent or greater violation rate for an Appendix C regulation. Based upon the motor carrier's improvements in the other safety areas, FMCSA upgrades the overall safety rating to ''conditional'' and the carrier continues in operation. At the same time, because of the HOS violations discovered in the second CR, the Agency issues a notice of remedial directive and proposed determination of

[10] All four scenarios assume the motor carrier is not a carrier of passengers or hazardous materials. Thus, 60-day periods, rather than 45-days periods, would apply under §§ 385.11, 385.13, 385.15 and 385.17.

unfitness. The carrier fails to install EOBRs within 60 days following the second CR, and it also fails to seek administrative review of the remedial directive in accordance with § 385.517. The carrier is therefore placed out of service on the 61st day.

C. Incentives

Background

FMCSA recognizes that many motor carriers are deterred from voluntary installation of EOBRs because they believe this would place them at a competitive disadvantage to carriers not using EOBRs. Motor carriers believe there is an ''uneven playing field'' in which those with EOBRs are held to a higher level of compliance. Qualcomm described this perceived inequity in its docket comments: ''Qualcomm contends that in general the industry's reluctance to employ technology to verify compliance is not based in being adverse to use of technology, but in being adverse to compliance enforcement not being conducted on a level playing field.''

We believe this concern may have some merit. Because of the extensive supporting documentation EOBRs are capable of producing, even minor violations of the HOS regulations can be more easily detected if the carrier uses EOBRs. In fact, these violations are often identified in automated reports that motor carriers can set up as part of their EOBR monitoring systems. This suggests EOBRs do what they are intended to (and would accomplish under the remedial provisions discussed previously)—make it more difficult to exceed the HOS limitations of the FMCSRs.

The inability to conceal even minor HOS violations can increase the chances of receiving a less than satisfactory safety fitness rating in the event of a CR—which in turn could hinder the carrier's ability to compete. Among other things, a less than satisfactory safety rating prevents the carrier from maintaining self-insurance and may prevent it from maintaining contracts with major shippers. Civil penalties under 49 U.S.C. 521(b)(2) may also be imposed for violations discovered, even when the safety rating is unaffected.

FMCSA believes these fears of receiving an adverse safety fitness rating as a consequence of EOBR use may be compounded by motor carrier industry concerns with Agency policies and procedures for assigning safety fitness ratings. These concerns are long-standing. In particular, many motor carriers believe the Agency's HOS sampling techniques during CRs should be random across all areas of a carrier's operation. Instead, FMCSA's procedures for CRs direct safety investigators to focus first on known problem areas and drivers. FMCSA takes this approach because it is in the interest of public safety to focus the Agency's limited resources on drivers most likely to be in violation of the regulations. If the number of HOS violations discovered using FMCSA's focused sampling policy equals or exceeds 10 percent of the records reviewed, the motor carrier is automatically assigned a proposed ''conditional'' safety fitness rating. Thus, a carrier's overall safety fitness rating can be adversely affected by FMCSA's reviewing only operational areas already identified as problematic.

ATA unsuccessfully challenged the Agency's HOS review techniques in 1997, arguing that the Agency's CR procedures ''[l]ack standards for ensuring that only statistically reliable samples of driver logs and other carrier records are relied upon in safety CRs. This deficiency would result in a safe carrier receiving an unwarranted adverse safety rating and having to bear the heavy burdens that accompany such a rating.'' [*American Trucking Ass'ns, Inc.* v. *U.S. Dept. of Transp.,* 166 F.3d 374 (D.C. Cir. 1999)]. FMCSA's predecessor Agency, FHWA, successfully defended the existing rating and sampling techniques against this challenge by citing the safety benefits of focusing Agency resources on the drivers and vehicles most likely to be in regulatory violation. In its final rule, ''Safety Fitness Procedure; Safety Ratings,'' FHWA had clarified the purpose of a CR: ''The overall safety posture of the motor carrier is not being measured during the CR, rather the adequacy of the carrier's safety management controls is being assessed pursuant to 49 CFR part 385.'' (62 FR 60035 at 60039, Nov. 6, 1997)

Despite these reassurances, many in the motor carrier industry believe there nevertheless exists a public perception, with resulting consequences, that the safety fitness rating measures a carrier's overall safety posture, as opposed to the efficacy of its safety management controls. We believe some motor carriers may be more willing to voluntarily install EOBRs if, under certain conditions, FMCSA offered the carrier incentives to make this safety commitment.

Proposed Incentives

1. As indicated previously, FMCSA conducts focused sampling of carrier HOS records during CRs and believes this approach is in the best interest of public safety. FMCSA's routine CR procedures call for FMCSA or State safety investigators to focus their sample of HOS records on the RODS of drivers involved in interstate recordable crashes, drivers placed out of service for hours-of-service violations during roadside inspections, drivers discovered to have poor driving records through Commercial Driver's License Information System checks, recently hired drivers, and drivers having a high probability of excessive driving. This procedure makes efficient use of staff resources and helps ensure the CR report clearly identifies known problem areas for corrective action and attention by motor carrier management. We intend to continue this protocol as a standard operating procedure for motor carriers using traditional paper RODS.

However, when motor carriers voluntarily install EOBRs, the HOS portion of a CR can be much more efficient and less resource intensive than the review of a carrier using traditional paper RODS and supporting documents. In fact, the efficiency of the review of EOBR records for 11-, 14-, and 70-hour HOS violations can often be improved by use of the motor carrier's ''exception reports,'' which allows more time to review records for accuracy and falsification. FMCSA therefore proposes an alternative approach to CRs and the issuance of safety fitness ratings that would be employed in limited instances as an incentive, strictly and solely for motor carriers that voluntarily install, use and maintain EOBRs meeting the requirements of proposed § 395.16, and for owner-operators leased to such carriers. This proposed approach to HOS records review during CRs would not be available to carriers using AOBRDs compliant with § 395.15.

Under the Agency's proposed approach, the first course of action would be to conduct the HOS portion of the CR using standard, focused sampling policies and procedures and taking into account known violations of critical part 395 regulations. If the focused sample of HOS records resulted in a 10 percent or greater violation rate, then a separate random sample of HOS records would be selected for review based upon the minimum sample size recommended in FMCSA's Field Operations Training Manual. The results of both samples, focused and random, would be cited on the CR report, but only the random sample results would be used to assign the carrier a safety fitness rating under part 385. This incentive would not be available to motor carriers and owner-operators that have been issued a remedial directive to install, use, and maintain EOBRs.

FMCSA believes this random review incentive for motor carriers voluntarily using EOBRs would mitigate industry concerns that currently tend to discourage EOBR use. FMCSA believes that, over time, widespread use of EOBRs will improve HOS compliance and reduce fatigue-related crashes. This incentive, which will foster broader EOBR use within the industry, is thus in keeping the Agency's mission of promoting motor carrier safety. At the same time, by continuing to require safety investigators to perform a focused sample of HOS records as the first step in a CR, FMCSA would meet its initial responsibility to detect and respond to known violations. The random review incentive would apply only to carriers voluntarily installing and using EOBRs, not to individual drivers.

FMCSA emphasizes that the Agency would continue to bring civil penalty enforcement cases against both drivers and carriers for HOS violations discovered during the initial logbook analysis, even though that analysis will not be used for purposes of determining the carrier's safety rating. The responsibility for assuring HOS compliance lies with both the carrier and the driver, and FMCSA would therefore continue to bring enforcement cases against both carriers and drivers for violations discovered during the initial focused sample analysis. These findings would be entered into the Agency's SafeStat system and would increase the probability of additional CRs for the carrier. FMCSA believes the adverse financial consequences, the negative SafeStat data, and the increased likelihood of undergoing additional compliance reviews would continue to give the carrier an incentive to correct any HOS problems cited on the CR report.

FMCSA seeks public comment on this issue. We are particularly interested in commenters' views on whether the proposed approach would provide motor carriers with incentives to voluntarily install EOBRs.

2. As an additional incentive to promote the installation and use of EOBRs by motor carriers, the Agency is proposing a new 49 CFR 395.11 to provide partial relief, for carriers that voluntarily install a device compliant with § 395.16, from the supporting documents requirements under 49 CFR 395.8(k). EOBRs meeting the requirements of § 395.16 produce regular time and CMV location position histories sufficient to verify adequately a driver's on-duty driving activities. Motor carriers voluntarily maintaining the time and location data produced by § 395.16-compliant EOBRs would need to maintain only such additional supporting documents as are necessary to verify on-duty not-driving activities and off-duty status. The proposed § 395.11 would not provide a blanket exemption from all supporting documents requirements because, even for carriers using EOBRs, some additional supporting documentation (e.g., driver payroll records, fuel receipts) is still necessary to verify on-duty not-driving activities and off-duty status. The proposed incentive would, however, significantly reduce the volume of required supporting documents for those carriers voluntarily installing EOBRs. This incentive would not be available to motor carriers subject to remedial directives to install, use, and maintain EOBRs under part 385 subpart F.

FMCSA seeks comment on this proposal as well. The Agency issued a supplemental notice of proposed rulemaking concerning HOS supporting documents on November 3, 2004 (69 FR 63997) and anticipates publication of the final rule in the near future. Under that rule, motor carriers may, in accordance with the exemption procedures in part 381, seek FMCSA approval to meet the § 395.8(k) requirements by using electronic systems that incorporate GPS or other electronic location-referencing and tracking technology. As noted in the section titled *Incentives To Promote EOBR Use,* the Agency will consider public comments to today's NPRM in determining whether adjustments to the supporting documents exemption procedures may be necessary. FMCSA requests public comment on this proposed incentive and the random sample incentive discussed above.

3. The Agency is interested in identifying other incentives under which carriers could be relieved of regulatory burdens made unnecessary by the direct or indirect safety benefits that EOBR technology provides. Such incentives could therefore raise the productivity of both carriers and drivers safely and without impairing driver health. We therefore solicit comments and suggestions about other possible incentives in addition to the two identified. Because of the Agency's limited experience with the benefits of EOBR technology, we request any evidence demonstrating that voluntary use of EOBRs could mitigate safety risks associated with extended driving or on-duty time, such that carriers using EOBRs might be afforded added scheduling flexibility under the HOS rules. The Agency seeks information, for example, on whether the time savings that drivers are likely to achieve from EOBR use (see section 13.3 above), or other safety and driver health benefits inherent in EOBR technology, would provide a sufficient basis for the Agency to allow drivers using the devices to extend their 14-hour driving window under 49 CFR 395.3(a)(2). Would using an EOBR reduce driver fatigue so that relief could be afforded under the sleeper berth provisions in 49 CFR 395.1(g)(1)? Likewise, would a motor carrier's voluntary use of EOBRs provide sufficient assurance of compliance with HOS regulations that FMCSA could safely forgo review of particular segments of the carrier's operations during a compliance review? We encourage both industry and safety groups to provide recommendations that will enable FMCSA to craft a rule that takes full advantage of EOBR technology in the safety program.

VI. Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and DOT policies and procedures, FMCSA must determine whether a regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one 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 government 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.

(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.

FMCSA has determined that, although this proposed rule would not have an annual effect of $100 million or more, it is a significant regulatory action within the meaning of the Executive Order and under the regulatory policies and procedures of DOT because of the level of public interest in rulemakings related to hours-of-service compliance. We have therefore conducted a Regulatory Impact Analysis (RIA) of the costs and benefits of this NPRM. The

RIA is summarized below. The full analysis is available in the docket.

The RIA examined three options, which differ based solely on the number and type of regulated entities that would be subject to mandatory EOBRs. Under the first option, the entire interstate trucking population would be required to use EOBRs, including those vehicles and drivers involved in short-haul (SH) and long-haul (LH) operations subject to HOS regulation. The second option was all LH trucks and drivers operating in interstate commerce. The third option was to mandate EOBR use for a relatively small population of companies and drivers with a recurrent HOS compliance problem, the ''2 x 10'' entities described under the *Remedies* section of this proposal. Owner-operators leased to other motor carriers are covered under the leasing carrier.

Based on a review of CR data, FMCSA estimated that approximately 465 motor carriers would be affected by the third option each year. After the first year, therefore, FMCSA estimates that at any given time about 930 carriers would be using EOBRs the Agency had required them to install. We estimate these carriers to have approximately 16,000 power units and 17,500 drivers.

FMCSA gathered cost information from EOBR vendors. Because there was significant variation in costs among vendors, the analysis included costs for high, median, and low-cost EOBR devices. The annualized costs of purchasing, installing, and operating an EOBR were estimated to range from $534 to $989 per power unit. We estimated costs on an annualized basis on a 10-year horizon, with replacement of EOBR units at the end of their useful life (3 or 5 years, depending on the device). Training time costs for drivers, back-office staff, and State enforcement personnel were estimated across a range—from a half-hour to 3 hours for drivers and 2 to 12 hours for back-office staff. We estimated State inspectors would receive 8 hours of training. We also estimated offsetting cost savings on paper log purchase, use, processing, and storage.

In estimating net benefits, we also considered the cost to carriers of achieving compliance with the HOS as a result of EOBR use. In section 6.4 of the full RIA, the results of the benefit-cost analysis are shown with these costs both included and excluded.

We assessed safety benefits of EOBR use by estimating reductions in HOS violations and resulting reductions in fatigue-related crashes. Other, non-safety health benefits for drivers, as a result of decreased driving time, were not quantified in this analysis. Possible negative health effects of being monitored were also discussed but not quantified. The impacts of incentives offered to increase EOBR use were not quantified.

The estimates of the total net benefits for each of the three options are presented in Table 3.

TABLE 3.—ANNUALIZED NET BENEFITS

[Millions]

	Option 1: LH and SH	Option 2: LH only	Option 3: recurring non-compliant LH
High Cost Estimate	($3,690)	($930)	($7.53)
Median Cost Estimate	(2,142)	(355)	(1.66)
Low Cost Estimate	(1,846)	(264)	0.61

In sum, options 1 and 2 show negative net benefits for all three of the cost estimates, though the magnitudes of the negative net benefits vary with the cost assumptions. For Option 3, cost estimates for the EOBR devices determine whether there are net benefits or net costs: Net benefits are positive under the low cost estimate (which encompasses compliant, yet not integrally synchronized, devices) but negative under the high and median cost estimates (which correlate with integrally synchronized units).

Regulatory Flexibility Act

This rulemaking has been drafted in accordance with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. §§ 601–612). FMCSA conducted an Initial Regulatory Flexibility Act (IRFA) analysis of the impacts on small entities to determine whether the proposed rule would have a significant economic impact on a substantial number of small entities. A brief summary of this Initial Regulatory Flexibility Analysis is provided below. The full IRFA is provided in the docket.

At present, it is unclear whether this proposal would have a significant impact on substantial numbers of small entities. The proposed requirements would apply only to the relatively small number of motor carriers with significant HOS noncompliance—an estimated total of between 465 and 930 carriers per year, a majority of which are considered small. Although the cost impacts are generally quite small as a percentage of typical carrier revenues, they could vary substantially across affected carriers, ranging from 0.45 to 0.07 percent of annual revenues depending on the carrier's revenue per CMV. Firms with higher revenues-per-truck would experience a proportionately lower cost impact. Further, these carriers would experience compensatory time savings, or administrative efficiencies, as a result of using EOBR records in place of paper RODS. The level of increased administrative efficiencies would vary with the number of CMVs the carrier operates.

Unfunded Mandates Reform Act

This rule would not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more (as adjusted for inflation) in any one year, nor would it affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 (Federalism)

This rulemaking would not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of Executive Order 13132.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that this NPRM would affect a currently approved information collection for OMB Control Number 2126–0001, titled ''Hours of Service of Drivers Regulation.'' OMB approved this information collection on November 3, 2005, at a revised total of 153,103,292 burden hours, with an expiration date of November 30, 2008. The PRA requires agencies to provide a specific, objectively supported estimate of burden hours that will be imposed by the information collection. See 5 CFR 1320.8. The paperwork burden imposed by FMCSA's records of duty status (RODS) requirement is set forth at 49 CFR 395.8.

FMCSA estimated that the remedial provisions of this NPRM, requiring the installation, use, and maintenance of EOBRs by motor carriers with a pattern of severe HOS violations, would affect approximately 930 motor carriers with about 17,500 drivers annually. These drivers' total annual burden hours for meeting the RODS requirement at § 395.8 is estimated at 455,000 (17,500 CMV drivers x 26 hours per year to complete the RODS). The time required by EOBR-using motor carriers to review the RODS would likewise be reduced compared with that required for review of paper RODS. The total burden hours for carriers to review the RODS for 17,500 EOBR-using drivers was estimated at 210,000 annual burden hours. The combined reduction in burden hours for carrier and driver is 665,000 burden hours.

Under the 2005 HOS final rule, the total annual burden hours for carriers and drivers using traditional paper RODS is 104,754,884 burden hours for drivers' completion of RODS and 48,348,408 burden hours for carriers to review the RODS, for a combined total of 153,103,292 burden hours. Subtracting from that total the 665,000-burden-hour reduction achieved by carriers using EOBRs under this proposed rule, we derived an estimated total of 152,438,292 burden hours for compliance with the RODS requirement by all motor carriers—both those operating under the remedial provisions of this NPRM and those using traditional paper RODS.

Note that the above estimates of paperwork burden do not take into account potential paperwork savings associated with voluntary use of EOBRs by motor carriers. Drivers employed by, and owner-operators leased to, such carriers would have a reduced paperwork burden to meet the RODS requirement at § 395.8, and the motor carrier's time-and-cost burden associated with reviewing and maintaining the RODS and supporting documents would be similarly reduced. Under proposed § 395.11, carriers maintaining time and location data produced by § 395.16-compliant EOBRs need only maintain such supporting documents as are necessary to verify on-duty not-driving and off-duty status to fully meet the supporting documents requirements in § 395.8(k). Depending on the number of CMVs these carriers operate, their paperwork savings could be substantial. However, because it is difficult to quantify the number of motor carriers that would voluntarily use EOBRs, the Agency did not estimate these potential paperwork savings.

A supporting statement reflecting this assessment will be submitted to OMB together with this NPRM.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*, as amended) requires Federal agencies to consider the consequences of, and prepare a detailed statement on, all major Federal actions significantly affecting the quality of the human environment. In accordance with its procedures for implementing NEPA (FMCSA Order 5610.1, Chapter 2.D.4(c) and Appendix 3), FMCSA prepared a draft Environmental Assessment (EA) to review the potential impacts of this proposed rulemaking. The draft EA findings are summarized below. The full EA is in the docket.

Implementation of this proposed action would alter to some extent the operation of CMVs. However, the proposal, if implemented, would not require any new construction or change significantly the number of CMVs in operation. FMCSA found, therefore, that noise, hazardous materials, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under Section 4(f) would not be impacted by the rule.

The EA also examined impacts on air quality and public safety. We anticipate that drivers of CMVs operated by carriers that have been issued an EOBR remedial directive would now take the full off-duty periods required by the HOS rules. During off-duty periods, drivers frequently leave the CMV parked in ''idle,'' which increases engine emissions on a per-mile basis. Hence, drivers for remediated carriers would cause a modest overall increase in engine emissions by virtue of coming into compliance with the HOS regulations. Because the number of trucks likely to be required to install EOBRs is relatively small (7,600 out of 1.51 million total CMVs), FMCSA determined that the increase in air toxics would be negligible. Moreover, because drivers for carriers brought into HOS compliance would experience less fatigue and be less likely to have fatigue-related crashes, there would be a counterbalancing increase in public safety.

FMCSA concludes that the rule changes would have a negligible impact on the environment, and therefore would not require an environmental impact statement. The provisions under the proposed action do not, individually or collectively, pose any significant environmental impact.

E.O. 13211 (Energy Supply, Distribution or Use)

FMCSA determined that the proposed rule would not significantly affect energy supply, distribution, or use. No Statement of Energy Effects is therefore required.

E.O. 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this proposed action and alternatives in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with the proposal. The proposed rule would have notable consequences only for trucking firms that have repeatedly demonstrated noncompliance with the HOS regulations. It would not create any adverse health or environmental effects.

E.O. 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required.

E.O. 12988 (Civil Justice Reform)

This action 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.

E.O. 12630 (Taking of Private Property)

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

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB.

FMCSA determined there are no voluntary national consensus standards for the design of EOBRs as complete units. However, there are many voluntary consensus standards concerning communications and information interchange methods that could be referenced as part of comprehensive performance-based requirements for EOBRs to ensure their reliable and consistent utilization by motor carriers and motor carrier safety compliance assurance officials. For example, the digital character set would reference the ASCII (American Standard Code for Information Interchange) character set specifications, the most widely used form of which is ANSI X3.4–1986. This is described in the *Document Information Systems—Coded Character Sets—7-Bit American National Standard Code for Information Interchange* (7-Bit ASCII) (ANSI document # ANSI INCITS 4–1986 (R2002)) published by ANSI (American National Standards Institute). In another example, the Agency would reference the 802.11 family of standards for wireless communication published by IEEE (Institute of Electrical and Electronics Engineers).

We did review and evaluate the European Commission Council Regulations 3821/85 (analog tachograph) and 2135/98 (digital tachograph). These are not voluntary standards, but rather are design-specific type-certification programs. We concluded these standards lack several features and functions (such as CMV location tracking and the ability for the driver to enter remarks) that FMCSA desires to include in its proposed performance-based regulation, and require other features (such as an integrated license document on the driver's data card) that are not appropriate for U.S. operational practices.

Privacy Impact Assessment

Section 522(a)(5) of the FY 2005 Consolidated Appropriations Act, Title V, General Provisions (Pub. L. 108–447, 118 Stat. 2809 at 3268) requires Federal agencies to conduct a privacy impact assessment (PIA) of proposed rules that will affect the privacy of individuals. The Agency conducted a PIA for this NPRM. We determined that the same personally identifiable information for CMV drivers currently collected as part of the RODS and supporting documents requirements would continue to be collected under this rulemaking.

Privacy was a significant consideration in FMCSA's development of this proposal. As stated earlier, we recognize that the need for a verifiable EOBR audit trail—a detailed set of records to verify time and physical location data for a particular CMV—must be counterbalanced by privacy considerations. The Agency considered, but rejected, certain alternative technologies to monitor drivers' HOS (including in-cab video cameras and biomonitors) as too invasive of personal privacy.

All CMV drivers subject to 49 CFR Part 395 must have their hours of service accounted for to ensure that drivers have adequate opportunities for rest. This NPRM would not change the treatment of HOS with respect to privacy matters, change which drivers and motor carriers are required to comply with the RODS requirement, or change the sharing of information. The HOS information recorded on EOBRs would be accessible to Federal and State enforcement personnel only when compliance assurance activities are conducted at the facilities of motor carriers subject to the RODS requirement or when the CMVs of those carriers are stopped for purposes of conducting roadside inspections. Motor carriers would not be required to upload this information into any Federal or State information system accessible either to the public or to motor carrier safety enforcement agencies. This would preserve data security and ensure that EOBR data collection does not result in a new or revised Privacy Act System of Records for FMCSA. Data accuracy concerning drivers' RODS should improve as a result of the proposals to establish new performance standards for EOBRs; to allow drivers to make EOBR entries to identify any errors or inconsistencies in the data; and to mandate EOBR use by motor carriers with a history of serious noncompliance with the HOS rules.

In summary, the NPRM would neither enlarge the scope of personally identifiable information collected nor change the sharing of that information.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping.

49 CFR Part 396

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

For the reasons set forth above, FMCSA is proposing to amend 49 CFR parts 350, 385, 395, and 396 as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.73.

2. Amend § 350.201 by revising the introductory text and adding paragraph (w) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

Each State must meet the following conditions:

* * * * *

(w) Enforce requirements relating to FMCSA remedial directives issued in accordance with 49 CFR Part 385, Subpart F, including providing inspection services for verification of electronic on-board recorder installation and operation as provided in § 385.511(b).

PART 385—SAFETY FITNESS PROCEDURES

3. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350, Pub. L. 107–87; and 49 CFR 1.73.

4. Amend § 385.1 by revising paragraph (a) to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers determined to be unfit from operating a CMV.

* * * * *

5. Amend § 385.3 by adding a definition for *safety fitness determination* in alphabetical order, and by revising the existing definition for *safety rating*, to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Safety fitness determination means the final determination by FMCSA that a motor carrier meets the safety fitness standard under § 385.5.

Safety rating or *rating* means a rating of ''satisfactory,'' ''conditional'' or ''unsatisfactory,'' which FMCSA assigns to a motor carrier using the factors prescribed in § 385.7, as computed under the Safety Fitness Rating Methodology (SFRM) set forth in Appendix B to this part and based on the carrier's demonstration of adequate safety management controls under § 385.5(a). A safety rating of ''satisfactory'' or ''conditional'' is necessary, but not sufficient, to meet the overall safety fitness standard under § 385.5.

(1) *Satisfactory safety rating* means that a motor carrier has in place and functioning safety management controls adequate to meet that portion of the safety fitness standard prescribed in § 385.5(a). Safety management controls are adequate for this purpose if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in § 385.5(a), which could result in occurrences listed in § 385.5(a)(1) through (a)(11).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in § 385.5(a), and this has resulted in occurrences listed in § 385.5 (a)(1) through (a)(11).

(4) *Unrated carrier* means that FMCSA has not assigned a safety rating to the motor carrier.

6. Revise § 385.5 to read as follows:

§ 385.5 Safety fitness standard.

A motor carrier must meet the safety fitness standard set forth in this section. Intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate the following:

(a) It has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(1) Commercial driver's license standard violations (part 383 of this chapter),

(2) Inadequate levels of financial responsibility (part 387 of this chapter),

(3) The use of unqualified drivers (part 391 of this chapter),

(4) Improper use and driving of motor vehicles (part 392 of this chapter),

(5) Unsafe vehicles operating on the highways (part 393 of this chapter),

(6) Failure to maintain accident registers and copies of accident reports (part 390 of this chapter),

(7) The use of fatigued drivers (part 395 of this chapter),

(8) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter),

(9) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter),

(10) Violation of hazardous materials regulations (parts 170 through 177 of this title), and

(11) Motor vehicle accidents, as defined in § 390.5 of this chapter, and hazardous materials incidents; and

(b) The motor carrier has complied with all requirements contained in any remedial directive issued under subpart F of this part.

7. Amend § 385.9 by revising paragraph (a) to read as follows:

§ 385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, FMCSA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in Appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with that portion of the safety fitness standard set forth in § 385.5(a), and assign a safety rating accordingly.

* * * * *

8. Amend § 385.11 by revising the section heading and adding paragraph (g) to read as follows:

§ 385.11 Notification of safety rating and safety fitness determination.

* * * * *

(g) If a motor carrier is subject to a remedial directive and proposed determination of unfitness under subpart F of this part, the notice of remedial directive will constitute the notice of safety fitness determination. If FMCSA has not issued a notice of remedial directive and proposed determination of unfitness under subpart F of this part, a notice of a proposed or final safety rating will constitute the notice of safety fitness determination.

9. Amend § 385.15 by revising paragraph (a) to read as follows:

§ 385.15 Administrative review.

(a) A motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning its proposed safety rating in accordance with § 385.11(c) or its final safety rating in accordance with § 385.11(b).

* * * * *

10. Amend § 385.17 by adding paragraphs (k) and (l) to read as follows:

§ 385.17 Change to safety rating based upon corrective actions.

* * * * *

(k) An upgraded safety rating based upon corrective action under this section will have no effect on an otherwise applicable notice of potential remedial directive applicability, remedial directive, or proposed determination of unfitness issued in accordance with subpart F of this part.

(l) A motor carrier may not request a rescission of a determination of unfitness issued under subpart F of this part based on corrective action.

11. Amend § 385.19 by revising paragraphs (a) and (b) to read as follows:

§ 385.19 Safety fitness information.

(a) Final safety ratings, remedial directives, and safety fitness determinations will be made available to other Federal and State agencies in writing, telephonically, or by remote computer access.

(b) The final safety rating, any applicable remedial directive(s), and the safety fitness determination pertaining to a motor carrier will be made available to the public upon request. Any person requesting information under this paragraph must provide FMCSA with the motor carrier's name, principal office address, and, if known, the USDOT number or the ICCMC docket number if applicable.

* * * * *

12. Amend § 385.407 by revising paragraph (a) to read as follows:

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) *Motor carrier safety performance.* (1) The motor carrier:

(i) Must be in compliance with any remedial directive issued under subpart F of this part, and

(ii) Must have a ''Satisfactory'' safety rating assigned by either FMCSA, under the Safety Fitness Procedures of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part.

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS); or

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

* * * * *

13. Add subpart F to part 385 to read as follows:

Subpart F—Remedial Directives

Sec.

Subpart F—Remedial Directives

§ 385.501 Purpose and scope.

(a) This subpart establishes procedures for FMCSA's issuance of notices of potential remedial directive applicability, remedial directives, and proposed determinations of unfitness.

(b) This subpart establishes the circumstances under which FMCSA will direct motor carriers (including owner-operators leased to motor carriers, regardless of whether the owner-operator has separate operating authority under part 365), in accordance with § 385.1(a), to install electronic on-board recorders (EOBRs) in their commercial motor vehicles as a remedy for recurring violations of the part 395 hours-of-service regulations listed in Appendix C to this part.

(c) This subpart establishes the procedures by which motor carriers may challenge FMCSA's issuance of notices of proposed remedial directive applicability, proposed determinations of unfitness, and remedial directives.

(d) The provisions of this subpart apply to all motor carriers subject to the requirements of part 395 of this chapter.

§ 385.503 Definitions and acronyms.

(a) The definitions in subpart A of this part and part 390 of this chapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this subpart, the following terms have the meaning specified:

Appendix C regulation means any of the regulations listed in Appendix C to Part 385 of this chapter.

Appendix C violation means a violation of any of the regulations listed in Appendix C to Part 385 of this chapter.

Electronic on-board recording device (EOBR) means an electronic device that is capable of recording a driver's duty hours of service and duty status accurately and automatically and that meets the requirements of § 395.16 of this chapter.

Final determination for purposes of part 385, subpart F means:

(1) An adjudication under this subpart upholding a notice of potential remedial directive applicability (NPRDA) or remedial directive and proposed unfitness determination;

(2) The expiration of the period for filing a request for administrative review of an NPRDA or remedial directive and proposed unfitness determination under this subpart; or

(3) The entry of a settlement agreement stipulating that the carrier is subject to mandatory EOBR installation, use, and maintenance requirements.

Motor carrier includes owner-operators leased to carriers subject to a remedial directive, regardless of whether the owner-operator has separate operating authority under part 365 of this chapter.

Notice of potential remedial directive applicability (NPRDA) means a notice, following a compliance review of a motor carrier, that this subpart applies to the motor carrier and that violations or other findings during the compliance review may contribute to the future issuance of a remedial directive under this subpart. The NPRDA will explain the future circumstances that would trigger issuance of a remedial directive and will describe generally the compliance review findings that prompted issuance of the NPRDA.

Pattern violation for the purposes of this subpart means a violation rate for any Appendix C regulation equal to or greater than 10 percent of the number of records reviewed.

Proposed determination of unfitness or *proposed unfitness determination* means a determination by FMCSA that a motor carrier will not meet the safety fitness standard under § 385.5 on a specified future date unless the carrier takes the actions necessary to comply with the terms of a remedial directive issued under this subpart.

Remedial directive means a mandatory instruction from FMCSA to take one or more specified action(s) as a condition of demonstrating safety fitness under 49 U.S.C. 31144(b).

§ 385.505 Events triggering issuance of remedial directive and proposed determination of unfitness.

(a) A motor carrier subject to 49 CFR Part 395 will be subject to a remedial directive and proposed unfitness determination in accordance with this subpart for pattern violations of any Appendix C regulation or regulations that occur within a 2-year period. A remedial directive and proposed unfitness determination will be issued if a compliance review conducted on the motor carrier resulted in a final determination of one or more pattern violations of any Appendix C regulation and, in a subsequent compliance review completed within the 2-year period following the closing date of the first review, one or more pattern violations of any Appendix C regulation(s) are discovered.

(b) The two compliance reviews under paragraph (a) of this section need not be conducted consecutively for a remedial directive and proposed unfitness determination to be issued.

§ 385.507 Notice of potential remedial directive applicability.

(a) Following the first of the two compliance reviews described in § 385.505(a), FMCSA will provide the motor carrier a written notice of potential remedial directive applicability (NPRDA).

(b) The NPRDA will contain the following information:

(1) Notification of the applicability of this subpart.

(2) Notification that violations discovered during the compliance review may cause the future issuance of a remedial directive under this subpart.

(3) The circumstances under which future violations would trigger issuance of a remedial directive.

(4) A brief statement of the compliance review findings that prompted issuance of the NPRDA.

(5) The manner in which a motor carrier may challenge the issuance of an NPRDA in accordance with § 385.517.

(6) Any other matters as FMCSA may deem appropriate.

(c) FMCSA will notify the carrier in writing of the rescission of an NPRDA.

§ 385.509 Issuance of remedial directive.

(a) Following the close of the second of the two compliance reviews described in § 385.505(a), FMCSA will issue the motor carrier a written notice of remedial directive and proposed determination of unfitness. FMCSA will issue the notice and proposed determination as soon as practicable, but not later than 30 days after the close of the review.

(b) The remedial directive will state that the motor carrier is required to install EOBRs compliant with § 395.16 of this chapter in all of the motor carrier's CMVs and to provide proof of the installation to FMCSA in accordance with § 385.511 within the following time periods:

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, must install EOBRs and provide proof of the installation by the 45th day after the date of the notice of remedial directive.

(2) All other motor carriers must install EOBRs and provide proof of installation by the 60th day following the date of FMCSA's notice of remedial directive. If FMCSA determines the motor carrier is making a good-faith effort to comply with the terms of the remedial directive, FMCSA may allow the motor carrier to operate for up to 60 additional days.

§ 385.511 Proof of compliance with remedial directive.

(a) Motor carriers subject to a remedial directive to install EOBRs under this section must provide proof of EOBR installation by one of the following:

(1) Submitting all of the carrier's CMVs for visual and functional inspection by FMCSA or qualified State enforcement personnel.

(2) Transmitting to the FMCSA service center for the geographic area where the carrier maintains its principal place of business all of the following documentation:

(i) Receipts for all necessary EOBR purchases.

(ii) Receipts for the installation work.

(iii) Digital or other photographic evidence depicting the installed devices in the carrier's CMVs.

(iv) Documentation of the EOBR serial number for the specific device corresponding to each CMV in which the device has been installed.

(3) If no receipt is submitted for an installed device or the installation work in accordance with paragraph (a)(2) of this section, the carrier must submit a written statement explaining who installed the devices, how many devices were installed, the manufacturer and model numbers of the devices installed, and the vehicle identification numbers of the CMVs in which the devices were installed.

(b) Visual and functional EOBR inspections may be performed at any FMCSA roadside inspection station or at the roadside inspection or weigh station facility of any State that receives Motor Carrier Safety Assistance Program funds under 49 U.S.C. 31102 and that provides such inspection services. The carrier may also request such inspections be performed at its principal place of business.

(c) Motor carriers issued remedial directives pursuant to this section must install in all of their CMVs EOBRs meeting the standards set forth in 49 CFR 395.16. Such motor carriers must maintain and use the EOBRs to verify compliance with part 395 for a period of 2 years following the issuance of the remedial directive. In addition to any other requirements imposed by the FMCSRs, during the period of time the carrier is subject to a remedial directive the carrier must maintain all records and reports generated by the EOBRs and, upon demand, produce those records to FMCSA personnel.

(d) *Malfunctioning devices.* Motor carriers subject to remedial directives shall maintain EOBRs installed in their CMVs in good working order. Such carriers must cause any malfunctioning EOBR to be repaired or replaced within 14 days from the date the carrier becomes aware of the malfunction. During this repair or replacement period, carriers subject to a remedial directive under this part must prepare a paper record of duty status pursuant to § 395.8 of this chapter as a temporary replacement for the non-functioning EOBR unit. All other provisions of the remedial directive will continue to apply during the repair and replacement period. Failure to comply with the terms of this paragraph may subject the affected CMV and/or driver to an out-of-service order pursuant to § 396.9(c) and § 395.13 of this chapter, respectively. Repeated violations of this paragraph may subject the motor carrier to the provisions of § 385.519.

§ 385.513 Issuance and conditional rescission of proposed unfitness determination.

(a) Simultaneously with the notice of remedial directive, FMCSA will issue a proposed unfitness determination. The proposed unfitness determination will explain that, if the motor carrier fails to comply with the terms of the remedial directive, the carrier will be unfit under the fitness standard in § 385.5, prohibited from engaging in interstate operations and intrastate operations affecting interstate commerce, and, in the case of a carrier registered under 49 U.S.C. 13901, have its registration revoked.

(b) FMCSA will conditionally rescind the proposed determination of unfitness upon the motor carrier's submission of sufficient proof of EOBR installation in accordance with § 385.511.

(c) During the period the remedial directive is in effect, FMCSA may reinstate the proposed unfitness determination and immediately prohibit the motor carrier from operating in interstate commerce and intrastate operations affecting interstate commerce if the motor carrier violates the provisions of the remedial directive.

§ 385.515 Exemption for AOBRD users.

(a) Upon written request by the motor carrier, FMCSA will grant an exception from the requirements of remedial directives under this section to motor carriers that already had installed in all commercial motor vehicles, at the time of the compliance review immediately preceding the issuance of the notice of remedial directive, AOBRDs compliant with 49 CFR 395.15, or to motor carriers that had been issued a waiver allowing the carrier to use devices not fully compliant with § 395.15.

(b) The carrier will be permitted to continue using the previously installed devices if the carrier can satisfactorily demonstrate to FMCSA that the carrier and its employees understand how to use the AOBRDs and the information derived from them.

(c) The carrier must either use and maintain the AOBRDs currently in its CMVs or install new § 395.16-compliant devices.

(d) Although FMCSA may suspend enforcement for noncompliance with the remedial directive, the directive will remain in effect, and the hours-of-service compliance of any motor carrier so exempted will be subject to ongoing FMCSA oversight.

(e) The exemption granted under this section shall not apply to CMVs

manufactured on or after the date 2 years from the effective date of this rule.

§ 385.517 Administrative review.

(a) A motor carrier may request FMCSA to conduct an administrative review if the carrier believes FMCSA has committed an error in issuing an NPRDA under § 385.507 or a notice of remedial directive and proposed unfitness determination under § 385.509. Administrative reviews of notices of remedial directive and proposed unfitness determinations are limited to findings in the compliance review immediately preceding the notice.

(b) The motor carrier's request must explain the error it believes FMCSA committed in issuing the NPRDA or the notice of remedial directive and proposed unfitness determination. The motor carrier must include a list of all factual and procedural issues in dispute and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Assistant Administrator, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The carrier must submit on the same day a copy of the request to FMCSA counsel in the FMCSA service center for the geographic area where the carrier maintains its principal place of business.

(1) If a motor carrier has received a notice of remedial directive and proposed unfitness determination, the carrier should submit its request in writing within 15 days from the date of the notice. This timeframe will allow FMCSA to issue a written decision before the prohibitions outlined in § 385.519(a) take effect. If the carrier submits its request for administrative review within 15 days of the issuance of the notice of remedial directive and proposed unfitness determination, FMCSA will stay the finality of the proposed unfitness determination until the Agency has ruled on the carrier's request. Failure to submit the request within this 15-day period may prevent FMCSA from ruling on the request before the prohibitions take effect.

(2) A motor carrier must make a request for an administrative review within 90 days following the date of the NPRDA under § 385.507 or the notice of remedial directive and proposed determination of unfitness under § 385.509.

(d) FMCSA may request the motor carrier to submit additional data or attend a conference to discuss the request for review. If the motor carrier does not provide the information requested, or does not attend the conference, FMCSA may dismiss its request for review.

(e) FMCSA will notify the motor carrier in writing of its decision following the administrative review. FMCSA will complete its review:

(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed unfitness determination;

(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed unfitness determination;

(3) With respect to requests for administrative review of notices of potential remedial directive applicability, as soon as practicable but not later than 60 days after receiving the request.

(f) The decision regarding a proposed unfitness determination constitutes final Agency action.

(g) The provisions of this section will not affect procedures for administrative review of proposed or final safety ratings in accordance with § 385.15 or for requests for changes to safety ratings based upon corrective action in accordance with § 385.17.

§ 385.519 Effect of failure to comply with remedial directive.

(a) A motor carrier that fails or refuses to comply with the terms of a remedial directive issued under this subpart, including a failure or refusal to provide proof of EOBR installation in accordance with § 385.511, does not meet the safety fitness standard set forth in § 385.5(b). With respect to such carriers, the proposed determination of unfitness issued in accordance with § 385.513 becomes final, and the motor carrier is prohibited from operating, as follows:

(1) Motor carriers transporting hazardous materials in quantities requiring placarding and motor carriers transporting passengers in a CMV are prohibited from operating CMVs in interstate commerce and in operations that affect interstate commerce beginning on the 46th day after the date of FMCSA's notice of remedial directive and proposed unfitness determination. A motor carrier subject to the registration requirements of 49 U.S.C. 13901 will have its registration revoked on the 46th day after the date of FMCSA's notice of remedial directive and proposed unfitness determination.

(2) All other motor carriers are prohibited from operating a CMV in interstate commerce and in operations that affect interstate commerce beginning on the 61st day after the date of FMCSA's notice of remedial directive and proposed unfitness determination. A motor carrier subject to the registration requirements of 49 U.S.C. 13901 will have its registration revoked on the 61st day after the date of FMCSA's notice of remedial directive and proposed unfitness determination. If FMCSA determines the motor carrier is making a good-faith effort to satisfy the terms of the remedial directive, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(b) If a proposed unfitness determination becomes a final determination, FMCSA will issue an order prohibiting the motor carrier from operating in interstate commerce. If the motor carrier is required to register under 49 U.S.C. 13901, FMCSA will revoke the motor carrier's registration on the dates specified in § 385.519(a)(1) and (a)(2).

(c) If FMCSA has prohibited a motor carrier from operating in interstate commerce under paragraph (a) of this section and, if applicable, revoked the carrier's registration, and the motor carrier subsequently complies with the terms and conditions of the remedial directive and provides proof of EOBR installation under § 385.511, the carrier may request FMCSA to lift the prohibition on operations at any time after the prohibition becomes effective. The request should be submitted in writing in accordance with § 385.517(c).

(d) A Federal Agency must not use for CMV transportation a motor carrier that FMCSA has determined is unfit.

(e) *Penalties.* If a proposed unfitness determination becomes a final determination, FMCSA will issue an order prohibiting the motor carrier from operating in interstate commerce and any intrastate operations that affect interstate commerce and, if applicable, revoking its registration. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in 49 U.S.C. 521(b).

14. Amend Appendix B by revising introductory paragraphs (b), (c), and (d) and section VI Conclusion, paragraph (a), to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

(b) As directed, FMCSA promulgated a safety fitness regulation, entitled ''Safety Fitness Procedures,'' which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a ''safety fitness standard'' that a motor carrier must meet to obtain a ''satisfactory'' safety rating. FMCSA later amended the safety fitness standard to add a distinct requirement that

motor carriers also be in compliance with applicable remedial directives.

(c) To meet the safety fitness standard, a motor carrier must meet two requirements. First, the carrier must demonstrate to FMCSA it has adequate safety management controls in place that function effectively to ensure acceptable compliance with the applicable safety requirements. (See § 385.5(a)). A ''safety fitness rating methodology'' (SFRM) developed by FMCSA uses data from compliance reviews (CRs) and roadside inspections to rate motor carriers. Second, a motor carrier must also be in compliance with any applicable remedial directives issued in accordance with subpart F. This second requirement is set forth in § 385.5(b).

(d) The safety rating process developed by FMCSA is used to:

1. Evaluate the first component of the safety fitness standard, under § 385.5(a), and assign one of three safety ratings (satisfactory, conditional, or unsatisfactory) to motor carriers operating in interstate commerce. This process conforms to § 385.5(a), Safety fitness standard, and § 385.7, Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated unsatisfactory or conditional.

* * * * *

VI. Conclusion

(a) FMCSA believes this ''safety fitness rating methodology'' is a reasonable approach to assignment of a safety rating, as required by the safety fitness regulations (§ 385.9), that most closely reflects the motor carrier's current level of compliance with the safety fitness standard in § 385.5(a). This methodology has the capability to incorporate regulatory changes as they occur.

* * * * *

15. Add Appendix C to read as follows:

Appendix C to Part 385—Regulations Pertaining To Remedial Directives in Part 385 Subpart F

§ 395.1(h)(1)(i)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska).

§ 395.1(h)(1)(ii)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska).

§ 395.1(h)(1)(iii)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).

§ 395.1(h)(1)(iv)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).

§ 395.1(h)(2)(i)

Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska).

§ 395.1(h)(2)(ii)

Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska).

§ 395.1(h)(2)(iii)

Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).

§ 395.1(h)(2)(iv)

Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).

§ 395.1(o)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours.

§ 395.3(a)(1)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

§ 395.3(a)(2)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty.

§ 395.3(b)(1)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days.

§ 395.3(b)(2)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.

§ 395.3(c)(1)

Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.

§ 395.3(c)(2)

Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.

§ 395.5(a)(1)

Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours.

§ 395.5(a)(2)

Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.

§ 395.5(b)(1)

Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days.

§ 395.5(b)(2)

Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.

§ 395.8(a)

Failing to require driver to make a record of duty status.

§ 395.8(e)

False reports of records of duty status.

§ 395.8(i)

Failing to require driver to forward within 13 days of completion, the original of the record of duty status.

§ 395.8(k)(1)

Failing to preserve driver's record of duty status for 6 months.

§ 395.8(k)(1)

Failing to preserve driver's records of duty status supporting documents for 6 months.

PART 395—HOURS OF SERVICE OF DRIVERS

16. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

17. Section 395.2 is amended to add the following definitions in alphabetical order:

§ 395.2 Definitions.

* * * * *

ASCII (American Standard Code for Information Interchange) is a character set and a character encoding system based on the Roman alphabet as used in modern English and other Western European languages. ASCII is commonly used by computers and other communication equipment. The specifications for the ASCII standard (the most widely used form of which is ANSI X3.4–1986) are described in the document *Information Systems—Coded Character Sets—7-Bit American National Standard Code for Information Interchange (7-Bit ASCII)* (ANSI document # ANSI INCITS 4–1986 (R2002)), published by the American National Standards Institute (ANSI).

* * * * *

Bluetooth is a short-range wireless data communications standard typically used to exchange information between electronic devices such as personal digital assistants (PDAs), mobile phones, and portable laptop computers.

The technical specifications for the Bluetooth standard are described in the document *Bluetooth Specification Version 2.0 + EDR [vol. 0],* available from the Bluetooth Special Interest Group (SIG).

CD–RW (Compact Disc—ReWriteable) means an optical disc digital storage format that allows digital data to be erased and rewritten many times. The technical and physical specifications for CD–RW are described in the document *Orange Book Part III: CD–RW,* published by Royal Philips Electronics.

* * * * *

802.11 is a set of communications and product compatibility standards for wireless local area networks (WLAN). The 802.11 standards are also known as WiFi by marketing convention. The 802.11 standard includes three amendments to the original standard, 802.11a, 802.11b, and 802.11g. The technical specifications for 802.11a, 802.11b, and 802.11g are published by the Institute of Electrical and Electronics Engineers (IEEE).

Electronic on-board recording device (EOBR) means an electronic device that is capable of recording a driver's hours of service and duty status accurately and automatically and that meets the requirements of § 395.16.

* * * * *

Integrally synchronized refers to an AOBRD or EOBR that receives and records the engine use status for the purpose of deriving on-duty-driving status from a source or sources internal to the CMV.

* * * * *

RS–232 is a standard for serial binary data interconnection. The technical specifications for the RS–232 standard are described in the document *Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment Employing Serial Binary Data Interchange (ANSI/TIA–232–F–1997 (R2002))*, September 1, 1997, published by the Telecommunications Industry Association (TIA).

* * * * *

USB (Universal Serial Bus) is a serial bus interface standard for connecting electronic devices. The technical and physical specifications for USB are described in the document *Universal Serial Bus Revision 2.0 specification,* published by the USB Implementers Forum (USBIF), an industry standards group of leading companies from the computer and electronics industries.

UTC (Coordinated Universal Time) is the international civil time standard, determined by using highly precise atomic clocks. It is the basis for civil standard time in the United States and its territories. UTC time refers to time kept on the Greenwich meridian (longitude zero), which is 5 hours ahead of Eastern Standard Time. UTC times are expressed in terms of a 24-hour clock. Standard time within any U.S. time zone is offset from UTC by a given number of hours determined by the time zone's distance from the Greenwich meridian.

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XML (Extensible Markup Language) is text format used for including information about the conceptual structure of a piece of text. The primary purpose of XML is to facilitate the sharing of data across different computer systems. The technical specifications for XML are described in the document *Extensible Markup Language (XML) 1.0 (Third Edition),* published by the World Wide Web Consortium (W3C).

18. Amend § 395.8 to revise paragraphs (a)(2) and (e) to read as follows:

§ 395.8 Driver's record of duty status.

(a) * * *

(2) Every driver operating a commercial motor vehicle equipped with either an automatic on-board recording device meeting the requirements of § 395.15 or an electronic on-board recorder meeting the requirements of § 395.16 must record his or her duty status using the device installed in the vehicle. The requirements of this section shall not apply, except for paragraphs (e) and (k)(1) and (2).

* * * * *

(e) Failure to complete the record of duty activities of this section, failure to preserve a record of such duty activities, or making false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution.

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19. Add § 395.11 to read as follows:

§ 395.11 Supporting documents for EOBR-created RODS.

Time and location data produced by an EOBR meeting the requirements of § 395.16 are sufficient to verify on-duty driving time. Motor carriers maintaining time and location data produced by a § 395.16-compliant EOBR need only maintain additional supporting documents (e.g., driver payroll records, fuel receipts) that provide the ability to verify on-duty not-driving activities and off-duty status to fully meet the requirements of § 395.8(k). This section does not apply to motor carriers and owner-operators that have been issued a remedial directive to install, use, and maintain EOBRs.

20. Amend § 395.13 to revise paragraph (b)(2) and to add paragraph (b)(4) to read as follows:

§ 395.13 Drivers declared out of service.

* * * * *

(b) * * *

(2) Every driver required to maintain a record of duty status under § 395.8 must have a record of duty status current on the day of examination and for the prior 7 consecutive days.

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(4) No driver shall drive a CMV in violation of § 385.511(d) of this chapter.

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21. Amend § 395.15 to revise paragraph (a) to read as follows:

§ 395.15 Automatic on-board recording devices.

(a) *Applicability.* This section applies to automatic on-board recording devices (AOBRDs) used to record the driver's hours of service as specified by part 395. For commercial motor vehicles manufactured prior to [INSERT DATE 2 YEARS AFTER PUBLICATION OF FINAL RULE], manufacturers or motor carriers may install an electronic device to record hours of service if the device meets the requirements of either this section or § 395.16.

* * * * *

22. Add § 395.16 to read as follows:

§ 395.16 Electronic on-board recording devices.

(a) *Applicability.* This section applies to electronic on-board recording devices (EOBRs) used to record the driver's hours of service as specified by part 395. For commercial motor vehicles manufactured after [INSERT DATE 2 YEARS AFTER PUBLICATION OF FINAL RULE], any electronic device installed in a CMV by a manufacturer or motor carrier to record hours of service must meet the requirements of this section.

(b) *Information to be recorded.* An EOBR must record the following information:

(1) Name of driver and any co-driver(s), and corresponding driver identification information (such as user IDs and passwords, PIN numbers, smart cards, or biometrics).

(2) Duty status.

(3) Date and time.

(4) Location of CMV.

(5) Distance traveled.

(6) Name and USDOT number of motor carrier.

(7) 24-hour period starting time (e.g., midnight, 9 a.m., noon, 3 p.m.).

(8) The multiday basis (7 or 8 days) used by the motor carrier to compute cumulative duty hours and driving time.

(9) Hours in each duty status for the 24-hour period, and total hours.

(10) Truck or tractor and trailer number.

(11) Shipping document number(s), or name of shipper and commodity.

(c) *Duty status categories.* An EOBR must use the following duty statuses:

(1) ''Off duty'' or ''OFF'', or other identifiable code or character.

(2) ''Sleeper berth,'' or ''SB'' or other identifiable code or character, to be used only if sleeper berth is used.

(3) ''Driving,'' or ''D'' or other identifiable code or character.

(4) ''On-duty not-driving'' or ''ON'' or other identifiable code or character.

(d) *Duty status defaults.*

(1) An EOBR must automatically record driving time.

(2) When the CMV is stationary for 15 minutes or more, the EOBR must default to on-duty not-driving, and the driver must enter the proper duty status.

(3) An EOBR must record the results of power-on self-tests and diagnostic error codes.

(e) *Date and time.*

(1) The date and time must be reported on the EOBR output record as specified under paragraph (f) of this section and displayed at each change of duty status.

(2) The date and time must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier, driver, or third party.

(3) The driver's duty status record must be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(4) The time must be coordinated to UTC and must not drift more than 2 seconds per day. The absolute deviation from the time base coordinated to UTC shall not exceed 10 minutes at any time.

(f) *Location.*

(1) Information used to determine the location of the CMV must be derived from a source not subject to alteration by the motor carrier or driver.

(2) The location description for the duty status change must be sufficiently precise to enable enforcement personnel to quickly determine the vehicle's geographic location at each change of duty status on a standard map or road atlas.

(3) When the CMV is in motion, location and time must be recorded at intervals no greater than 1 minute. This recorded information must be capable of being made available in an output file format as specified in Appendix A of this part, but does not need to be displayed on the EOBR's visual output device.

(4) For each change of duty status (e.g., the place and time of reporting for work, starting to drive, on-duty not-driving, and where released from work), the name of the nearest city, town, or village, with State abbreviation, must be recorded.

(5) The EOBR must use location codes derived from satellite or terrestrial sources, or a combination of these. The location codes must correspond, at a minimum, to the Census Bureau 2000 Gazetteer ''County Subdivision'' data.

(g) *Distance traveled.*

(1) Distance traveled must use units of miles or kilometers driving during each on-duty driving period and total for each 24-hour period for each driver operating the CMV.

(2) If the EOBR records units of distance in kilometers, it must provide a means to display the equivalent distance in miles.

(3) If the EOBR obtains distance-traveled information from a source internal to the CMV, the information must be accurate to the distance traveled as measured by the CMV's odometer.

(4) If the EOBR obtains distance-traveled information from a source external to the CMV, the information recorded must be accurate to within ±1 percent of actual distance traveled over a 24-hour period as measured by the CMV's odometer.

(h) *Review of information by driver.*

(1) The EOBR must allow for the driver's review of each day's record before the driver submits the record to the motor carrier.

(2) The driver must review the information contained in the EOBR record and affirmatively note the review before submitting the record to the motor carrier.

(3) The driver may annotate only non-driving-status periods, and may do so only immediately prior to the first driving period of the day and immediately following the last driving period of the day. The driver must electronically confirm his or her intention to make any annotations.

(4) If the driver makes a written entry on a hardcopy output of an EOBR relating to his or her duty status, the entries must be legible and in the driver's own handwriting.

(i) *Information reporting requirements.*

(1) An EOBR must make it possible for authorized Federal, State, or local officials to immediately check the status of a driver's hours of service.

(2) An EOBR must produce, upon demand, a driver's hours-of-service chart using a graph-grid format in either electronic or printed form in the manner described in § 395.8 and a digital file in the format described in Appendix A of this part. The chart must show the time and sequence of duty status changes including the driver's starting time at the beginning of each day.

(3) This information may be used in conjunction with handwritten or printed records of duty status for the previous 7 days.

(4) The information displayed on the device must be made accessible to authorized Federal, State, or local safety assurance officials for their review without requiring the official to enter in or upon the CMV. The output record must conform to the file format specified in Appendix A of this part.

(5) The driver must have in his or her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records must consist of information stored in and retrievable from the EOBR, handwritten records, other computer-generated records, or any combination of these. Electronic records must be transferable to portable computers used by roadside safety assurance officials and must provide files in the format specified in Appendix A of this part. The communication information interchange methods must comply with the requirements of RS 232, USB 2.0, IEEE 802.11(g), and Bluetooth.

(6) Support systems used in conjunction with EOBRs at a driver's home terminal or the motor carrier's principal place of business must be capable of providing authorized Federal, State, or local officials with summaries of an individual driver's hours of service records, including the information specified in § 395.8(d). The support systems must also provide information concerning on-board system sensor failures and identification of amended and edited data. Support systems must provide a file in the format specified in Appendix A of this part. The system must also be able to produce a copy of files on portable storage media (CD–RW, USB 2.0 drive) upon request of authorized safety assurance officials.

(j) *Driver identification.* For the driver to log into the EOBR, the EOBR must require the driver to enter information (such as user IDs and passwords, PIN numbers) that identifies the driver or to provide other information (such as smart cards, biometrics) that identifies the driver.

(k) *Availability of records of duty status.*

(1) An EOBR must be capable of producing duty status records for the current day and the previous 7 days from either the information stored in and retrievable from the EOBR or computer-generated records, or any combination of these.

(2) If an EOBR fails, the driver must do the following:

(i) Note the failure of the EOBR.

(ii) Reconstruct the record of duty status for the current day and the previous 7 days, less any days for which the driver has records.

(iii) Continue to prepare a handwritten record of all subsequent duty status until the device is again operational.

(l) *On-board information.* Each commercial motor vehicle must have onboard the commercial motor vehicle an information packet containing the following items:

(1) An instruction sheet describing how data may be stored and retrieved from the EOBR.

(2) A supply of blank driver's records of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of the current trip.

(m) *Submission of driver's record of duty status.*

(1) The driver must submit electronically, to the employing motor carrier, each record of the driver's duty status.

(2) For motor carriers not subject to the remedies provisions of part 385 subpart F of this chapter, each record must be submitted within 13 days of its completion.

(3) For motor carriers subject to the remedies provisions of part 385 subpart F of this chapter, each record must be submitted within 3 days of its completion.

(4) The driver must review and verify that all entries are accurate prior to submission to the employing motor carrier.

(5) The submission of the record of duty status certifies that all entries made by the driver are true and correct.

(n) *EOBR display requirements.* An EOBR must have the capability of displaying all of the following information:

(1) The driver's name and EOBR login ID number on all EOBR records associated with that driver, including records in which the driver serves as a co-driver.

(2) The driver's total hours of driving during each driving period and the current duty day.

(3) The total hours on duty for the current duty day.

(4) Total miles or kilometers of driving during each driving period and the current duty day.

(5) Total hours on duty and driving time for the 7-consecutive-day period, including the current duty day.

(6) Total hours on duty and driving time for the prior 8-consecutive-day period, including the current duty day.

(7) The sequence of duty status for each day, and the time of day and location for each change of duty status, for each driver using the device.

(8) EOBR serial number or other identification, and identification number(s) of vehicle(s) operated that day.

(9) Remarks, including fueling, waypoints, loading and unloading times, unusual situations, or violations.

(10) Acknowledgement of an advisory message or signal concerning HOS limits.

(11) Override of an automated duty status change to driving if using the vehicle for personal conveyance or for yard movement.

(12) Date and time of crossing a State line (for purposes of fuel-tax reporting).

(o) *Performance of recorders.* A motor carrier that uses EOBRs for recording drivers' records of duty status instead of the handwritten record must ensure the EOBR meets the following requirements in order to address all hours-of-service requirements in effect as of October 24, 2005:

(1) The EOBR must permit the driver to enter information into the EOBR only when the commercial motor vehicle is at rest.

(2) The EOBR and associated support systems must, to the maximum extent practicable, be tamper resistant. The EOBR must not permit alteration or erasure of the original information collected concerning the driver's hours of service, or alteration of the source data streams used to provide that information.

(3) The EOBR must be able to perform a power-on self-test, as well as a self-test at any point upon request of an authorized safety assurance official. The EOBR must provide an audible and visible signal as to its functional status. It must record the outcome of the self-test and its functional status as a diagnostic event record in conformance with Appendix A of this part.

(4) The EOBR must provide an audible and visible signal to the driver at least 30 minutes in advance of reaching the driving time limit and the on-duty limit for the 24-hour period.

(5) The EOBR must be able to track total weekly on-duty and driving hours over a 7- or 8-day consecutive period. The EOBR must be able to warn a driver at least 30 minutes in advance of reaching the weekly duty/driving-hour limitation.

(6) The EOBR must warn the driver via an audible and visible signal that the device has ceased to function.

(7) The EOBR must record a code corresponding to the reason it has ceased to function and the date and time of that event.

(8) The audible signal must be capable of being heard and discerned by the driver when seated in the normal driving position, whether the CMV is in motion or parked with the engine operating. The visual signal must be visible to the driver when the driver is seated in the normal driving position.

(9) The EOBR must be capable of recording separately each driver's duty status when there is a multiple-driver operation.

(10) The EOBR device/system must identify sensor failures and edited and annotated data when downloaded or reproduced in printed form.

(11) The EOBR device/system must identify annotations made to all records, the date and time the annotations were made, and the identity of the person making them.

(12) If a driver or any other person annotates a record in an EOBR or an EOBR support system, the annotation must not overwrite the original contents of the record.

(p) *Motor Carrier Requirements.*

(1) The motor carrier must ensure that the EOBR is calibrated, maintained, and recalibrated in accordance with the manufacturer's specifications; the motor carrier must retain records of these activities.

(2) The motor carrier's drivers and other personnel reviewing and using EOBRs and the information derived from them must be adequately trained regarding the proper operation of the device.

(3) The motor carrier must maintain a second copy (back-up copy) of the electronic hours-of-service files, by month, on a physical device different from that on which the original data are stored.

(4) The motor carrier must review the EOBR records of its drivers for compliance with part 395.

(q) *Manufacturer's self-certification.*

(1) The EOBR and EOBR support systems must be certified by the manufacturer as evidence that they have been sufficiently tested to meet the requirements of § 395.16 and Appendix A of this part under the conditions in which they would be used.

(2) The exterior faceplate of the EOBR must be marked by the manufacturer with the text 'USDOT–EOBR' as

evidence that the device has been tested and certified as meeting the performance requirements of § 395.16 and Appendix A of this part.

23. Add Appendix A to 49 CFR Part 395 to read as follows:

Appendix A to Part 395—Electronic On-Board Recorder Performance Specifications

1. Data Elements Dictionary for Electronic On-Board Recorders (EOBRs)

1.1 To facilitate the electronic transfer of records to roadside inspection personnel and compliance review personnel, and provide the ability of various third-party and proprietary EOBR devices to be interoperable, a consistent electronic file format and record layout for the electronic RODS data to be recorded are necessary. This EOBR data elements dictionary provides a standardized and consistent format for EOBR output data.

EOBR Database Concept

1.2 Regardless of the particular electronic file type (such as ASCII or XML) ultimately used for recording the electronic RODS produced by an EOBR, RODS data must be recorded according to a ''flat file'' database model. A flat file is a simple database in which all information is stored in a plain text format with one database ''record'' per line. Each of these data records is divided into ''fields'' using delimiters (as in a comma-separate-values data file) or based on fixed column positions. Table 1 below presents the general concept of a flat data file consisting of data ''fields'' (columns) and data ''records'' (rows).

Table 1: Flat Data File Database Model

FIELDS →

RECORDS ↓

Person First Name	Person Last Name	Driver PIN	Event Date	Event Time	Status Code
William	Smith	978354	20050718	12:11	D
William	Smith	978354	20050718	15:17	SB
William	Smith	978354	20050718	18:53	D
William	Smith	978354	20050718	21:43	ON
William	Smith	978354	20050718	22:14	OFF
William	Smith	978354	20050719	06:25	ON
William	Smith	978354	20050719	06:47	D
William	Smith	978354	20050719	13:32	SB
William	Smith	978354	20050719	15:27	D
William	Smith	978354	20050719	20:04	SB

1.3 The data elements dictionary describes the data fields component of the above framework. Individual data records must be generated and recorded whenever there is a change in driver duty status, an EOBR diagnostic event (such as power-on/off, self test, etc.), or when one or more data fields of an existing data record are later amended. In the last case, the corrected record must be recorded and noted as ''current'' in the ''Event Status Code'' data field, with the original record maintained in its unedited form and noted as ''historical'' in the ''Event Status Code'' data field. The EOBR Data Elements Dictionary is described in Table 2. The event codes are listed in Table 3.

TABLE 2.—EOBR DATA ELEMENTS DICTIONARY

Data element	Data element definition	Type	Length	Valid values & notes
Driver Identification Data:				
Driver First Name	First name of the driver	A	35	
Driver Last Name	Last name, family name, or surname of the driver.	A	35	
Driver PIN/ID	Numeric identification number assigned to a driver by the motor carrier.	A	40	
Vehicle Identification Data:				
Tractor Number	Motor carrier assigned identification number for tractor unit.	A	10	
Trailer Number	Motor carrier assigned identification number for trailer.	A	10	
Tractor VIN Number	Unique vehicle ID number assigned by manufacturer according to U.S. DOT regulations.	A	17	
Co-Driver Data:				
Co-Driver First Name	First name of the co-driver	A	35	
Co-Driver Last Name	Last name, family name or surname of the co-driver.	A	35	
Co-Driver ID	Numeric identification number assigned to a driver by the motor carrier.	A	40	

TABLE 2.—EOBR DATA ELEMENTS DICTIONARY—Continued

Data element	Data element definition	Type	Length	Valid values & notes
Company Identification Data:				
Carrier USDOT Number	USDOT number of the motor carrier assigned by FMCSA.	N	8	
Carrier Name	Name or trade name of the motor carrier company appearing on the Form MCS–150.	A	120	
Shipment Data:				
Shipping Document Number	Shipping document number	A	40	
Event Data:				
Event Sequence ID	A serial identifier for an event that is unique to a particular vehicle and a particular day.	N	4	0001 through 9999.
Event Status Code	Character codes for the four driver duty status change events, state border crossing event, and diagnostic events.	A	3	OFF=Off Duty; SB=Sleeper Berth; D=On Duty Driving; ON=On Duty Not Driving; DG=Diagnostic.
Event Date	The date when an event occurred	N (Date)	8	UTC (universal time) recommended. Format: YYYYMMDD.
Event Time	The time when an event occurred	N (Time)	6	UTC (universal time) recommended. Format: HHMMSS (hours, minutes, seconds).
Event Latitude	Latitude of a location where an event occurred.	N	2, 6	Decimal format: XX.XXXXXX.
Event Longitude	Longitude of a location where an event occurred.	N	3, 6	Decimal format: XXX.XXXXXX.
Place Name	Nearest populated place from the FIPS55 list of codes for populated places. (Census Bureau 2000 Gazetteer ''County Subdivision'').	N	5	Unique within a FIPS state code. Lookup list derived from FIPS55.
Place Distance Miles	Distance in miles to nearest populated place from the location where an event occurred.	N	4	
Total Vehicle Miles	Total vehicle miles (as noted on vehicle odometer or as measured by any other compliant means such as vehicle location system, etc.).	N	7	With total vehicle mileage recorded at the time of each event, vehicle miles traveled while driving, etc., can be computed.
Event Update Status Code	A status of an event, either Current (the most up-to-date update or edit) or Historical (the original record if the record has subsequently been updated or edited).	A	1	C=Current; H=Historical.
Diagnostic Event Code	For diagnostic events (events where the ''Event Status Code'' is noted as ''DG''), records the type of diagnostic performed (e.g., power-on, self test, power-off, etc.).	A	2	(See Table 3).
Event Error Code	Error code associated with an event	A	2	(See Table 3).
Event Update Date	The date when an event record was last updated or edited.	N (Date)	8	UTC (universal time) recommended. Format: YYYYMMDD.
Event Update Time	Then time when an event record was last updated or edited.	N (Time)	6	UTC (universal time) recommended. Format: HHMMSS (hours, minutes, seconds).
Event Update Person ID	An identifier of the person who last updated or edited a record.	A	40	
Event Update Text	A textual note related to the most recent record update or edit.	A	60	Brief narrative regarding reason for record update or edit.

TABLE 3.—EOBR DIAGNOSTIC EVENT CODES

Code class	Code	Brief description	Full description
General System Diagnostic	PWR_ON	Power on	EOBR initial power-on.
General System Diagnostic	PWROFF	Power off	EOBR power-off.
General System Diagnostic	TESTOK	test okay	EOBR self test successful.
General System Diagnostic	SERVIC	Service	EOBR Malfunction (return unit to factory for servicing).
General System Diagnostic	MEMERR	memory error	System memory error.
General System Diagnostic	LOWVLT	Low voltage	Low system supply voltage.
General System Diagnostic	BATLOW	battery low	Internal system battery backup low.
General System Diagnostic	CLKERR	clock error	EOBR system clock error (clock not set or defective).
General System Diagnostic	BYPASS	Bypass	EOBR system bypassed (RODS data not collected).

TABLE 3.—EOBR DIAGNOSTIC EVENT CODES—Continued

Code class	Code	Brief description	Full description
Data Storage Diagnostic	INTFUL	internal memory full	Internal storage memory full (requires download or transfer to external storage).
Data Storage Diagnostic	DATACC	Data accepted	System accepted driver data entry.
Data Storage Diagnostic	EXTFUL	external memory full	External memory full (smartcard or other external data storage device full).
Data Storage Diagnostic	EXTERR	external data access error	Access external storage device failed.
Data Storage Diagnostic	DLOADY	download yes	EOBR data download successful.
Data Storage Diagnostic	DLOADN	download no	Data download rejected (unauthorized request/wrong Password).
Driver Identification Issue	NODRID	no driver ID	No driver information in system and vehicle is in motion.
Driver Identification Issue	PINERR	PIN error	Driver PIN/identification number invalid.
Driver Identification Issue	DRIDRD	Driver ID read	Driver information successfully read from external storage device (transferred to EOBR).
Peripheral Device Issue	DPYERR	display error	EOBR display malfunction.
Peripheral Device Issue	KEYERR	keyboard error	EOBR keyboard/input device malfunction.
External Sensor Issue	NO_GPS	no GPS data	No GPS sensor information available.
External Sensor Issue	NOLTLN	no latitude longitude	No latitude and longitude from positioning sensor.
External Sensor Issue	NOTSYC	no time synchronization	Unable to synchronize with external time reference input.
External Sensor Issue	COMERR	communications error	Unable to communicate with external data link (to home office or wireless service provider).
External Sensor Issue	NO_ECM	no ECM data	No sensory information received from vehicle's Engine Control Module (ECM).
External Sensor Issue	ECM_ID	ECM ID number mismatch	ECM identification/serial number mismatch (with preprogrammed information).

2. Communications Standards for the Transmittal of Data Files From Electronic On-Board Recorders (EOBRs)

2.1 EOBRs must produce and store RODS in accordance with the file format specified in this Appendix and must be capable of a one-way transfer of these records through wired and wireless methods to authorized safety officials upon request.

2.2 EOBRs must be capable of transferring RODS using one of the following wired standards:

2.2.1 Universal Serial Bus 2.0

2.2.2 RS–232.

2.3 EOBRs must be capable of transferring RODS using one of the following wireless standards:

2.3.1 Institute of Electrical and Electronics Engineers (IEEE) 802.11g

2.3.2 Bluetooth

3. Certification of EOBRs To Assess Conformity With FMCSA Standards

3.1 The following outcome-based performance requirements must be included in the self-certification testing conducted by EOBR manufacturers:

3.1.1 Location—

3.1.1.1 The location description for the duty status change must be sufficiently precise (within 300 meters) to enable enforcement personnel to quickly determine the vehicle's geographic location at each change of duty status on a standard map or road atlas.

3.1.1.2 When the CMV is in motion, location and time must be recorded at intervals of 1 minute. This recorded information must be available for an audit of EOBR data, but is not required to be displayed on the EOBR's visual output device.

3.1.1.3 Location codes derived from satellite or terrestrial sources, or a combination thereof must be used. The location codes must correspond, at minimum, to the Census Bureau 2000 Gazetteer ''County Subdivision'' data.

3.1.2 Distance Traveled

3.1.2.1 Distance traveled may use units of miles or kilometers driving during each on-duty driving period and total for each 24-hour period for each driver operating the CMV.

3.1.2.2 If the EOBR records units of distance in kilometers, it must provide a means to display the equivalent distance in English units.

3.1.2.3 If the EOBR obtains distance-traveled information from a source internal to the CMV, the information must be ±1 percent accurate to an odometer calibrated per 24-hour period.

3.1.2.4 If the EOBR obtains distance-traveled information from a source external to the CMV, the information recorded must be accurate to within ±1 percent of actual distance traveled per 24-hour period as measured by a calibrated odometer.

3.1.3 Date and Time

3.1.3.1 The date and time must be reported on the EOBR output record and display for each change of duty status and at such additional entries as specified under ''Location.''

3.1.3.2 The date and time must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier or driver.

3.1.3.3 The time must be coordinated to the Universal Time Clock (UTC) and must not drift more than 60 seconds per month.

3.1.4 File format and communication protocols: The EOBR must produce and transfer a RODS file in the format and communication methods specified in sections 1.0 and 2.0 of this Appendix.

3.1.5 Environment

3.1.5.1 Temperature—The EOBR must be able to operate in temperatures ranging from −20 degrees F to 120 degrees F.

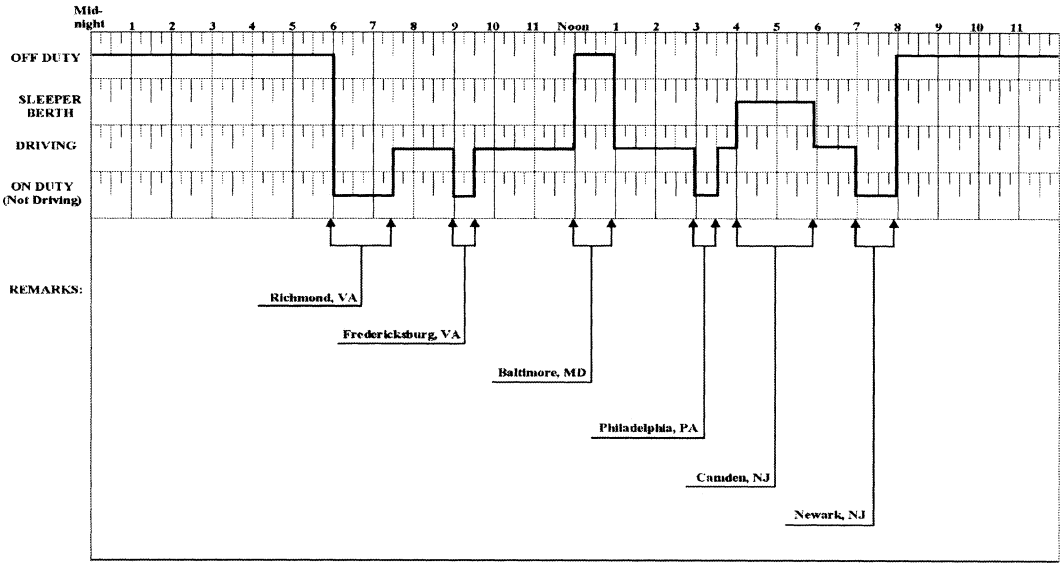
3.1.5.2 Vibration and shock—The EOBR must meet industry standards for vibration stability and for preventing electrical shocks to device operators.

3.2 The EOBR and EOBR support systems must be certified by the manufacturer as evidence that their design has been sufficiently tested to meet the requirements of § 395.16 under the conditions in which they would be used.

3.3 The exterior faceplate of EOBRs must be marked by the manufacturer with the text ''USDOT–EOBR'' as evidence that the device has been tested and certified as meeting the performance requirements of § 395.16.

4. Example of Grid Generated From EOBR Data

4.1 The following picture shows an acceptable format for grid versions of logs generated by EOBR data.



PART 396—INSPECTION, REPAIR AND MAINTENANCE

24. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; and 49 CFR 1.73.

25. Amend § 396.9 to revise paragraph (c)(1) to read as follows:

§ 396.9 Inspection of motor vehicles in operation.

* * * * *

(c) *Motor vehicles declared ''out of service.''* (1) Authorized personnel shall declare and mark ''out of service'' any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. Authorized personnel may declare and mark ''out of service'' any motor vehicle not in compliance with § 385.511(d) of this chapter. An ''Out of Service Vehicle'' sticker shall be used to mark vehicles ''out of service.''

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Issued on: January 5, 2007.

John H. Hill,

Administrator.

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Part III

Department of Housing and Urban Development

Notice of HUD's Fiscal Year (FY) 2007 Notice of Funding Availability (NOFA); Policy Requirements and General Section to the FY2007 SuperNOFA for HUD's Discretionary Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5100–N–01]

Notice of HUD's Fiscal Year (FY) 2007 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the FY2007 SuperNOFA for HUD's Discretionary Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of HUD's FY2007 NOFA Policy Requirements and General Section to the FY2007 SuperNOFA for HUD's Discretionary Programs (notice).

SUMMARY: This notice provides prospective applicants for HUD competitive funding with the opportunity to become familiar with the General Section of HUD's FY2007 SuperNOFA, in advance of publication of the FY2007 SuperNOFA. HUD plans to publish its annual SuperNOFA early in 2007. Early publication of the General Section is one of several steps instituted to improve the funding process for the grantee community. Early publication of the General Section gives prospective applicants additional time to become familiar with and address provisions in the General Section, which constitute part of almost every individual program application. HUD will publish with the SuperNOFA any changes to this General Section made after today's publication.

HUD will continue to require that applicants submit their applications electronically via Grants.gov. To submit an application via Grants.gov, new users will be required to complete a five-step registration process, which can take 2 to 4 weeks to complete. The process includes ensuring that information provided by your organization to Dun and Bradstreet (D&B) matches information previously provided by your organization and contained in Internal Revenue Service (IRS) records. If there is a discrepancy in the information, the registration cannot be completed until discrepancy issues are resolved. Applicants that are already registered have to update the information previously provided in the Central Contractor Registration (CCR). During the update process, the CCR will check the D&B information against the IRS records for your organization. If there are discrepancies, the update cannot be completed until the discrepancies are resolved. Please allow adequate time to resolve any registration issues. To submit an application to HUD, the Authorized Organization Representative (AOR) must be able to make a legally binding agreement for the organizational entity. Please see detailed registration instructions in Section IV.B. of this notice.

For FY2007, the Continuum of Care applications are the lone SuperNOFA paper applications that HUD will accept without first granting a waiver. Continuum of Care applicants should be aware that HUD intends to have the Continuum of Care applicants applying via Grants.gov no later than FY2008. Therefore, it is in the interest of Continuum of Care applicants to complete the Grants.gov registration process in anticipation of moving to electronic application submission in 2008. Continuum of Care agencies would benefit from becoming familiar with the Grants.gov filing requirements so that they do not limit their ability to apply for funding from federal sources. HUD recommends that all prospective applicants take the time to carefully read the **Federal Register** notice published on October 31, 2006, entitled ''Notice of Opportunity to Register Early and other Important Information for Electronic Application Submission via Grants.gov'' and register prior to the publication of the Program Sections of the FY2007 SuperNOFA. The early registration notice can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.*

FOR FURTHER INFORMATION CONTACT: Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington, DC 20410–5000; telephone number (202) 708–0667. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Each year, HUD strives to improve its competitive funding process. In FY 2005, HUD successfully migrated a majority of its funding opportunities to electronic application submission. In FY 2006, over 99 percent of applicants successfully submitted applications electronically for HUD's grant programs. While a majority of HUD's applicants were able to make the transition to electronic government, HUD wants to enable all applicants to make the transition. To ease concerns, HUD has developed a Desktop User Guide for Submitting Electronic Grant Applications. The user guide provides step-by-step details and screen shots of the entire registration and application submission process, including troubleshooting application submission errors. HUD updates the guide regularly and it is available at *http://www.hud.gov/offices/adm/grants/deskuserguide.pdf.*

In addition, HUD's Early Registration Notice provides step-by-step instructions for applicants who must register with Grants.gov and also provides renewal instructions for those who have previously registered. The renewal instructions are simple and easy to follow, but must be completed before an applicant's registration in the CCR expires. Failure to update the registration in the CCR will require an applicant to go through the entire registration process again. As part of the CCR renewal process, CCR checks the information provided to Dun and Bradstreet (D&B) against IRS records. If a discrepancy in the information is found, the applicant must correct the discrepancy before the renewal process can be completed. Applicants are urged to check the information they provided to D&B, CCR, and the IRS to ensure consistency. HUD believes that early publication of the General Section is beneficial to prospective applicants by providing advance notice of the Department's threshold requirements, strategic goals, policy priorities, and other comprehensive requirements that are applicable to almost every individual NOFA that comprises the SuperNOFA. The General Section, as in the past, is structured to refer the reader to the individual program NOFAs. Although the program NOFAs are not being published at this time, the references are retained. This way, when the Program Sections of the FY2007 SuperNOFA are published, they will be fully reconciled with the General Section, as has been the case since 1998 when the SuperNOFA was first published. Applicants interested in receiving e-mail notification of the availability of the program sections should go to *http://www.grants.gov/applicants/email_subscription.jsp* and sign up for e-mail notification of funding opportunities. By doing so, you will receive an e-mail as soon as the program NOFA portion of the SuperNOFA is available on Grants.gov.

It is HUD's intent to have every applicant (the exception being Continuum of Care applicants who will still be submitting paper applications in FY 2007) successfully submit an electronic application via Grants.gov in FY 2007. You can help HUD improve its outreach and program NOFAs by providing feedback on ways it can improve the SuperNOFA process. Please note that each application contains a ''You Are Our Client'' survey questionnaire. HUD requests that you respond to this survey to let the Department know what improvements

have been beneficial and to share your ideas on where improvements can continue to be made. HUD carefully considers the comments received from its clients and continually strives to improve each year's SuperNOFA and its funding process. This publication includes a list of programs anticipated to be in the FY2007 SuperNOFA, subject to the availability of funds. The program NOFA portion of the SuperNOFA will include any changes made to this listing and provide projected funding available and application deadline dates.

HUD hopes that the steps that it has taken to provide information early in the FY2007 funding process and SuperNOFA requirements will be of benefit to you, our applicants.

Dated: January 4, 2007.

Roy A. Bernardi,

Deputy Secretary.

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development (HUD), Office of the Secretary.

B. *Funding Opportunity Title:* Policy requirements applicable to all HUD NOFAs published during FY2007.

C. *Announcement Type:* Initial announcement of the general policy requirements that apply to all HUD federal financial assistance NOFAs for FY2007 issued simultaneous with or after the publication of this notice.

D. *Funding Opportunity Number:* FR 5100–N–01.

E. *Catalog of Federal Domestic Assistance (CFDA) Number:* A CFDA number is provided for each HUD federal financial assistance program. When using ''Apply Step 1'' on the Grants.gov Web site to download an application, you will be asked for the CFDA number. Please refer to the program NOFA for the CFDA number assigned to the program(s) for which you wish to apply. Use only the CFDA number, the Funding Competition Identification Number, OR the Funding Opportunity Number when using the search feature on Grants.gov. Using more than one of these items will result in an error message indicating that the opportunity cannot be found.

F. *Dates:* The deadline dates that apply to the federal financial assistance made available through HUD's FY2007 SuperNOFA will be found in the program NOFAs contained in the published SuperNOFA. HUD is currently operating under a Continuing Resolution and it is expected that appropriations for FY2007 will be enacted soon. Appendix A to this General Section lists the programs that were included in the FY2006 SuperNOFA. This list should not be understood as a final or comprehensive list of the programs that will be published in the FY2007 SuperNOFA. For example, the Youthbuild program, which was included in the FY2006 SuperNOFA, was transferred to the United States Department of Labor on September 22, 2006 in accordance with Public Law 109–281 and will not be included in the FY2007 SuperNOFA. Additionally, FY2007 appropriations, when enacted, may result in other changes to the list of programs issued for FY2007. When published, the SuperNOFA will contain a revised Appendix A to the General Section providing the final list of programs included in the SuperNOFA, funds available under each funding opportunity, and key deadline dates. The contents of Appendix A will be based upon the enacted appropriations.

G. *Additional Overview Content Information:* Unless otherwise stated, HUD's general policy requirements set forth in this notice apply to all HUD federal financial assistance made available through HUD's FY2007 NOFAs. These policies cover those NOFAs issued through the FY2007 SuperNOFA, and those NOFAs issued after publication of the SuperNOFA.

Full Text of Announcement

I. Funding Opportunity Description

This notice describes HUD's FY2007 policy requirements applicable to all of HUD's NOFAs published in FY2007. Each such NOFA will contain a description of the specific requirements for the program for which funding is made available and each will refer to applicable policies described in this General Section. Each program NOFA will also describe additional procedures and requirements that apply to the individual program NOFA, including a description of the eligible applicants, eligible activities, threshold requirements, factors for award, and any additional program requirements or limitations. To adequately address all of the application requirements for any program for which you intend to apply, please carefully read and respond to both this *General Section* and the individual program NOFAs.

Authority. HUD's authority for making funding available under its FY2007 programs is identified in each program NOFA under this section of the General Section.

II. Award Information

Funding Available. Each program NOFA will identify the estimated amount of funds available in FY2007 based on available appropriations plus funds from previous years available for award in FY2007. Appendix A to this notice contains a chart of the programs that were included in the FY2006 SuperNOFA. This list should not be understood as a final or comprehensive list of the programs that will be published in the FY2007 SuperNOFA. For example, the Youthbuild program, which was included in the FY2006 SuperNOFA, was transferred to the United States Department of Labor on September 22, 2006 in accordance with Public Law 109–281 and will not be included in the FY2007 SuperNOFA. Additionally, FY2007 appropriations, when enacted, may result in other changes to the list of programs issued for FY2007. When published, the SuperNOFA will contain a revised Appendix A to the General Section providing the final list of programs included in the SuperNOFA, funds available under each funding opportunity, and key deadline dates. The contents of Appendix A will be based upon the enacted appropriations. Note that additional program NOFAs may be published separately from the FY2007 SuperNOFA.

III. Eligibility Information

A. Eligible Applicants

The individual program NOFAs describe the eligible applicants and eligible activities for each program.

B. Cost Sharing or Matching

The individual program NOFAs describe the applicable cost sharing, matching requirements, or leveraging requirements related to each program, if any. Although matching or cost sharing may not be required, HUD programs often encourage applicants to leverage grant funds with other funding in order to receive higher rating points.

C. Other Requirements and Procedures Applicable to All Programs

Except as may be modified in the individual program NOFAs, the requirements, procedures, and principles listed below apply to all HUD programs in FY2007 for which funding is announced by NOFA and published in the **Federal Register**. Please read the individual program NOFAs for additional requirements and information.

1. *Statutory and Regulatory Requirements.* To be eligible for funding under HUD NOFAs issued during FY2007, applicants must meet all statutory and regulatory requirements applicable to the program or programs

for which they seek funding. Applicants requiring program regulations may obtain them from the NOFA Information Center or through HUD's Grants Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* See the individual program NOFAs for instructions on how HUD will respond to proposed activities that are ineligible.

2. *Threshold Requirements*

a. *Ineligible Applicants.* HUD will not consider an application from an ineligible applicant.

b. *Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement.* All applicants seeking funding directly from HUD must obtain a DUNS number and include the number in its Application for Federal Assistance submission. Failure to provide a DUNS number will prevent you from obtaining an award, regardless of whether it is a new award or renewal of an existing one. This policy is pursuant to the Office of Management and Budget (OMB) policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD published its regulation implementing the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register** notice and HUD's regulation implementing the DUNS number can be found on HUD's Web site at *www.hud.gov/offices/adm/grants/duns.cfm.*

c. *Compliance with Fair Housing and Civil Rights Laws*

(1) With the exception of federally recognized Indian tribes and their instrumentalities, applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the nondiscrimination provisions enumerated at 24 CFR 1000.12, as applicable. In addition to these requirements, there may be program-specific threshold requirements identified in the individual program NOFAs.

(2) If you, the applicant:

(a) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagraphs (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then you are ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken before the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to a letter of findings;

(ii) A HUD-approved conciliation agreement signed by all parties;

(iii) A consent order or consent decree; or

(iv) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

d. *Conducting Business in Accordance with Core Values and Ethical Standards/Code of Conduct.* Applicants subject to 24 CFR parts 84 and 85 (most nonprofit organizations and state, local, and tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. Before entering into an agreement with HUD, an applicant awarded assistance under a HUD program NOFA announced in FY2007 will be required to submit a copy of its code of conduct and describe the methods it will use to ensure that all officers, employees, and agents of its organization are aware of its code of conduct. An applicant is prohibited from receiving an award of funds from HUD if it fails to meet this requirement for a code of conduct. An applicant who submitted an application during FY2005 or FY2006 and included a copy of its code of conduct *will not* be required to submit another copy if the applicant is listed on HUD's Web site *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm* and if the information has not been revised. An applicant not listed on the above website must submit a copy of its code of conduct with their FY2007 application for assistance. An applicant must also include a copy of its code of conduct if the information listed on the above website has changed (e.g., the person who submitted the previous application is no longer your authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed, etc.). Any applicant that needs to may submit its code of conduct to HUD via facsimile using the form HUD–96011, ''Facsimile Transmittal'' (''Third Party Documentation Facsimile Transmittal'' on Grants.gov) at the time of application submission. When using the facsimile transmittal form, please type the requested information. Use the HUD–96011 as the cover page to the submission and include the following header in the top line of the form under ''Name of Document Being Requested:'' ''Code of Conduct for (insert your organization's name, city, and state).'' Fax the information to HUD's toll-free number at (800) HUD–1010. If you cannot access an 800 number or have problems, you may use (215) 825–8798 (this is not a toll-free number). HUD updates its code of conduct website annually before publishing the SuperNOFA. Therefore, applicants that submitted codes of conduct in FY2006 will find that their information has been updated and is available online for the FY2007 application submission time frame.

e. *Delinquent Federal Debts.* Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), HUD will not award federal funds to an applicant that has an outstanding delinquent federal debt unless: (1) the delinquent account is paid in full, (2) a negotiated repayment schedule is established and the repayment schedule is not delinquent, or (3) other arrangements satisfactory to HUD are made prior to the deadline date.

f. *Pre-Award Accounting System Surveys.* HUD may arrange for a pre-award survey of the applicant's financial management system if the recommended applicant has no prior federal support, if HUD's program officials have reason to question whether the applicant's financial management system meets federal financial management standards, or if the applicant is considered a high risk based upon past performance or financial management findings. HUD will not disburse funds to any applicant that does not have a financial management system that meets federal standards. (Please see 24 CFR part 84.21 if you are an institution of higher

education, hospital, or other nonprofit organization. See 24 CFR part 85.20 if you are a state, local government, or federally recognized Indian tribe).

g. *Name Check Review.* Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, including if any key individual has been convicted or is presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant or any key individual, HUD reserves the right to: (1) Deny funding or consider suspension or termination of an award immediately for cause, (2) require the removal of any key individual from association with management or implementation of the award, and (3) make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

h. *False Statements.* A false statement in an application is grounds for denial or termination of an award and possible punishment as provided in 18 U.S.C. 1001.

i. *Prohibition Against Lobbying Activities.* Applicants are subject to the provisions of Section 319 of Public Law 101–121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. In addition, applicants must disclose, using Standard Form LLL (SF–LLL), ''Disclosure of Lobbying Activities,'' any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, members of Congress, or congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but state-recognized Indian tribes and TDHEs established only under state law must comply with this requirement. Applicants must submit the SF–LLL if they have used or intend to use federal funds for lobbying activities.

j. *Debarment and Suspension.* In accordance with 24 CFR part 24, no award of federal funds may be made to applicants that are presently debarred or suspended, or proposed to be debarred or suspended, from doing business with the federal government.

3. *Other Threshold Requirements.* The individual program NOFAs for which you are applying may specify other threshold requirements. Additional threshold requirements may be identified in the discussion of ''eligibility'' requirements in the individual program NOFAs. If a program NOFA requires a certification of consistency with the Consolidated Plan and the applicant fails to provide a certification, and such failure is not cured as a technical deficiency, HUD will not fund the application. If HUD is provided a signed certification indicating consistency with the area's approved Consolidated Plan and HUD finds that the activities are not consistent with the Consolidated Plan, HUD will not fund the inconsistent activities or will deny funding the application if a majority of the activities are not consistent with the approved Consolidated Plan. The determination not to fund an activity or to deny funding may be determined by a number of factors, including the number of activities being proposed, the impact of the elimination of the activities on the proposal, or the percent of the budget allocated to the proposed activities.

4. *Additional Nondiscrimination and Other Requirements.* Applicants and their subrecipients must comply with:

a. *Civil Rights Laws*, including the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*), the Age Discrimination Act of 1974 (42 U.S.C. 6101 *et seq.*), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

b. *Affirmatively Furthering Fair Housing.* Under Section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funding recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability, and familial status. Unless otherwise instructed in the individual program NOFA, your application must include specific steps to:

(1) Overcome the effects of impediments to fair housing choice that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(2) Remedy discrimination in housing; and

(3) Promote fair housing rights and fair housing choice.

Further, you, the applicant, have a duty to carry out the specific activities provided in your responses to the individual program NOFA rating factors that address affirmatively furthering fair housing. These requirements apply to all HUD programs announced via a NOFA, unless specifically excluded in the individual program NOFA.

c. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).* Certain programs to be issued during FY2007 require recipients of assistance to comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 CFR part 135, including the reporting requirements at subpart E. Section 3 requires recipients to ensure, to the greatest extent feasible, that training, employment, and other economic opportunities will be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons in the area in which the project is located. Review the individual program NOFAs to determine if Section 3 applies to the program for which you are seeking funding. Applicants required to comply with Section 3 requirements must report annually using form HUD–60002 or HUD's online system at *http://www.hud.gov/offices/fheo/system/index.cfm.* Copies of form HUD–60002 are available on HUDClips at *http://www.hudclips.org/sub_nonhud/html/nph-brs.cgi?d=FRMS&s1=hud-6$[no]&op1=AND&SECT1=TXTHLB&SECT5=FRMS&u=./forms.htm&p=1&r=3&f=G.*

d. *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD financial assistance. Too often, these businesses still experience difficulty in accessing information and in successfully bidding on federal contracts. State, local, and tribal governments are required by 24 CFR 85.36(e) and nonprofit recipients of assistance (grantees and sub-grantees) by 24 CFR 84.44(b) to take all necessary affirmative steps in contracting for the purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms

are used whenever possible or as specified in the individual program NOFAs.

e. *Real Property Acquisition and Relocation.* HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. 4601), and the government-wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR part 24, subpart B. Real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as ''voluntary acquisitions,'' must satisfy the applicable requirements of 49 CFR 24.101(b)(1) through (5) to be exempt from the URA's acquisition policies. Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant(s) who are displaced by an acquisition and who meet the requirements of 49 CFR 24.101(b)(1) through (5).

The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for ''temporary relocation'' under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR 24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance. Some HUD program regulations provide additional protections for temporarily relocated tenants. For example, 24 CFR 583.310(f)(1) provides guidance on temporary relocation for the Supportive Housing program for the homeless. Before planning their project, applicants should review the regulations for the programs for which they are applying. The URA does not apply to displacements resulting from the demolition or disposition of public housing covered by Section 18 of the United States Housing Act of 1937.

Additional information and resources pertaining to real property acquisition and relocation for HUD-funded programs and projects are available on HUD's Real Estate Acquisition and Relocation Web site at *http://www.hud.gov/relocation*. You will find applicable laws and regulations, policy and guidance, publications, training resources, and a listing of HUD contacts if you have questions or need assistance.

f. *Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency (LEP).''* Executive Order 13166 seeks to improve access to federally assisted services, programs, and benefits for individuals with limited English proficiency. Applicants obtaining an award from HUD must seek to provide access to program benefits and information to LEP individuals through translation and interpretive services in accordance with LEP guidance published on December 19, 2003 (68 FR 70968). HUD expects final guidance to be published in January 2007. For assistance and information regarding your LEP obligation, go to *http://www.lep.gov*.

g. *Executive Order 13279, ''Equal Protection of the Laws for Faith-Based and Community Organizations.''* HUD is committed to full implementation of Executive Order 13279. The Executive Order established fundamental principles and policymaking criteria to guide federal agencies in formulating and developing policies that have implications for faith-based and community organizations to ensure the equal protection for these organizations in social service programs receiving federal financial assistance. Consistent with this order, HUD has undertaken a review of all policies and regulations that have implications for faith-based and community organizations and has established a policy priority to provide full and equal access to grassroots faith-based and other community organizations in HUD program implementation. HUD revised its program regulations in 2003 and 2004 to remove the barriers by participation of faith-based organizations in HUD funding programs (68 FR 56396, September 30, 2003; 69 FR 41712, July 9, 2004; and 69 FR 62164, October 22, 2004). Copies of the regulatory changes can be found at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*.

h. *Accessible Technology.* Section 508 of the Rehabilitation Act (Section 508) requires HUD and other federal departments and agencies to ensure, when developing, procuring, maintaining, or using electronic and information technology (EIT), that the EIT allow, regardless of the type of medium of technology, persons with disabilities to access and use information and data on a comparable basis as is made available to and used by persons without disabilities. Section 508's coverage includes, but is not limited to, computers (hardware, software, word processing, email, and Internet sites), facsimile machines, copiers, and telephones. Among other things, Section 508 requires that unless an undue burden would result to the federal department or agency, EIT must allow individuals with disabilities who are federal employees or members of the public seeking information or services to have access to and use information and data on a comparable basis as that made available to employees and members of the public who are not disabled. Where an undue burden exists to the federal department or agency, alternative means may be used to allow a disabled individual use of the information and data. Section 508 does not require that information services be provided at any location other than a location at which the information services are generally provided. HUD encourages its funding recipients to adopt the goals and objectives of Section 508 by ensuring, whenever EIT is used, procured, or developed, that persons with disabilities have access to and use of the information and data made available through the EIT on a comparable basis as is made available to and used by persons without disabilities. This does not affect recipients' required compliance with Section 504 of the Rehabilitation Act and, where applicable, the Americans with Disabilities Act.

i. *Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of a state that are using assistance under a HUD program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

j. *Participation in HUD-Sponsored Program Evaluation.* As a condition of the receipt of financial assistance under a HUD program NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors who perform HUD-funded research or evaluation studies.

k. *Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors'' Labor Relations on Federal and Federally Funded Construction Projects.''* Compliance with HUD regulations at 24 CFR 5.108 that implement Executive Order 13202 is a condition of receipt of assistance under a HUD program NOFA.

l. *Salary Limitation for Consultants.* Unless specifically authorized by law, FY2007 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant, whether retained by the federal government or the grantee, at a rate more than the equivalent of the high pay for members of the Senior Executive Service (SES). For information on Executive Pay Band levels, please see the Office of Personnel Management (OPM) Web site at *http://www.opm.gov/oca/06tables/html/es.asp.*

m. *OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs.* Certain OMB Circulars also apply to HUD programs in the SuperNOFA. The policies, guidance, and requirements of OMB Circulars A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments), A–21 (Cost Principles for Education Institutions), A–122 (Cost Principles for Nonprofit Organizations), A–133 (Audits of States, Local Governments, and Non-Profit Organizations), and the regulations at 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments), may apply to the award, acceptance, and use of assistance under the individual program NOFAs of the SuperNOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of HUD's appropriations act for FY2007, other federal statutes or regulations, or the provisions of this notice. Compliance with additional OMB circulars or government-wide regulations may be specified for a particular program in the Program Section of the SuperNOFA. Copies of the OMB circulars may be obtained from Executive Office of the President Publications, New Executive Office Building, Room 2200, Washington, DC 20503; telephone (202) 395–3080 (this is not a toll-free number) or (800) 877–8339 (toll-free TTY Federal Information Relay Service); or from the following Web site: *http://www.whitehouse.gov/omb/circulars/index.html.*

n. *Environmental Requirements.* If you become a recipient under a HUD program that assists in physical development activities or property acquisition, you are generally prohibited from acquiring, rehabilitating, converting, demolishing, leasing, repairing, or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

(1) HUD has completed an environmental review in accordance with 24 CFR part 50; or

(2) For programs subject to 24 CFR part 58, HUD has approved a recipient's Request for Release of Funds (form HUD–7015.15) following a Responsible Entity's completion of an environmental review.

You, the applicant, should consult the individual program NOFA for any program for which you are interested in applying to determine the procedures for, timing of, and any modifications or exclusions from environmental review under a particular program. For applicants applying for funding under the Section 202 Supportive Housing for the Elderly program or Section 811 Supportive Housing for Persons with Disabilities program, please note the environmental review requirements for these programs.

o. *Conflicts of Interest.* If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under the SuperNOFA or future NOFAs published in FY2007, you are subject to 18 U.S.C. 208, the federal criminal conflict-of-interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for programs in the SuperNOFA or NOFAs published in FY2007, you may not serve on a selection panel and you may not serve as a technical advisor to HUD. Persons involved in rating and ranking HUD FY2007 NOFAs, including experts and consultants, must avoid conflicts of interest or the appearance of such conflicts. Persons involved in rating and ranking applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information, if applicable: how the selection or non-selection of any applicant under the FY2007 SuperNOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208, or how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The person must disclose this information before participating in any matter regarding a FY2007 NOFA. If you have questions regarding these provisions or concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at (202) 708–3815 (this is not a toll-free number).

p. *Drug-Free Workplace.* Applicants awarded funds from HUD are required to provide a drug-free workplace. Compliance with this requirement means that the applicant will:

(1) Publish a statement notifying employees that it is unlawful to manufacture, distribute, dispense, possess, or use a controlled substance in the applicant's workplace and that such activities are prohibited. The statement must specify the actions that will be taken against employees for violation of this prohibition. The statement must also notify employees that, as a condition of employment under the federal award, they are required to abide by the terms of the statement and that each employee must agree to notify the employer in writing of any violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after such violation;

(2) Establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) The applicant's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, or employee maintenance programs; and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Notify the federal agency in writing within 10 calendar days after receiving notice from an employee of a drug abuse conviction or otherwise receiving actual notice of a drug abuse conviction. The notification must be

provided in writing to HUD's Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington, DC 20410–3000, along with the following information:

(a) The program title and award number for each HUD award covered;

(b) The HUD staff contact name, phone, and fax numbers;

(c) A grantee contact name, phone, and fax numbers; and

(4) Require that each employee engaged in the performance of the federally funded award be given a copy of the drug-free workplace statement required in item (1) above and notify the employee that one of the following actions will be taken against the employee within 30 calendar days of receiving notice of any drug abuse conviction:

(a) Institution of a personnel action against the employee, up to and including termination consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(b) Imposition of a requirement that the employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

q. *Safeguarding Resident/Client Files.* In maintaining resident and client files, HUD funding recipients shall observe state and local laws concerning the disclosure of records that pertain to individuals. Further, recipients are required to adopt and take reasonable measures to ensure that resident and client files are safeguarded.

r. *Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282).* Applicants receiving an award from HUD should be aware of the requirements of the Federal Funding Accountability and Transparency Act of 2006, which calls for the establishment of a central website that makes available to the public full disclosure of all entities receiving federal funds. The only exemptions to this law are federal transactions below $25,000 and credit card transactions prior to October 1, 2006. Grantees should be aware that the law requires the information provided on the federal website to include the following elements related to all subaward transactions, except as noted above:

(1) The name of the entity receiving the award;

(2) The amount of the award;

(3) Information on the award including the transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source, and an award title descriptive of the purpose of each funding action;

(4) The location of the entity receiving the award and primary location of performance under the award, including the city, state, congressional district, and country;

(5) A unique identifier of the entity receiving award and of the parent entity of the recipient, should the entity be owned by another entity; and

(6) Any other relevant information specified by OMB.

Additional information regarding these requirements will be provided when available.

IV. Application and Submission Information

A. Addresses to Request Application Package

This section describes how applicants may obtain application forms and request technical assistance.

1. Copies of the published NOFAs and application forms for HUD programs made available at Grants.gov can be found at *https://apply.grants.gov/forms_apps_idx.html.*

2. *Technical Assistance and Resources for Electronic Grant Applications.*

a. *Grants.gov Customer Support.* Applicants having difficulty accessing the application and instructions or having technical problems can receive customer support from Grants.gov by calling (800) 518–GRANTS (this is a toll-free number) or by sending an e-mail to *support@grants.gov.* The customer support center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday, except federal holidays. The customer service representatives will assist applicants in accessing the information and addressing technology issues.

b. *Desktop Users Guide for Submitting Electronic Grant Applications.* HUD has published on its Web site a detailed Desktop Users Guide that walks applicants through the electronic process, beginning with finding a funding opportunity, completing the registration process, and downloading and submitting the electronic application. The guide includes helpful step-by-step instructions, screen shots, and error-proof tips to assist applicants in becoming familiar with submitting applications electronically. The guide is available online at *http://www.hud.gov/offices/adm/grants/deskuserguide.pdf.*

c. *HUD's Registration Brochure.* HUD has a registration brochure that provides detailed information on the registration process. See *http://www.hud.gov/offices/adm/grants/regbrochure.pdf.*

d. *HUD's Finding and Applying for Grant Opportunities Brochure.* HUD also has a brochure that will guide you through the process of finding and applying for grants. See HUD's Finding and Applying for Grant Opportunities brochure at *http://www.hud.gov/offices/adm/grants/findapplybrochure.pdf.*

e. *HUD's NOFA Information Center.* Applicants that do not have Internet access and need to obtain a copy of a NOFA can contact HUD's NOFA Information Center toll-free at (800) HUD–8929. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

f. *HUD Staff.* HUD staff will be available to provide you with general guidance and technical assistance about this notice or about individual program NOFAs. However, HUD staff is not permitted to help prepare your application. Following selection of applicants, but before announcement of awards are made, HUD staff is available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or annual contributions contract (ACC) by HUD. If you have program-related questions, follow the instructions in Section VII of the Program Section entitled ''Agency Contact(s)'' in the program NOFA under which you are applying.

g. *Connecting with Communities: A User's Guide to HUD Programs and the FY2007 NOFA Process Guidebook.* A guidebook to HUD programs will be available from the HUD NOFA Information Center and at the HUD's Funds Available Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* after the publication of the SuperNOFA. The guidebook provides a brief description of all HUD programs that have funding available in FY2007, identifies eligible applicants for the programs, and provides examples of how programs can work in combination to serve local community needs.

h. *SuperNOFA Webcasts.* HUD provides technical assistance and training on its programs announced through NOFAs. The NOFA broadcasts are interactive and allow potential applicants to obtain a better understanding of the threshold, program, and application submission requirements for funding. Participation in this training opportunity is free of

charge and can be accessed via HUD's Web site at *www.hud.gov/offices/adm/grants/fundsavail.cfm*. The SuperNOFA Webcast schedule can be found via HUD's Web site at *http://www.hud.gov/webcasts/index.cfm*.

B. Content and Form of Application Submission

1. *Instructions on How to Register for Electronic Application Submission.* Applicants must submit their applications electronically through Grants.gov. Before you can do so, you must complete several important steps to register as a submitter. The registration process can take approximately 2 to 4 weeks to complete. Therefore, registration should be done in sufficient time before you submit your application. This section provides information on how to register with Grants.gov. There are five sequential registration steps required for an applicant to complete:

a. Step one is to obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number for your organization. All applicants seeking funding directly from HUD must obtain a DUNS number and include the number on the form SF–424, Application for Federal Financial Assistance, which is part of the application submission. Failure to provide a DUNS number will prevent you from obtaining an award, regardless of whether it is a new award or renewal of an existing one. This policy is pursuant to the OMB policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD published its regulation implementing the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register** notice and HUD's regulation implementing the DUNS number can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/duns.cfm*. Applicants cannot submit applications electronically without a DUNS number entry. Applicants should also be aware that the applicant information entered and used to obtain the DUNS number will be used to pre-populate the Central Contractor Registration (CCR), which is required as part of the registration process. Applicants should carefully enter and review their information when obtaining a DUNS number.

When completing the application, applicants will be asked to provide their DUNS number on the SF–424. Applicants must carefully enter the DUNS number on the application package, making sure it is identical to the DUNS number under which the Authorized Organization Representative is registered to submit an application. If the DUNS number entered on the application package does not match the registration, the application will be rejected. For details about the error messages received when submitting with the wrong DUNS number, please see HUD's Desktop Users Guide for Submitting Electronic Grant Applications at *http://www.hud.gov/offices/adm/grants/deskuserguide.pdf*. Applicants can obtain a DUNS number by calling (866) 705–5711 (this is a toll-free number). The approximate time to get a DUNS number is 10 to 15 minutes, and there is no charge. You should wait approximately 24 to 48 hours to register with the CCR so that your DUNS number can become active in Dun and Bradstreet's (D&B) records.

b. *Step two is to register with the CCR.* Grant applicants must register with CCR to begin the electronic application submission process. The CCR is the primary vendor database for the federal government. In addition, your CCR registration must be renewed/updated annually. Failure to update/renew your CCR registration will cause your Grants.gov registration to be invalid and you will not be able to submit an application for funding. Registration can take several weeks, so HUD urges any applicant that has not completed or updated its registration to do so immediately because the changes to the CCR registration processing noted below may prohibit you from attempting to make these changes in the last few days prior to the deadline date. Applicants can register with the CCR at *http://www.ccr.gov/*. The CCR registration process consists of completing a Trading Partner Profile (TPP), which contains general, corporate, and financial information about your organization. While completing the TPP, you will need to identify an E-Business Point of Contact (E-Business POC), who will be responsible for maintaining the information in the TPP and giving authorization to individuals to serve as Authorized Organization Representatives (AORs). The AOR will submit applications through Grants.gov for your organization.

(1) *CCR Use of D&B Information.* At the end of July 2006, a policy change to the CCR name and address information was implemented. Under this new policy, instead of obtaining name and address information directly from the registrant, CCR will obtain the following data fields from D&B: Legal Business Name, Doing Business As Name (DBA), Physical Address, and Postal Code/Zip+4. Registrants will not be able to enter/modify these fields in CCR; they will be pre-populated using D&B Data Universal Numbering System (DUNS) record data. During new registration or when updating a record, the registrant has a choice to accept or reject the information provided from D&B. Under the revised system, if the CCR registrant agrees with the D&B-supplied information, the D&B data will be accepted into the CCR registrant record. If the registrant disagrees with the D&B-supplied information, the registrant will need to go to the D&B Web site *http://fedgov.dnb.com/webform* to modify the information currently contained in D&B's records before proceeding with its CCR registration. Once D&B confirms modifications, the registrant must revisit the CCR Web site and ''accept'' D&B's changes. Only at this point will the D&B data be accepted into the CCR record. This process can take up to 2 business days for D&B to send modified data to CCR, and that time frame may be longer if data is sent from abroad.

(2) *CCR EIN/TIN Validation.* On October 30, 2005, CCR began validating the Employer Identification Number (EIN)/Taxpayer Identification Number (TIN) and the Employer/Taxpayer Name of each new and updating CCR registrant with the IRS. The EIN/TIN matching process is a joint effort between the General Services Administration, Department of Defense, and IRS to improve the quality of data in government acquisition systems. A notice has gone out to CCR registrants informing them of the IRS validation in CCR registration. In order to complete your CCR registration and qualify as a vendor eligible to bid for federal government contracts or apply for federal grants, the EIN/TIN and Employer/Taxpayer Name combination you provide in the IRS Consent Form must match exactly to the EIN/TIN and Employer/Taxpayer Name used in federal tax matters. It will take at least one to two business days to validate new and updated records prior to becoming active in CCR. Therefore, please be sure that the data items provided to D&B match information that you have provided to the IRS. Otherwise, when the validation check with IRS is done, the registrations in D&B and the CCR will not match the IRS information and an error message will result. This will prevent the registration from being completed until the discrepancies have been resolved. Applicants should allow sufficient time to review their D&B and CCR information. If you have questions about your EIN or TIN, call (800) 829–4933.

c. *Step three requires that the designated Authorized Organization Representative (AOR) from the organization register with the Credential*

Provider. In order to safeguard the security of your electronic information, Grants.gov utilizes a Credential Provider to determine with certainty that someone is really who he or she claims to be. Your organization will need to be registered with the CCR and you will need to have your organization's DUNS number available to complete this process. An assigned AOR must register with the Credential Provider to create and receive a username and password, which are needed to submit an application package through Grants.gov. Applicants can register with the Credential Provider at *http://apply.grants.gov/OrcRegister*.

Beginning August 30, 2007, organizations will have three federally approved credential providers from which to choose their authentication services—the Agriculture Department; OPM's Employee Express; and, the current provider, Operational Research Consultants, Inc. (ORC). Users who already hold a Grants.gov user name and password through ORC will not experience much change. New users will be able to choose from the credential providers on the list.

d. *Step four requires the AOR to register with Grants.gov in order to submit an electronic grant application.* To submit an application to HUD, an AOR must be able to make a legally binding commitment on behalf of the applicant. The AOR can register with Grants.gov and submit an application on the same day. Applicants can register with Grants.gov at *https://apply.grants.gov/GrantsgovRegister*.

e. *Step five requires the E-Business point of contact (POC) to approve the designated AORs.* The E-Business POC can designate the AOR to submit applications on behalf of the organization at *https://apply.grants.gov/agency/AorMgrGetID*.

2. *Instructions on How to Download an Application Package and Application Instructions*

a. *The Application Package and Application Instructions.* The general process for downloading, completing, submitting, and tracking grant application packages is described at *http://www.grants.gov/applicants/apply_for_grants.jsp*. To download the application and instructions, go to *https://apply.grants.gov/forms_apps_idx.html* and enter the CFDA Number, Funding Opportunity Number, *or* Funding Opportunity Competition ID for the application that you are interested in. If you enter more than one criterion, you will not find the instructions. You will then come to a page where you will find the funding opportunity Download Application & Instructions links. The first thing you should do is download the Instructions by clicking on the Download Instructions link. The Instructions contain the General and Program Sections for the funding opportunity, as well as forms that are not part of the application download but are included as elements of a complete package as specified in the published NOFA. The second thing you should do is download the application by clicking on the Download Application link. Both the Instructions and Application can be saved to your desktop. You *do not* need to be registered to download and read the instructions or complete the application; however, once you have downloaded the application and intend to submit an application, you must save it on your computer.

Each program NOFA also includes a checklist. Please review the checklist in the Program Section to ensure that your application contains all the required materials.

b. *Electronic Grant Application Forms*.

(1) Forms contained in the Instructions download are available in Microsoft Word (.doc) (version 9), Microsoft Excel 2000 (.xls), or Adobe (.pdf) formats. The pdf files are *only* fillable forms—not savable, unless you have Adobe Professional software version 6.0 or higher.

(2) The Application download will also contain a cover page entitled ''Grant Application Package.'' The cover page provides information regarding the application package you have chosen to download, i.e., Opportunity Title, Agency Name, CFDA Number, etc. Review this information to ensure that you have selected the correct application. The Grant Application cover page separates the required forms into two categories: ''Mandatory Documents'' and ''Optional Documents.'' Please note that *regardless of the box* in which the forms are listed, the published **Federal Register** document is the *official* document HUD uses to solicit applications. Therefore, applicants should follow the instructions provided in the General Section and Program Sections of the Instructions download. The individual NOFA sections will also identify the forms that may be applicable and that need to be submitted with the application.

(3) Because you will be adding additional attachment files to the downloaded application, applicants should save the application to their hard drive. Do not download the application or attempt to upload the application using a ''thumb'' or ''jump drive,'' as Grants.gov has found that applicants have problems uploading from a jump drive. Be sure to read and follow the application submission requirements published in each individual NOFA for which you are submitting an application. Each program NOFA will identify all the required forms for submission.

(4) HUD's standard forms are identified below:

(a) Application for Federal Financial Assistance (SF–424);

(b) Faith-Based EEO Survey (SF–424 Supplement, Survey on Ensuring Equal Opportunities for Applicants), if applicable;

(c) HUD Detailed Budget (HUD–424–CB, Grant Application Detailed Budget);

(d) Grant Application Detailed Budget Worksheet (HUD–424–CBW);

(e) Disclosure of Lobbying Activities (SF–LLL), if applicable;

(f) HUD Applicant Recipient Disclosure Report (HUD–2880, Applicant/Recipient Disclosure/Update Report);

(g) Certification of Consistency with RC/EZ/EC–II Strategic Plan (HUD–2990), if applicable;

(h) Certification of Consistency with the Consolidated Plan (HUD–2991), if applicable;

(i) Acknowledgment of Application Receipt (HUD–2993);

(j) You Are Our Client Grant Applicant Survey (HUD 2994–A) (Optional);

(k) Program Outcome Logic Model (HUD–96010);

(l) HUD Race Ethnic Form (HUD–27061), if applicable;

(m) HUD Communities Initiative (HUD–27300, Questionnaire for HUD's Removal of Regulatory Barriers), if applicable; and

(n) HUD Facsimile Transmittal (HUD–96011, Third Party Documentation Facsimile Transmittal).

All HUD ''program specific'' forms not available at the Application download will be available in the Instructions download in Microsoft Word .doc (version 9), Microsoft Excel 2000 (.xls), or Adobe (.pdf) format compatible with Adobe Reader 6.0 or later. The pdf forms are form fillable but *not* savable unless you have Adobe Professional 6.0 or higher. Applicants may use the HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''HUD Facsimile Transmittal'' on Grants.gov) form and fax to HUD any forms they have completed but cannot save.

Copies of the Continuum of Care application forms will be on HUD's website at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* until such

time as HUD places an application on *www.Grants.gov/Apply*. Once an application is placed on Grants.gov/Apply, applicants should follow the website instructions for obtaining an application from Grants.gov.

3. *Instructions on How to Complete the Selected Grant Application Package*

a. *Mandatory Fields on Application Download Forms.* Forms in the Application download contain fields with a yellow background. These data fields are mandatory and must be completed. Failure to complete the fields will result in an error message when checking the package for errors.

b. *Completion of SF–424 Fields First.* The forms in the application package are designed to automatically populate common data such as the applicant name and address, DUNS number, etc. In order to trigger this function, the SF–424 must be completed first. Once applicants complete the SF–424, the entered information will transfer to the other forms.

c. *Submission of Narrative Statements, Third Party Letters, Certifications, and Program-Specific Forms.* In addition to program-specific forms, many of the NOFAs require the submission of other documentation, such as third-party letters, certifications, or program narrative statements. This section discusses how you should submit this additional information electronically as part of your application:

(1) *Narrative Statements to the Factors for Award.* If you are required to submit narrative statements, you must submit them as an electronic file in Microsoft Word (version 9 or earlier), Microsoft Excel (.xls) 2000 (or earlier) or in Adobe (.pdf) format that is compatible with Adobe Reader 6.0 or earlier. If HUD receives a file in a format other than those specified, HUD will not be able to read the file, and it will not be reviewed. Each response to a Factor for Award should be clearly identified and can be incorporated into a single attachment or all attachments can be zipped together into a single attached ZIP file. Program NOFAs may require files to be submitted separately or as a single ZIP file, so please carefully review the individual NOFAs when they are published. Documents that applicants possess in electronic format, e.g., narratives they have written, or graphic images (such as computer aided design (CAD) files from an architect) must be saved in PDF format compatible with Adobe Reader 6.0 or an earlier version and attached using the ''Attachments'' form included in the application package downloaded from Grants.gov. In addition, some NOFAs may request photographs. If this is the case, then the photos should be saved in .jpg or jpeg format and attached using the attachments form. When creating attachments to your application, please follow these rules:

(a) DO NOT attach a copy of the electronic application with your attachments as an attachments file. HUD cannot open such files when they are attached as attachments.

(b) Check the attachment file and make sure it has a file extension of .doc, .pdf, .xls, .jpg, or .jpeg.

(c) Make sure that file extensions are not in upper case. File extensions must be lower case for the file to be opened.

(d) DO NOT use special characters (i.e., #, %, /, etc.) in a file name.

(e) DO NOT include spaces in the file name.

(f) Limit file names to not more than 50 characters.

(2) *ZIP Files.* In order to reduce the size of attachments, applicants can compress several files using a ZIP utility. Applicants can then attach the zipped file as described above. HUD's standard zip utility is WinZip. Files compressed with the WinZip utility must use either the ''Normal'' option or ''Maximum (portable)'' option available to ensure that HUD is able to open the file. Files received using compression methods other than ''Normal'' or ''Maximum (portable)'' cannot be opened and will not be reviewed. Applicants should be aware that if HUD receives files compressed using another utility, or not in accord with these directions, it cannot open the files and, therefore, such files will not be reviewed.

(3) *Third-Party Letters, Certifications Requiring Signatures, and Other Documentation.* Applicants required to submit third-party documentation (e.g., establishing matching or leveraged funds, documentation of 501(c)(3) status or incorporation papers, documents that support the need for the program, memoranda of understanding (MOUs), or program-required documentation that supports your organization's claims regarding work that has been done to remove regulatory barriers to affordable housing) can choose from the following two options as a way to provide HUD with the documentation:

(a) *Scanning Documents to Create Electronic Files.* Scanning documents increases the size of files. If your computer has the capacity to upload scanned documents, submit your documents with the application by using the Attachment Form in the Mandatory or Optional Forms section of the application. If your computer does not have the memory to upload scanned documents, you should submit them via fax as described below. Electronic files must be labeled so that the recipient at HUD will know what the file contains. Program NOFAs will indicate any naming conventions that applicants must use when submitting files using the attachment form.

(b) *Faxing Required Documentation.* Applicants may fax the required documentation as program-specific forms to HUD. Applicants should only use this method when documents cannot be attached to the electronic application package as a .pdf, .doc, .xls, .jpeg, or .jpg, or when the size of the submission is too large to upload from the applicant's computer. HUD will not accept entire applications by fax and will disqualify applications submitted entirely in that manner.

(i) Fax Form HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''HUD Facsimile Transmittal'' on Grants.gov). Facsimiles submitted in response to a NOFA must use the form HUD–96011. The facsimile transmittal form, found in the downloaded application, contains a unique identifier that allows HUD to match an applicant's submitted application via Grants.gov with faxes coming from a variety of sources. Each time the application package is downloaded, the forms in the package are given a unique ID number. To ensure that all the forms in your package contain the same unique ID number, after downloading your application, complete the SF–424, save the forms to your hard drive, and use the saved forms to create your application. When you have downloaded your application package from Grants.gov, be sure to first complete the SF–424, and then provide copies of the form HUD–96011 to third parties that will submit information in support of your application. *Do not* download the same application package from Grants.gov more than once because if your application submission does not match the unique identifier on the facsimile transmittal form, HUD will not be able to match the faxes received to your application submission. Faxes that cannot be matched to an application will not be considered in the review process.

If you have to provide a copy of the form HUD–96011 to another party that will be responsible for faxing an item as part of your application, make a copy of the facsimile transmittal cover page from your downloaded application and provide that copy to the third party for use with the fax transmission. Please instruct third parties to use the form HUD–96011 that you have provided as

a *cover page* when they submit information supporting your application using the facsimile method, because it *contains the embedded ID number that is unique to your application submission.*

(ii) Use Form HUD–96011 as Fax Cover Page. For HUD to correctly match a fax to a particular application, the applicant must use and require third parties that fax documentation on its behalf to use the form HUD–96011 as the cover page of the facsimile. Using the form HUD–96011 will ensure that HUD can electronically read faxes submitted by and on behalf of an applicant and match them to the applicant's application package received via Grants.gov.

Failure to use the form HUD–96011 as the cover page will create a problem in electronically matching your faxes to the application. If HUD is unable to match the faxes electronically due to an applicant's failure to follow these directions, HUD will not hand-match faxes to applications and will not consider the faxed information in rating the application. If your facsimile machine automatically creates a cover page, turn this feature off before faxing information to HUD.

(iii) HUD Fax Number. Applicants and third parties submitting information on their behalf must use the HUD–96011 facsimile transmittal cover page and must send the information to the following fax number: (800) HUD–1010. If you cannot access the toll-free 800 number or experience problems, you may use (215) 825–8798 (this is not a toll-free number).

(iv) Fax Individual Documents as Separate Transmissions. In addition, it is highly recommended that applicants fax individual documents as separate submissions to avoid fax transmission problems. When faxing two or more documents to HUD, applicants must use the form HUD–96011 as the cover page for each document (e.g., Letter of Matching or Leveraging Funds, Memorandum of Understanding, Certification of Consistency with the Consolidated Plan, etc.). Please be aware that faxing large documents at one time may result in transmission failures.

(v) Check Accuracy of Fax Transmission. Be sure to check the record of your transmission issued by the fax machine to ensure that your fax submission was completed ''OK.'' For large or long documents, HUD suggests that you divide them into smaller sections for faxing purposes. Each time you fax a document that you have divided into smaller sections, you should indicate on the cover sheet what part of the overall section you are submitting (e.g., ''part 1 of 4 parts'' or ''pages 1–10 of 20 pages'').

Your facsimile machine should provide you with a record of whether HUD received your transmission. If you get a negative response or a transmission error, you should resubmit the document until you confirm that HUD has received your transmission. HUD *will not* acknowledge that it received a fax successfully. When receiving a fax electronically, HUD will electronically read it with an optical character reader and attach it to the application submitted through Grants.gov. Applicants and third parties submitting information on their behalf may submit information by facsimile at any time before the application deadline date. Applicants must ensure that the form HUD–96011 used to fax information matches their electronic application (i.e., is part of the application package downloaded from Grants.gov). As stated previously, when faxing information, you must ensure that if your facsimile machine automatically generates a cover page, that you turn that feature off and use the form HUD–96011 as the cover page. Also ensure that the fax is transmitted to fit 8½″ x 11″ letter size paper.

(vi) Preview your Fax Transmission. HUD recommends that you ''preview'' how your fax will be transmitted by using the copy feature on your facsimile machine and make a copy of the first two or three pages. You will see what HUD receives as a fax. If the fax is not clear or cuts off at the bottom of the page, applicants should use a different facsimile machine or have the machine adjusted. All faxed materials must be received no later than 11:59:59 p.m. eastern time on the application deadline date. HUD will store the information and match it to the electronic application when HUD receives it from Grants.gov. If you are not faxing any documents: *Even though you are not faxing any documents, you must still complete the facsimile transmittal form. In the section of the form titled ''Name of Document Transmitting,'' enter the words ''Nothing Faxed with this Application.'' Complete the remaining highlighted fields and enter the number ''0'' in the section of the form titled ''How many pages (including cover) are being faxed?''*

Steps to Take Before You Submit Your Application. You should review the application package and all the attachments to make sure it contains all the documents you want to submit. If it does, save it to your computer and remove previously saved versions. Check your AOR status on Grants.gov to make sure your E-Business POC has authorized you to submit an application on behalf of your organization. Run the Check Package for Errors feature on the application package and correct any problems identified. Contact any persons or entities that were to submit third-party faxes to make sure that the faxes have been submitted using the facsimile cover page that you provided.

C. Submission Dates and Times

Applications submitted through Grants.gov must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. There are several steps in the upload and receipt process, so applicants are advised to submit their applications at least 48 to 72 hours in advance of the deadline date and when the Grants.gov help desk is open so that any issues can be addressed prior to the deadline date and time. HUD recommends uploading your application using Internet Explorer or Netscape.

1. *Confirmation of Submission to Grants.gov.* When you successfully upload an application to Grants.gov, you will receive a confirmation message on your computer screen that your application has been submitted to Grants.gov and is being processed. This confirmation will include a tracking number. Print this confirmation out and save it for your records. If you have submitted multiple applications, be sure to check to see what application to which each confirmation applies. The grant number, CFDA, and Funding Opportunity Number, as well as the date and time of submission, will appear on the confirmation. If you do not receive this confirmation, it means that your application has not been successfully uploaded. If your screen goes blank or you have problems uploading, you need to immediately call Grants.gov support at (800) 518–GRANTS for assistance (this is a toll-free number).

2. Application Submission Validation Check. The application will then go through a validation process. The validation check ensures that:

a. The application is virus-free;

b. The application meets the deadline requirements established for the funding opportunity;

c. The DUNS number submitted on the application matches the DUNS number in the registration, and that the AOR has been authorized to submit the application for funding by the organization identified by its DUNS number; and

d. All the mandatory (highlighted) fields and forms were completed on the application.

3. *Application Validation and Rejection Notification.* If the application fails any of the above items during the validation check, the application package will be rejected and the submitter will receive an email indicating the application has been rejected. The email will include the reasons why the application was rejected. The validation check can occur 24 to 48 hours after the application submission. Therefore, HUD recommends that all applicants submit their application no later than 72 hours before the deadline. That way, if the application fails the validation process, the applicant will have time to make the corrections and resubmit the application before the deadline. By submitting 72 hours in advance of the deadline, applicants should have time to cure deficiencies in their application. In developing the application submission dates, HUD has considered the validation process and established due dates for all NOFAs that add in the additional time needed for the validation process. For example, if HUD previously provided a 60-day application period, HUD will provide a 63-day application period in FY2007. In this scenario, however, in order to meet the validation requirement, your application must be submitted by the 60th day.

4. *Timely Receipt Requirements and Proof of Timely Submission*

a. *Proof of Application Submission.* Proof of timely submission and validation is automatically recorded by Grants.gov. An electronic time stamp is generated within the system when the application has been successfully received and validated.

b. *Confirmation Receipt.* Upon submitting an application at Grants.gov, you will receive a Confirmation, which advises that your application is being processed. This confirmation will also include the Grants.gov tracking number. Print the confirmation and save it with your records.

c. *Validation Receipt via E-mail.* Within 24 to 48 hours after receipt of the confirmation, the applicant will receive a validation receipt via email. The receipt indicates that the application has passed the validation review at Grants.gov and the application is ready to be retrieved by the grantor agency for agency processing. Please be aware that the Grants.gov validation does not indicate that the grantor agency has reviewed the content of your application; rather, the validation merely indicates that the application has been successfully received and is ready for pick-up by the grantor agency.

d. *Rejection Notice.* If an application fails the validation process, the applicant will receive a rejection notice within 24 to 48 hours after the confirmation notice. The applicant should review the rejection notice because it will include the reason for rejection. The applicant should try to cure the deficiencies and resubmit the application as soon as possible prior to the deadline. By submitting the application 72 hours prior to the deadline, applicants who have completed their registration should have sufficient time to cure the reasons for rejection and successfully resubmit their application in time to meet the deadline.

e. *Save and File Receipts.* Applicants should save all receipts from Grants.gov, as well as facsimile receipts for proof of timely submission. Applicants will be considered as meeting the deadline date requirements when Grants.gov has received and validated your application no later than the deadline date and time, and when all fax transmissions have been received by the deadline date and time.

f. *Delayed Transmission Time.* Applicants using dial-up connections should be aware that transmitting your application takes extra time before Grants.gov receives it. Grants.gov will provide either an error or a successfully received transmission message. The Grants.gov Help Desk reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting a large file, particularly electronic forms with associated eXtensible mark-up language (XML) schema, will take considerable time to process and be received by Grants.gov. However, the upload even for large files should not take longer than one hour. If you are still waiting after one hour for the submission to be uploaded to Grants.gov, stop the transmission and check the available disk space and memory on your computer. HUD has found that difficulty in uploading an application from the applicant's desktop is most frequently due to: (1) The application package being too large to be handled by the applicant's computer; (2) the local entity's network limits the size of files going in or out; or (3) the Internet service provider has a file size limit. Therefore, in such instances, the application should be reduced in size by removing attachment files and submitting the attachments via the facsimile method using the form HUD–96011 as the cover page. The application without attachments should be uploaded to Grants.gov. HUD will match applications submitted to Grants.gov with facsimiles that have been transmitted following the directions in this notice.

g. *Ensure You Have Installed the Free Grants.gov Software.* Check to ensure that the latest version of the software available from Grants.gov, which is free for system users, has been properly installed on your computer. Applicants will find a link to the free software for download at the Download Application page for the funding opportunity available on Grants.gov. HUD has found that an improper installation will result in an application not being able to upload properly. If you are not sure how to determine if the software is properly installed, call the Grants.gov Support Desk.

5. *Late applications.* Applications validated by Grants.gov after the established deadline for the program will be considered late and will not receive funding consideration. Applicants should pay close attention to these submission and timely receipt instructions, as they can make a difference in whether HUD will accept your application for funding consideration. Similarly, HUD will not consider information submitted by facsimile as part of the application if received by HUD after the established deadline. Please take into account the transmission time required for submitting your application via the Internet and the time required to fax any related documents. HUD suggests that applicants submit their applications during the operating hours of the Grants.gov Help Desk so that, if there are questions concerning transmission, operators will be available to assist you through the process. Submitting your application early and during the Help Desk hours will also ensure that you have sufficient time for the application to complete its transmission before the application deadline.

6. *Continuum of Care Paper Application Submission.* Applicants under the Continuum of Care program should follow the directions for application submission and timely receipt that are contained in the Continuum of Care program section.

D. Intergovernmental Review/State Points of Contact (SPOC)

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial

assistance and direct federal development. HUD implementing regulations are published at 24 CFR part 52. The executive order allows each state to designate an entity to perform a state review function. Applicants can find the official listing of State Points of Contact (SPOCs) for this review process at *http://www.whitehouse.gov/omb/grants/spoc.html.* States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact the SPOC to see if it is interested in reviewing your application before submission to HUD.

Please make sure that you allow ample time for this review when developing and submitting your applications. If your state does not have a SPOC, you can submit your application directly to HUD using Grants.gov.

E. Funding Restrictions

The individual program NOFAs will describe any funding restrictions that apply to each program.

F. Other Submission Requirements

1. *Application Kits.* There are no application kits for HUD programs. All the information you need to apply will be in the NOFA and available at *http://www.grants.gov/applicants/apply_for_grants.jsp.*

2. *Discrepancies between the* **Federal Register** *and Other Documents.* The published **Federal Register** document is the *official* document that HUD uses to solicit applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, at *www.grants.gov,* or at HUD's Web site, the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** file for the program NOFA or NOFAs to which you are applying.

3. *Application Certifications and Assurances.* Applicants are placed on notice that by signing the SF–424 cover page:

a. The governing body of the applicant's organization has duly authorized the application for federal assistance. In addition, by signing or electronically submitting the application, the AOR certifies that the applicant:

(1) Has the legal authority to apply for federal assistance and has the institutional, managerial, and financial capacity (including funds to pay for any non-federal share of program costs) to plan, manage, and complete the program as described in the application;

(2) Will provide HUD with any additional information it may require; and

(3) Will administer the award in compliance with requirements identified and contained in the NOFA (General and Program sections) as applicable to the program for which funds are awarded and in accordance with requirements applicable to the program.

b. No appropriated federal funds have been paid or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress, in connection with this application for federal assistance or any award of funds resulting from the submission of this application for federal assistance or its extension, renewal, amendment, or modification. If funds other than federal appropriated funds have been or will be paid for influencing or attempting to influence the persons listed above, the applicant agrees to complete and submit SF–LLL, Disclosure of Lobbying Activities, as part of its application submission package. The applicant further agrees to and certifies that it will require similar certification and disclosure of all subawards at all tiers, including subgrants and contracts.

c. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by a federally recognized Indian tribe, as a result of the exercise of the tribe's sovereign power, are excluded from coverage by item b. (also known as the Byrd Amendment). However, state-recognized Indian tribes and TDHEs established under state law are not excluded from the statute's coverage and therefore must comply with item b above.

By submitting an application, the applicant affirms its awareness of these certifications and assurances. The AOR submitting the application is affirming that these certifications and assurances are material representations of the facts upon which HUD will rely when making an award to the applicant. If it is later determined that the signatory to the application submission knowingly made a false certification or assurance or did not have the authority to make a legally binding commitment for the applicant, the applicant may be subject to criminal prosecution, and HUD may terminate the award to the applicant organization or pursue other available remedies.

4. *Waiver of Electronic Submission Requirements.* The regulatory framework for HUD's electronic submission requirement is the final rule established in 24 CFR 5.1005. Applicants seeking a waiver of the electronic submission requirement must request a waiver in accordance with 24 CFR 5.1005. HUD's regulations allow for a waiver of the electronic submission requirement for cause. If the waiver is granted, the applicable program office's response will include instructions on how many hard copies of the paper application must be submitted as well as how and where to submit them. Applicants that are granted a waiver of the electronic submission requirement will not be afforded additional time to submit their applications. The deadlines for applications will remain as provided in the program section of the SuperNOFA and as per the final Appendix A published with the SuperNOFA program sections. As a result, applicants seeking a waiver of the electronic application submission requirement should submit their waiver request with sufficient time to allow HUD to process and respond to the request. Applicants should also allow themselves sufficient time to submit their application so that HUD receives the application by the established deadline date. For this reason, HUD strongly recommends that if an applicant finds it cannot submit its application electronically and must seek a waiver of the electronic grant submission requirement, it should submit the waiver request to the headquarters of the applicable HUD office no later than 15 days before the application deadline. This will allow time for HUD to process the waiver request and give the applicant sufficient time to submit the paper application to meet the deadline if the waiver is granted. To expedite the receipt and review of such requests, applicants may email their requests to the program contact listed in the program NOFA. If HUD does not have sufficient time to process the waiver request, a waiver will not be granted. Paper applications received without a prior approved waiver and/or after the established deadline date will not be considered.

V. Application Review Information

A. Criteria

1. Factors for Award Used to Evaluate and Rate Applications. For each program NOFA, the points awarded for the rating factors total 100. Depending on the program for which you are seeking funding, the funding

opportunity may provide up to four bonus points, as provided below:

a. *RC/EZ/EC–II.* HUD will award two bonus points to each application that includes a valid form HUD–2990 certifying that the proposed activities/projects in the application are consistent with the strategic plan for an empowerment zone (EZ) designated by HUD or the U.S. Department of Agriculture (USDA), the tax incentive utilization plan for an urban or rural renewal community designated by HUD (RC), or the strategic plan for and enterprise community designated in round II by USDA (EZ–II), and that the proposed activities/projects will be located within the RC/EZ/EC–II identified above and are intended to serve the residents. For ease of reference in this notice, all of the federally designated areas are collectively referred to as ''RC/EZ/EC–IIs'' and residents of any of these federally designated areas as ''RC/EZ/EC–II residents.'' The individual funding announcements will indicate if the bonus points are available under the program. This notice contains a certification that must be completed for the applicant to be considered for RC/EZ/EC–II bonus points. Applicants can obtain a list of RC/EZ/EC–IIs from HUD's grants Web page at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* Applicants can determine if their program or project activities are located in one of these designated areas by using the locator on HUD's Web site at *http://egis.hud.gov/egis/.*

b. *The Five Standard Rating Factors for FY2007.* HUD has established the following five standard factors for awarding funds under the majority of its FY2007 program NOFAs.

Factor 1: Capacity of the Applicant and Relevant Organizational Staff.

Factor 2: Need/Extent of the Problem.

Factor 3: Soundness of Approach.

Factor 4: Leveraging Resources.

Factor 5: Achieving Results and Program Evaluation.

Additional details about the five rating factors and the maximum points for each factor are provided in the program NOFAs. For a specific funding opportunity, HUD may modify these factors to take into account explicit program needs or statutory or regulatory limitations. Applicants should carefully read the factors for award as described in the program NOFA to which you are responding.

The Continuum of Care Homeless Assistance programs have only two factors that receive points: (1) Need and (2) Continuum of Care.

c. *Additional Criterion.* In addition to the Standard Rating Criterion, HUD will consider the following additional items when rating your application(s).

(1) *Past Performance.* In evaluating applications for funding, HUD will take into account applicants' past performance in managing funds, including, but not limited to, the ability to account for funds appropriately; timely use of funds received either from HUD or other federal, state, or local programs; timely submission and quality of reports to HUD; meeting performance targets as established in logic models approved as part of the grant agreement; timelines for completion of activities and receipt of promised matching or leveraged funds; and the number of persons to be served or targeted for assistance. HUD may consider information available from HUD's records; the name check review; public sources such as newspapers, Inspector General or Government Accountability Office reports or findings; or hotline or other complaints that have been proven to have merit.

(2) *Deducting Points for Poor Performance.* In evaluating past performance, HUD may elect to deduct points from the rating score or establish threshold levels as specified under the Factors for Award in the individual program NOFAs.

B. Reviews and Selection Process

1. HUD's Strategic Goals to Implement HUD's Strategic Framework and Demonstrate Results. HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. To support this effort, grant applications submitted for HUD programs will be rated on how well they tie proposed outcomes to HUD's policy priorities and annual goals and objectives, as well as the quality of the applicant's proposed evaluation and monitoring plans. HUD's strategic framework establishes the following goals and objectives for the Department:

a. Increase Homeownership Opportunities.

(1) Expand national homeownership opportunities.

(2) Increase minority homeownership.

(3) Make the home-buying process less complicated and less expensive.

(4) Reduce predatory lending practices through reform, education, and enforcement.

(5) Help HUD-assisted renters become homeowners.

(6) Keep existing homeowners from losing their homes.

b. Promote Decent Affordable Housing.

(1) Expand access to and the availability of decent, affordable rental housing.

(2) Improve the management accountability and physical quality of public and assisted housing.

(3) Improve housing opportunities for the elderly and persons with disabilities.

(4) Promote housing self-sufficiency.

(5) Facilitate more effective delivery of affordable housing by reforming public housing and the Housing Choice Voucher program.

c. Strengthen Communities.

(1) Assist disaster recovery in the Gulf Coast region.

(2) Enhance sustainability of communities by expanding economic opportunities.

(3) Foster a suitable living environment in communities by improving physical conditions and quality of life.

(4) End chronic homelessness and move homeless families and individuals to permanent housing.

(5) Mitigate housing conditions that threaten health.

d. Ensure Equal Opportunity in Housing.

(1) Ensure access to a fair and effective administrative process to investigate and resolve complaints of discrimination.

(2) Improve public awareness of rights and responsibilities under fair housing laws.

(3) Improve housing accessibility for persons with disabilities.

(4) Ensure that HUD-funded entities comply with fair housing and other civil rights laws.

e. Embrace High Standards of Ethics, Management, and Accountability.

(1) Strategically manage human capital to increase employee satisfaction and improve HUD performance.

(2) Improve HUD's management and internal controls to ensure program compliance and resolve audit issues.

(3) Improve accountability, service delivery, and customer service of HUD and its partners.

(4) Capitalize on modernized technology to improve the delivery of HUD's core business functions.

f. Promote Participation of Faith-Based and Other Community Organizations.

(1) Reduce barriers to faith-based and other community organizations.

(2) Conduct outreach and provide technical assistance to strengthen the capacity of faith-based and community organizations to attract partners and secure resources.

(3) Encourage partnerships between faith-based and other community

organizations and HUD's grantees and subgrantees.

Additional information about HUD's New Strategic Plan FY2006–FY2011, and 2002–2007 Annual Performance Plans is available at *http://www.hud.gov/offices/cfo/reports/cforept.cfm.*

2. Policy Priorities. HUD encourages applicants to undertake specific activities that will assist the Department in implementing its policy priorities and achieving its goals for FY2007 and beyond, when the majority of funding recipients will be reporting programmatic results and achievements. Applicants that include work activities that specifically address one or more of these policy priorities will receive higher rating scores than applicants that do not address these HUD priorities. Each NOFA issued in FY2007 will specify which priorities relate to a particular program and how many points will be awarded for addressing those priorities.

a. Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Persons with Limited English Proficiency. Too often, these individuals and families are shut out of the housing market through no fault of their own. Often, developers of housing, housing counseling agencies, and other organizations engaged in the housing industry must work aggressively to open up the realm of homeownership and rental opportunities to low- and moderate-income persons, persons with disabilities, the elderly, minorities, and persons with limited English proficiency. Many of these families are anxious to have homes of their own, but are not aware of the programs and assistance that are available. Applicants are encouraged to address the housing, housing counseling, and other related supportive service needs of these individuals and coordinate their proposed activities with funding available through HUD's affordable housing programs and home loan programs.

Proposed activities support strategic goals a, b, and d.

b. Improving our Nation's Communities. HUD wants to improve the quality of life for those living in distressed communities. Applicants are encouraged to include activities that:

(1) Bring private capital into distressed communities;

(2) Finance business investments to grow new businesses;

(3) Maintain and expand existing businesses;

(4) Create a pool of funds for new small and minority-owned businesses; and

(5) Create decent jobs for low-income persons.

(6) Improve the environmental health and safety of families living in public and privately owned housing by including activities that:

(i) Coordinate lead hazard reduction programs with weatherization activities funded by state and local governments and the federal government; and

(ii) Reduce or eliminate health-related hazards in the home caused by toxic agents, such as molds and other allergens, carbon monoxide, and other hazardous agents and conditions;

(7) Make communities more livable by:

(i) Providing public and social services; and

(ii) Improving infrastructure and community facilities.

Activities support strategic goals b, c, and d.

c. Encouraging Accessible Design Features. As described in Section III.C.2.c., applicants must comply with applicable civil rights laws, including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws and the regulations implementing them provide for nondiscrimination based on disability and require housing and other facilities to incorporate certain features intended to provide for their use and enjoyment by persons with disabilities. HUD is encouraging applicants to add accessible design features beyond those required under civil rights laws and regulations. Such features would eliminate many other barriers limiting the access of persons with disabilities to housing and other facilities. Copies of the Uniform Federal Accessibility Standards (UFAS) are available from the NOFA Information Center at (800) HUD–8929 and also from the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5230, Washington, DC 20410–2000; telephone (202) 755–5404 or toll-free at (800) 877–8339 (TTY). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. (These are toll-free numbers.)

Accessible design features are intended to promote visitability and incorporate features of universal design, as described below.

(1) *Visitability in New Construction and Substantial Rehabilitation.* Applicants are encouraged to incorporate visitability standards, where feasible, in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. Visitability means that there is at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk, and that the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, allowing 32 inches of clear passage space. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. More information about visitability is available at *http://www.concretechange.org/.*

Activities support strategic goals b, c, and d.

(2) Universal Design. Applicants are encouraged to incorporate universal design in the construction or rehabilitation of housing, retail establishments, and community facilities funded with HUD assistance. Universal design is the design of products and environments to be usable by all people to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost to the user. Universal design benefits people of all ages and abilities. In addition to any applicable required accessibility feature under Section 504 of the Rehabilitation Act of 1973 or the design and construction requirements of the Fair Housing Act, the Department encourages applicants to incorporate the principles of universal design when developing housing, community facilities, and electronic communication mechanisms, or when communicating with community residents at public meetings or events.

HUD believes that by creating housing that is accessible to all, it can increase the supply of affordable housing for all, regardless of ability or age. Likewise, creating places where people work, train, and interact that are usable and open to all residents increases opportunities for economic and personal self-sufficiency. More information on universal design is available from the Center for Universal Design at *http://www.design.ncsu.edu:8120/cud/* or the Resource Center on Accessible Housing and Universal Design at *www.abledata.com/abledata.cfm?pageid=113573&top=16029&sectionid=19326.*

Activities support strategic goals a thru d.

d. Providing Full and Equal Access to Grassroots Faith-Based and Other Community Organizations in HUD Program Implementation.

(1) HUD encourages nonprofit organizations, including grassroots faith-based and other community organizations, to participate in the vast array of programs for which funding is available through HUD's programs. HUD also encourages states, units of local government, universities, colleges, and other organizations to partner with grassroots organizations (*e.g.*, civic organizations, faith communities, and grassroots faith-based and other community organizations) that have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services, such as assisting the homeless and preventing homelessness, counseling individuals and families on fair housing rights, providing elderly housing opportunities, developing first-time homeownership programs, increasing homeownership and rental housing opportunities in neighborhoods of choice, developing affordable and accessible housing in neighborhoods across the country, creating economic development programs, and supporting the residents of public housing facilities. HUD seeks to make its programs more effective, efficient, and accessible by expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. Additionally, HUD encourages applicants to include these grassroots faith-based and other community organizations in their work plans. Applicants, their partners, and participants must review the individual FY2007 HUD program announcements to determine whether they are eligible to apply for funding directly or whether they must establish a working relationship with an eligible applicant in order to participate in a HUD funding opportunity. Grassroots faith-based and other community organizations, and applicants that currently or propose to partner, fund, subgrant, or subcontract with grassroots organizations (including grassroots faith-based or other community nonprofit organizations eligible under applicable program regulations) in conducting their work programs will receive higher rating points, as specified in the individual FY2007 HUD program announcements.

(2) Definitions of Grassroots Organizations.

(a) HUD will consider an organization a ''grassroots organization'' if the organization is headquartered in the local community in which it provides services; and

(i) Has a social services budget of $300,000 or less, or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered ''grassroots.'' Local affiliates of national organizations are encouraged, however, to partner with grassroots organizations, but must demonstrate that they are currently working with a grassroots organization (*e.g.*, having a grassroots faith-based or other community organization provide volunteers).

(c) The cap provided in paragraph (2)(a)(i) above includes only that portion of an organization's budget allocated to providing social services. It does not include other portions of the budget, such as salaries and expenses, not directly expended in the provision of social services.

Activities support strategic goal f.

e. Participation of Minority-Serving Institutions (MSIs) in HUD Programs. Pursuant to Executive Orders 13256, ''President's Board of Advisors on Historically Black Colleges and Universities,'' 13230, ''President's Advisory Commission on Educational Excellence for Hispanic Americans,'' 13216, ''Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs,'' and 13270, ''Tribal Colleges and Universities,'' HUD is strongly committed to broadening the participation of MSIs in its programs. HUD is interested in increasing the participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high quality education, and increase opportunities for MSIs to participate and benefit from federal financial assistance programs. HUD encourages all applicants and recipients to include meaningful participation of MSIs in their work programs. A listing of MSIs can be found on the Department of Education Web site at *www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html* or HUD's Web site at *www.hud.gov/offices/adm/grants/fundsavail.cfm*. Activities support strategic goals c and d.

f. Ending Chronic Homelessness. President Bush has set a national goal to end chronic homelessness. HUD Secretary Alphonso Jackson has embraced this goal and has pledged that HUD's grant programs will be used to support the President's goal and better meet the needs of chronically homeless individuals. A person experiencing chronic homelessness is defined as an unaccompanied individual with a disabling condition who has been continuously homeless for a year or more or has experienced four or more episodes of homelessness over the last 3 years. A disabling condition is defined as a diagnosable substance abuse disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. Applicants are encouraged to target assistance to chronically homeless persons by undertaking activities that will result in:

(1) Creation of affordable housing units, supportive housing, and group homes;

(2) Establishment of a set-aside of units of affordable housing for the chronically homeless;

(3) Establishment of substance abuse treatment programs targeted to the homeless population;

(4) Establishment of job training programs that will provide opportunities for economic self-sufficiency;

(5) Establishment of counseling programs that assist homeless persons in finding housing, managing finances, managing anger, and building interpersonal relationships;

(6) Provision of supportive services, such as health care assistance, that will permit homeless individuals to become productive members of society; and

(7) Provision of service coordinators or one-stop assistance centers that will ensure that chronically homeless persons have access to a variety of social services.

Applicants that are developing programs to meet the goals set in this policy priority should keep in mind the requirements of the regulations implementing Section 504 of the Rehabilitation Act, in particular, 24 CFR 8.4(b)(1)(iv), 8.4(c)(1), and 8.4(d).

Activities support strategic goals b and c.

g. Removal of Regulatory Barriers to Affordable Housing.

In FY2007, HUD continues to make removal of regulatory barriers a policy priority. Through the Department's America's Affordable Communities Initiative, HUD is seeking input into how it can work more effectively with the public and private sectors to remove regulatory barriers to affordable housing. Increasing the affordability of rental and homeownership housing continues to be a high priority of the Department. Addressing these barriers to housing affordability is a necessary component of any overall national housing policy.

Under this policy priority, higher rating points are available to: (1) governmental applicants that are able to

demonstrate successful efforts in removing regulatory barriers to affordable housing and (2) nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. To obtain the policy priority points for efforts to successfully remove regulatory barriers, applicants must complete form HUD–27300, ''Questionnaire for HUD's Removal of Regulatory Barriers'' (''HUD Communities Initiative'' on Grants.gov). Copies of HUD's notices published on this issue can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.*

Local jurisdictions and counties with land use and building regulatory authority applying for funding, as well as PHAs, nonprofit organizations, and other qualified applicants applying for funds for projects located in these jurisdictions, are invited to answer the 20 questions under Part A. An applicant that scores at least five in column 2 will receive one point in the NOFA evaluation. An applicant that scores ten or more in column 2 will receive two points in the NOFA evaluation.

State agencies or departments applying for funding, as well as PHAs, nonprofit organizations, and other qualified applicants applying for funds for projects located in unincorporated areas or areas not otherwise covered in Part A, are invited to answer the 15 questions under Part B. Under Part B, an applicant that scores at least four in column 2 will receive one point in the NOFA evaluation. Under Part B, an applicant that scores eight or more will receive a total of two points in the respective evaluation.

Applicants that will be providing services in multiple jurisdictions may choose to address the questions in either Part A or Part B for that jurisdiction in which the preponderance of services will be performed should an award be made. In no case will an applicant receive more than two points for barrier removal activities under this policy priority. An applicant that is an Indian tribe or TDHE may choose to complete either Part A or Part B after determining whether the tribe's or TDHE's association with the local jurisdiction or the state would be the more advantageous for its application.

The form HUD–27300, ''Questionnaire for HUD's Removal of Regulatory Barriers'' (''HUD Communities Initiative'' on Grants.gov), is available as part of the application package retrieved from Grants.gov, and at *http://www.hudclips.org/sub_nonhud/html/forms.htm.* A limited number of questions on the form expressly request the applicant to provide brief documentation with its response. Other questions require that, for each affirmative statement made, the applicant supply a reference, Internet address, or brief statement indicating where the back-up information may be found and a point of contact, including a telephone number or email address. To obtain an understanding of this policy priority and how it can affect their score, applicants are encouraged to read HUD's three notices, which are available at *http://www.hud.gov/initiatives/affordablecom.cfm.* Applicants that do not provide the Internet addresses, references, or documentation will not get the policy priority points. Activities support strategic goals a and b.

h. Participation in Energy Star. HUD has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency (EPA), and the Department of Energy (DOE) have signed a partnership to promote energy efficiency in HUD's affordable housing programs, including public housing, HUD-insured housing, and housing financed through HUD formula and competitive programs. The purpose of the Energy Star partnership is to promote energy-efficient affordable housing stock while protecting the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote energy efficiency in design and operations. They are urged especially to purchase and use products that display the Energy Star label. Applicants providing housing assistance or counseling services are encouraged to promote Energy Star materials and practices, as well as buildings constructed to Energy Star standards, to both homebuyers and renters.

Applicants are encouraged to undertake program activities that include developing Energy Star promotional and information materials; providing outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances; utilizing Energy Star-designated products in the construction or rehabilitation of housing units; and replacing worn products or facilities, such as light bulbs, water heaters, furnaces, etc., with Energy Star products in order to reduce operating costs. Communities and developers are encouraged to promote the designation of community buildings and homes as Energy Star compliant. For further information about Energy Star, see *http://www.energystar.gov* or call the following toll-free numbers: (888) 782–7937 or (888) 588–9920 (TTY).

Activities support strategic goals a and b.

3. Threshold Compliance. Only applications that meet all of the threshold requirements will be eligible to receive an award of funds from HUD.

4. Corrections to Deficient Applications. After the application deadline, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct curable (correctable) technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants.

Examples of curable (correctable) technical deficiencies include inconsistencies in the funding request, failure to submit the proper certifications, and failure to submit an application that contains a signature by an official able to make a legally binding commitment on behalf of the applicant. In the case of an applicant that received a waiver of the regulatory requirement to submit an electronic application, the technical deficiency may include failure to submit an application that contains an original signature. If HUD finds a curable deficiency in the application, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or via the U.S. Postal Service, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the deadline date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) If the deficiency is not corrected within this time, HUD will reject the application as incomplete, and it will not be considered for funding. In order to meet statutory deadlines for the obligation of funds or for timely completion of the review process, program NOFAs may reduce the number of days for submitting a response to a HUD clarification or a correction to a technical deficiency. Please be sure to

carefully read each program NOFA for any additional information and instructions. An applicant's response to a HUD notification of a curable deficiency should be submitted directly to HUD in accordance with the instructions provided in the notification.

5. Rating Panels. To review and rate applications, HUD may establish panels that may include persons not currently employed by HUD. HUD may include these non-HUD employees to obtain particular expertise and outside points of view, including views from other federal agencies. Persons brought into HUD to review applications are subject to conflict-of-interest provisions. In addition, reviewers using HUD information technology (IT) systems may be subject to an IT security check.

6. Rating. HUD will evaluate and rate all applications for funding that meet the threshold requirements.

7. Ranking. HUD will rank applicants within each program or, for Continuum of Care applicants, across the three programs identified in the Continuum of Care NOFA. HUD will rank applicants only against those applying for the same program funding.

Where there are set-asides within a program competition, you, the applicant, will compete against only those applicants in the same set-aside competition.

C. Anticipated Announcement and Award Dates

The individual program NOFAs will provide the applicable information regarding this subject.

VI. Award Administration Information

A. Award Notices

1. *Negotiation.* After it has rated and ranked all applications and made selections, HUD may require, depending upon the program, that a selected applicant participate in negotiations to determine the specific terms of the funding agreement and budget. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In such an instance, HUD may offer an award to and proceed with negotiations with the next highest-ranking applicant.

2. *Adjustments to Funding.*

a. To ensure the fair distribution of funds and enable the purposes or requirements of a specific program to be met, HUD reserves the right to fund less than the full amount requested in your application.

b. HUD will not fund any portion of your application that: (1) is not eligible for funding under specific HUD program statutory or regulatory requirements; (2) does not meet the requirements of this notice; or (3) is duplicative of other funded programs or activities from prior year awards or other selected applicants. Only the eligible portions of your application (excluding duplicative portions) may be funded.

c. If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If you, the applicant, turn down an award offer, HUD will make an offer of funding to the next highest-ranking application.

d. If funds remain after all selections have been made, remaining funds may be made available within the current fiscal year for other competitions within the program area or held over for future competitions.

e. Individual program NOFAs may have other requirements, so please review the program NOFA carefully.

3. *Funding Errors.* In the event HUD commits an error that, if corrected, would result in selection of an applicant during the funding round of a program NOFA, HUD may select that applicant when sufficient funds become available.

4. *Performance and Compliance Actions of Funding Recipients.* HUD will measure and address the performance and compliance actions of funding recipients in accordance with the applicable standards and sanctions of their respective programs.

5. *Debriefing.* For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide to a requesting applicant a debriefing related to its application. A request for debriefing must be made in writing or by email by the authorized official whose signature appears on the SF–424 or by his or her successor in office, and be submitted to the person or organization identified as the contact under the section entitled ''Agency Contact(s)'' in the individual program NOFA under which you applied for assistance. Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

B. Administrative and National Policy Requirements

See Section III.C. of this notice regarding related requirements.

C. Reporting

1. *Use of a Logic Model to Report Performance.* In FY2004, HUD used as a planning tool the logic model submitted as part of NOFA applications. In FY2005, HUD required grant agreements to incorporate performance reporting against the approved logic model. In FY2006, HUD moved to standardized ''master'' logic models from which applicants can select needs, activities/outputs, and outcomes appropriate to their programs. In addition, program offices have identified Program Management Evaluation Questions that grantees will be required to report on as specified in the approved program eLogic Model™. The time frame established for the logic model reporting will be in accordance with the program's established reporting periods and as stated in the program NOFA.

2. *Placement of Approved Logic Models and Reports on HUD's Web site.* It is HUD's intent to publish approved logic models and grantee progress reports submitted to HUD on its Grants web site. Starting with awards made in FY2007, HUD is establishing a Grants Performance page that will feature program performance ratings issued by OMB under its Program Assessment Rating Tool (PART), or its successor tool, for HUD programs that have been evaluated by OMB. HUD will also post all approved logic models that show each awardee's projected outputs and outcomes during the period of performance. As required performance reports are received by HUD, they will be added to the web site. HUD is creating this web site page to highlight and make available to the public performance and results from HUD-funded programs in keeping with Executive Order 13392, issued December 14, 2005, and published in the **Federal Register** on December 19, 2005 (70 FR 75373). HUD believes that informing the public on progress in funded programs is in keeping with presidential and congressional intent for transparency in federally funded programs, as demonstrated by the passage of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), and creation of the federal Web sites *http://www.ExpectMore.gov* and *http://www.Results.gov.*

3. *HUD also intends to propose Return on Investment (ROI) Statements for each of its competitive grant programs.* Before finalizing ROI Statements for implementation, HUD will publish the proposed ROI Statements for public comment. HUD

believes the applicant/grantee community can greatly assist HUD in its attempt to place a value on the work done under the Department's grant programs. While HUD expects grantees to respond to the Management Evaluation Questions in their final reports, reporting on the ROI Statements is not mandatory at this time. As HUD finalizes ROI Statements for each program, they will be included in awards in the future. HUD intends to publish the first ROI Statements for public comment and input during FY2007.

4. *The logic model form (HUD–96010), which is a Microsoft Excel workbook, contains instructions in Tab 1 on how to use the form.* The form or eLogic Model incorporates a program-specific master list of statements of need, service, or activity/output(s) and their associated unit(s) of measure; and outcome(s) and their associated unit(s) of measure. Applicants will be required to click on a cell within a column. When you click on the cell, the drop-down button appears to the right of the cell. Applicants can then select the appropriate statement(s) to reflect their proposed program. Applicants can select multiple need(s) and services, or activities/outputs and outcomes, but each selection is entered in separate cells using the drop-down menu. The units of measure, whether for outputs or outcomes, contain both a number and a descriptor of the output or outcome that is counted. Applicants select the unit of measure in accordance with the output or outcome selected, and then insert the expected number of units to be completed or achieved during the period of performance. In this manner, the applicant will build a custom logic model reflecting their program of activities. The custom logic model will link the need(s) to the activity/output(s), which in turn are linked to the result or expected outcome(s).

5. *Based upon experience gathered from the logic models completed in FY2006, HUD has made the following changes to the logic model format:*

a. Added drop-down menus for HUD Strategic Goals and Policy Priorities to eliminate applicant confusion as to what letters and numbers to use for the goals and priorities, and to improve data quality;

b. Added tabs for Year 1, Year 2, and Year 3 activities as well as a tab for Total. HUD found that applicants within a program had varying opinions or interpretations on time frames for short, intermediate, and long term. To provide for greater consistency in reporting, applicants should include all activities and outcomes expected per year of the period of performance. HUD also found that applicants varied their use of the short, intermediate, and long-term totals so that it was difficult to distinguish if long-term totals were cumulative or just reflective of the activities performed during the last reporting period. To eliminate this problem, HUD has added a Total tab so that cumulative projected and final results can be shown covering all years of the period of performance. Applicants with a one-year period of performance will only have to complete the Year 1 tab, since the total results will all occur in the one-year award period.

c. Included a new tab for reporting instructions. For the grantees' convenience and to call attention to the requirements, the logic model form now contains reporting instructions. The instructions ask applicants to identify in their reports to HUD where actual results deviated from projected results—either positively or negatively. The Reporting Instruction tab includes a text field in which grantees can report any deviations, as well as their responses to the management questions. While these changes to the form do not add additional burden hours to the information collection, HUD believes that the changes will assist the applicant in completing their logic model and provide for better quality logic models and reporting to HUD. The changes were developed based on eLogic Models™ received in FY2006 and comments received from applicants during the NOFA process. HUD will continue to review data received via the eLogic Models™ and would like to thank the applicant/grantee community for their recommendations and insights.

6. *In FY2007, grantees must adhere to the following reporting principles:*

a. An evaluation process will be part of the ongoing management of the HUD-funded award;

b. Comparisons will be made between projected and actual numbers for outputs and outcomes;

c. Deviations from projected outputs and outcomes will be documented and explained as part of required reporting; and

d. Data will be analyzed to determine the relationship of outputs to outcomes to determine which outputs produce which outcomes and which are most effective.

As stated above, in FY2006, HUD required each program to establish a set of Program Management Evaluation Questions for grantee reporting. Grantees must use these questions to self-evaluate the management and performance of their program. HUD is continuing this practice in FY2007. In developing the master logic model Program Management Evaluation Questions, HUD trained its program managers on the Carter-Richmond Methodology, a critical thinking process that identifies key management and evaluation questions for HUD's programs. The following table identifies the Carter-Richmond generic questions and where the source data is found in the logic model.

CARTER-RICHMOND METHODOLOGY: [1] BUILDING BLOCKS FOR EFFECTIVE MANAGEMENT

Management questions	Logic model columns for source data
1. How many clients are you serving?	Service/Activity/Output.
2. How many units were provided?	Service/Activity/Output.
3. Who are you serving?	Service/Activity/Output.
4. What services do you provide?	Service/Activity/Output.
5. What does it cost?	Service/Activity/Output.
6. What does it cost per service delivered?	Service/Activity/Output/Evaluation.
7. What happens to the ''subjects'' as a result of the service? [2]	Outcome
8. What does it cost per outcome?	Outcome and Evaluation.
9. What is the value of the outcome?	Outcome and Evaluation.
10. What is the return on investment?	Evaluation.

[1] ''The Accountable Agency—How to Evaluate the Effectiveness of Pubic and Private Programs,'' Reginald Carter, ISBN Number 9780978724924.

[2] The subject can be a client or a unit, such as a building, and is defined in its associated unit of service.

As a result of this training, each program has developed specific Program Management Evaluation Questions tailored to the statutory purpose of each of their programs. Each program NOFA will require applicants to address these questions based upon the Carter-Richmond Methodology in their reports to HUD. The program NOFAs will identify the particular questions to be addressed that relate to the statutory purpose and intent of each program.

Training on HUD's logic model and on the reporting requirements for addressing the Program Management Evaluation Questions will be provided via satellite broadcast. The training will also provide examples of how to construct the logic model using the drop-down lists in the eLogic Model.™ Training materials and the dates for the training will be on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*, shortly after publication of the SuperNOFA. In addition, each program NOFA broadcast will address the specific questions and reporting requirements for the program.

Applicants should submit the completed logic model as an attachment to their application, in accordance with the directions in the program NOFA for addressing the factors for award. Each program NOFA will identify if it requires the factors for award, including the logic model that is required as part of the application submission, to be submitted as a single attached file or as separate files. Please follow the program NOFA directions. Applicants must submit the Logic Model in the Microsoft Excel format provided. DO NOT convert the file to PDF format.

After being selected for funding and awarded funds, grantees will be required to submit a completed form HUD–96010, Logic Model, indicating results achieved against the proposed output(s) and proposed outcome(s) stated in the grantee's approved application and agreed to by HUD. The logic model and required management questions must be submitted to HUD in accord with the reporting periods identified in each program NOFA for providing reports to HUD.

7. *Use of Form HUD–27061, Race and Ethnic Data Reporting Form, to Report Race and Ethnicity Data for Beneficiaries of HUD Programs.* HUD requires grantees that provide HUD program benefits to individuals or families to report data on the race and ethnicity of those receiving such benefits. Grantees that provide benefits to individuals during the period of performance, whether directly, through subrecipients, or through contractual arrangements, must report the data using form HUD–27061, Race and Ethnic Data Reporting Form, on Grants.gov. The form is a data collection based on the standards published by OMB on August 13, 2002. The individual program NOFAs will identify applicable reporting requirements related to each program. Applicants reporting to HUD using an online system can use that system to meet this requirement, provided the data elements and reports derived from the system are equivalent to the data collection in the form HUD–27061.

8. *Frequency of Reports and Data Consistency.*

a. *Logic Model Reporting.* When submitting eLogic Model™ reports on a quarterly or semi-annual basis, each report should show the results that occurred during that reporting period. All final reports should provide a final eLogic Model™ performance for the entire period of the award.

b. *Race and Ethnic Data Report.* When submitting the Race and Ethnic Data Reporting Form (HUD–27061) on a quarterly or semi-annual basis, each reporting period should show the results that occurred during the performance period for all active clients. If a multi-year program is funded, then each annual report should show results that occurred during that performance year for all active clients. A final form HUD–27061 should show results for all active clients for the entire period of performance.

VII. Agency Contact(s)

The individual program NOFAs will identify the applicable agency contacts related to each program. Questions regarding this notice should be directed to the NOFA Information Center between the hours of 10 a.m. and 6:30 p.m. eastern time at (800) HUD–8929. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. (These are toll-free numbers.) Questions regarding specific program requirements should be directed to the agency contacts identified in each program NOFA.

VIII. Other Information

A. Grants.gov and Public Law 106–107 Streamlining Activities

The Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) directs each federal agency to develop and implement a plan that, among other things, streamlines and simplifies the application, administrative, and reporting procedures for federal financial assistance programs administered by the agency. This law also requires the Director of OMB to direct, coordinate, and assist federal agencies in establishing: (1) a common application and reporting system and (2) an interagency process for addressing ways to streamline and simplify federal financial assistance application and administrative procedures as well as reporting requirements for program applicants. Over the last several years, the Public Law 106–107 work groups have been engaged in various streamlining activities that are now being shared with the grantee community for their input prior to being implemented across the federal government. Applicants and grantees are urged to participate in the listening tour broadcasts sponsored by the Grants Policy Council and the Public Law 106–107 work groups and to become familiar with the proposed changes to simplify requirements at *http://www.grants.gov/aboutgrants/streamlining_initiatives.jsp.*

B. Grants.gov

The first segment of the Grants.gov initiative focuses on allowing the public to easily FIND competitive funding opportunities and then APPLY via Grants.gov. HUD posted all of its funding opportunities on *http://www.grants.gov/applicants/find_grant_opportunities.jsp* in FY2004, with the exception of Continuum of Care, and in FY2005 placed all applications on *http://www.Grants.gov/Apply,* with the exception Continuum of Care. In addition, Grants.gov is working with the federal agencies to begin the process of accepting mandatory and formula grant program plans and application submissions online via Grants.gov. Applicants for HUD's formula and competitive programs are urged to become familiar with the Grants.gov site, registration procedures, and electronic submissions so that as the site is expanded, you will be registered and familiar with the find-and-apply functionality. The Grants.gov Internet address for Finding Grant Opportunities is *http://www.grants.gov/applicants/find_grant_opportunities.jsp.* The Grants.gov Internet address for Applying for Grant Opportunities is *http://www.grants.gov/applicants/apply_for_grants.jsp.*

C. HUD–IRS Memorandum of Agreement

HUD and the IRS have entered into a memorandum of agreement to provide information to HUD grantees serving low-income, disabled, and elderly persons, as well as persons with limited English proficiency, on the availability

of low-income housing tax credits, the earned income tax credit, individual development accounts, child tax credits, and the IRS Voluntary Income Tax Assistance program. HUD is making available on its website information on these IRS asset-building resources. HUD encourages you to visit the site and disseminate this information to low-income residents in your community and other organizations that serve low-income residents, so that eligible individuals can take advantage of these resources.

D. Paperwork Reduction Act Statement

The information collection requirements in this notice have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. Each program NOFA will identify its applicable OMB control number.

E. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made for this notice, in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. eastern time, Monday through Friday, except federal holidays, in the Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

F. Executive Orders and Congressional Intent

1. *Executive Order 13132, Federalism.* Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on state and local governments and are not required by statute, or preempt state law, unless the relevant requirements of Section 6 of the executive order are met. This notice does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

2. *American-made Products.* Sections 708 and 709 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115; approved Nov. 30, 2005) states that, to the greatest extent practicable, all equipment and products purchased with funds made available should be made in the United States.

G. Public Access, Documentation, and Disclosure

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) (42 U.S.C. 3545) and the regulations codified at 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under individual NOFAs published as part of HUD's SuperNOFA or thereafter, as described below.

1. *Documentation, Public Access, and Disclosure Requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to its FY2007 NOFAs, whether published in the 2007 SuperNOFA or in NOFAs published thereafter, are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

2. *Form HUD–2880, ''Applicant/Recipient Disclosure/Update Report'' (''HUD Applicant Recipient Disclosure Report'' on Grants.gov).* HUD will also make available to the public for 5 years all applicant disclosure reports (form HUD–2880) submitted in connection with an FY2007 NOFA. Update reports (also reported on form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than 3 years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

3. *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all funding decisions made by the Department to provide:

a. Assistance subject to Section 102(a) of the HUD Reform Act; and

b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) noncompetitive basis.

H. Section 103 of the HUD Reform Act

HUD's regulations implementing Section 103 of the HUD Reform Act, codified at 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are prohibited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at (202) 708–3815 (this is not a toll-free number). The toll-free TTY number for persons with speech or hearing impairments is (800) 877–8339. HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

Appendix A: Programs That Were Included in the FY2006 SuperNOFA

Community Development Technical Assistance (CD-TA) Programs
HOME TA CFDA No.: 14.239 OMB Approval No.: 2506-0166
CHDO (HOME) TA CFDA No.: 14.239 OMB Approval No.: 2506-0166
McKinney-Vento Homeless Assistance Programs TA CFDA No.: 14.235 OMB Approval No.: 2506-0166
HOPWA TA CFDA No.: 14.241 OMB Approval No.: 2506-0133
Youthbuild TA (Transferred to the Department of Labor on September 22, 2006 in accordance with P.L. 109-281) CFDA No.: 14.243 OMB Approval No.: 2506-0142
Indian Community Development Block Grant Program
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