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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2006–0009]

Importation of Tomatoes From Certain Central American Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables in order to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. The conditions to which the importation of tomatoes will be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action will allow for the importation of pink and red tomatoes from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1228; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 though 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Section 319.56–2dd of the regulations contains administrative instructions allowing the importation of tomatoes from various countries where the Mediterranean fruit fly (Medfly, *Ceratitis capitata*) is present. In this document, we are amending that section by adding a new paragraph (f) that sets forth administrative instructions concerning the importation of pink and red tomatoes from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

On February 6, 2006, we published in the **Federal Register** (71 FR 6011–6016, Docket No. APHIS–2006–0009) a proposal [1] to amend the regulations to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States under certain conditions.

We solicited comments concerning our proposal for 60 days ending April 7, 2006. We received 15 comments by that date. They were from representatives of State and foreign agricultural departments, industry organizations, importers and exporters, producers, farmers, and individuals. Eight of these commenters supported the proposed rule. The others expressed reservations, which are discussed below.

General Comments

In our proposal, we explained that the proposed conditions to which tomatoes from Central America would be subject were very similar to current requirements for importing tomatoes from France, Morocco and Western Sahara, and Spain. We also stated that since the start of the tomato systems approach in France and Spain, the number of pest interceptions has been very low, with an approximate shipment infestation rate of 0.005 percent in Spain and 0.06 percent in France. With respect to those numbers, one commenter asked if the pest interception rates were for Medfly or for some other pest.

The interceptions on tomatoes from France and Spain were leafminers, not Medfly.

One commenter questioned why the pea leafminer (*Liriomyza huidobrensis*) was included in the list of quarantine pests of concern in the risk management document. The commenter said it would be unlikely for the pea leafminer to be introduced on tomato fruit, as that pest is commonly associated with only foliage or leaf litter, and asked if those plant parts will be allowed entry.

The commenter is correct in that the pea leafminer feeds on foliage and not fruit. While foliage and leaf litter will not be permitted entry with tomato fruit, leafminer pupae may fall from tomato foliage onto the fruit during harvesting, packing, etc. These pupae are easy to detect and inspectors should readily detect any that may end up on fruit.

Two commenters expressed concern that allowing more imports of tomatoes from foreign markets would result in negative economic impacts on small family farms in the United States. Two additional commenters stated that the Florida tomato industry has already experienced disasters such as freezes and hurricanes and that the entry of Medfly into Florida could devastate an already struggling industry.

Our proposed rule was prepared in response to requests from several Central American countries that we allow the importation of pink and red tomatoes grown under a systems approach. Our scientific review of pests, similar programs, and other available documents led us to conclude that pest risk would be mitigated under the systems approach. The Plant Protection Act authorizes the Secretary to prohibit or restrict importations only when necessary to prevent the introduction of plant pests.

One commenter stated that any imports of pink and red tomatoes from the Central American countries as proposed will increase the risk of the Medfly entering the United States and noted that the proposed rule claims only that the risk of Medfly introduction will be mitigated, not eliminated.

This rule is designed to prevent the introduction and dissemination of quarantine pests into the United States. We recognize that there is no such thing as ''zero risk'' with respect to the

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0009, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

importation of agricultural commodities, so we cannot claim that required phytosanitary measures will entirely eliminate all risk. With regard to pink and red tomatoes from Central America, we have determined that the requirements and mitigation measures set forth in this rule are effective and provide the appropriate level of protection to prevent the introduction and dissemination of the pests of concern in the United States. Further, pink and red tomatoes are not a preferred host of Medfly and Medfly has never been intercepted in commercial shipments of tomatoes grown under similar systems approaches in other countries.

One commenter stated that we did not clearly explain how the risks presented by tomatoes from Central America were similar to the risks presented by tomatoes from other countries. The commenter asked that we explain this conclusion. In addition, the commenter stated that we did not provide an explanation as to how the systems approach itself was very similar to the current requirements for importing tomatoes from France, Morocco and Western Sahara, and Spain, nor did we provide any documentation that the enforcement regimes in Europe are similar or equivalent to those in Central America.

With regard to risks presented by Central American tomatoes, we did not state that the risks associated with tomatoes from Central America and other countries were the same, merely that the systems approach we were proposing to add has been successful at mitigating the risk of Medfly introduction into the United States when applied to tomatoes produced in those other countries. With regard to the specific similarities of the systems approaches, tomatoes from Spain, France, and Morocco and Western Sahara are imported under conditions similar to those which will be applied to Central American tomatoes. The use of pest-exclusionary greenhouses, trapping/triggering programs, and inspection are similar in all of the programs. The requirements pertaining to the importation of pink and red tomatoes from Spain and France are contained in § 319.56–2dd, paragraphs (a) and (b), and requirements for Morocco and Western Sahara are contained in paragraph (c), and may be compared to the provisions of § 319.56–2dd, paragraph (f) in this rule.

With regard to growing conditions, the proposed rule did not make any claims as to the similarity of the growing conditions and practices in France, Morocco and Western Sahara, and Spain, thus we have not prepared any documentation on that subject. The enforcement regimes of those countries with respect to their tomato export programs would equate to compliance with the relevant regulations in § 319.56–2dd, thus any similarities in their respective enforcement regimes would be in line with the similarities among the respective paragraphs in those regulations.

One commenter stated that in a draft report titled, ''Exotic Fruit Fly Strategic Plan, FY 2006–2010,'' APHIS acknowledged that the fruit fly populations in Central America and in Mexico are a significant threat to U.S. agriculture due to the large numbers of people migrating north from fruit fly infested areas. The commenter stated that APHIS did not acknowledge this risk in the proposed rule.

The proposed rule pertains to the importation of commercial shipments of tomatoes from the specified Central American countries. Therefore, the risk documentation prepared for the proposed rule, as well as the proposed rule itself, focus on the commercial fruit pathway and do not examine or seek to address the risks associated with individuals migrating from fruit fly infested areas in those countries to the United States.

Alternatives Considered

One commenter stated that APHIS should consider requiring the use of aerial spraying of spinosad in the areas where Medfly exists and/or a program releasing sterile fruit flies in the Medfly areas of these countries to reduce the risk of exporting Medfly on pink and red tomatoes to the United States.

The measures suggested by the commenter would be undertaken by a country seeking to eradicate a fruit fly or to establish areas of pest freedom or low prevalence. They are not phytosanitary measures APHIS can require with respect to a particular imported commodity.

One commenter requested that we limit distribution of pink and red tomatoes to States with crops that are not susceptible to Medfly or other quarantine pests from Central American countries. The commenter stated that at a minimum, Central American tomatoes should not be allowed to be distributed in the southern United States.

Based on our experience with similar programs in France, Spain, and Morocco and Western Sahara, we believe that limiting distribution of tomatoes in the United States would be beyond what is necessary to ensure pest mitigation is achieved. As stated previously, the Plant Protection Act authorizes the Secretary to prohibit or restrict importations only when necessary to prevent the introduction of plant pests.

One commenter stated that APHIS did not consider the use of ethylene gas on green tomatoes to ripen them. The commenter added that using ethylene gas will not increase the risk of Medfly introduction because it would involve importing green tomatoes only.

Ethylene gas is not a phytosanitary measure; therefore, we would not require the use of it in our regulations. Further, green tomatoes from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama are currently enterable into the United States and importers are free to use ethylene gas to color tomatoes if they desire.

One commenter stated that we did not consider irradiation as an alternative.

As stated previously, we evaluated the risks associated with pink and red tomatoes from Central America and determined that the risks could be mitigated through the application of the measures described in the proposed rule and in this document. If we had determined that the designated measures were insufficient to provide an appropriate level of quarantine security, it is possible that we would have considered requiring the application of phytosanitary treatments such as irradiation. That was not necessary, however.

Central American National Plant Protection Organizations

One commenter asked if APHIS will provide oversight to ensure compliance with the program.

APHIS will provide oversight of the programs by monitoring, conducting inspections, reviewing reports, and removing from the program any participating sites that are not in compliance with the mitigation measures.

A second commenter stated that he requested specific information regarding the participating national plant protection organizations (NPPOs) from APHIS and was provided with contact information for each NPPO instead of the specific information. The commenter questioned our ability to trust the individual Central American NPPOs to provide sufficient oversight if we do not have specific information on their workforces and capacities. One commenter raised similar concerns stating that a systems approach is complicated and assumes that the necessary technical, inspection, and other resources are available to the exporting countries and are effective.

The NPPO of each of the countries covered by the rule, like the NPPO of

any country, is necessarily concerned with, among other things, the detection and management of quarantine pests, including fruit flies, and thus administers programs to prevent the introduction and spread of quarantine pests and promote appropriate measures for their control. Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama are all parties to the International Plant Protection Convention (IPPC), which is an international treaty to secure action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control.

We do not routinely request that our trading partners provide us with specific information concerning the number and experience level of the individual employees of their NPPOs, nor do our trading partners normally ask that information of APHIS. We have full confidence in the Central American NPPOs to oversee the prescribed mitigation measures. Further, it is in the best interest of the participating Central American countries to succeed with this program and doing so will require they meet our phytosanitary standards.

One commenter asked that APHIS include provisions for conducting compliance audits during the active shipping and growing season to ensure full compliance with the systems approach. The commenter added that results of these compliance audits should be made available for review by all stakeholders in the United States.

As described in the proposed rule and in this document, APHIS would be directly involved in the approval of production sites and determinations as to whether risk mitigation has been achieved following pest detections. In addition, each exporting country's NPPO will have to maintain an APHIS-approved quality control program to monitor or audit its fruit fly trapping program, and the trapping records will have to be maintained for APHIS review. We believe that these measures will be adequate to provide the compliance assurance sought by the commenter.

Economic Analysis

One commenter took issue with the statement in the economic analysis that, ''[b]etween 1997 and 2002 there is not likely to have been substantial changes in the [domestic] industry.'' The commenter said this statement is unsupportable and not relevant to the potential economic impacts on U.S. tomato growers in 2006.

Our statement that ''Between 1997 and 2002, there is not likely to have been substantial changes in the industry'' followed three sentences describing fruit and vegetable wholesale trade firms (*i.e.*, potential importers) and was intended to indicate that we believe the majority of those firms would still be small entities in 2002, as they were in 1997. The statement was not intended to apply to tomato growers.

One commenter took issue with a statement in the economic analysis that the proposed rule would provide importers with alternative sources of tomatoes at a more advanced stage of ripeness. The commenter said that while this is technically true, it is meaningless because importers have not requested an alternative source for pink and red tomatoes and there is no indication that there are insufficient supplies of green, pink, or red tomatoes available in the United States.

The availability of alternative sources of tomatoes at a more advanced stage of ripeness was cited as a potential result of the proposed action, not as an initiating factor behind it.

One commenter took issue with the statement that the effects on small businesses would not be significant. The commenter noted that APHIS indicates it does not have information on the size distribution of domestic tomato producers and makes assumptions, for example, that the subject imports will ''compete with all fresh tomatoes produced domestically.'' The commenter claimed that this statement was inaccurate based solely on the cost of transportation from Central America to all parts of the United States. The commenter stated that APHIS also notes that the domestic price would fall by as much as $0.50 per cwt. The commenter stated that even if the price decline was ''only'' 1.4 percent, this does not render the decline insubstantial, and that the answer depends on the marketplace at the time the imports enter the United States because we are dealing with a perishable commodity, and with pink and red tomatoes we are dealing with a most perishable commodity. In such cases, the commenter stated, a small decline in price can and has had a profound negative effect on the price of tomatoes, and that if these tomatoes were to enter the United States during the winter months, then only the tomato producers in Florida would be harmed and the harm could be much greater than that suggested in the economic analysis.

The economic analysis did not quantitatively account for the possibility that imports from Central America may displace imports from other countries. In fact, the economic analysis cautions that the impacts are likely overstated because the displacement of other tomato imports was not taken into account. Florida and other tomato-producing States do not produce enough field-grown tomatoes to meet domestic demand. Thus, domestic field production is supplemented by domestic greenhouse production and by imports. Over the past 6 years, fresh tomato imports have comprised approximately 34 percent of U.S. supply (production plus imports minus exports). Over one-third of annual imports arrive in the United States during the winter months, with the bulk of these imports coming from Mexico.

We are unclear as to the commenter's intent in stating that transportation costs of imports of fresh tomatoes from Central America would prevent them from competing with all fresh tomatoes produced domestically and about pink and red tomatoes being a most perishable commodity. We presume the commenter believes that it will not be cost effective, nor feasible time-wise due to a more advanced stage of ripeness, for importers to transport tomatoes all over the United States. It would appear that the commenter is concerned that the bulk of Central American tomato imports will end up in the southern States because of their closer proximity to Central America. Most of the tomatoes produced in Florida are shipped to markets in the eastern United States, while Mexican imports serve mainly the western States. We believe that Central American imports will follow a similar pattern as Mexican imports. These marketing patterns would suggest that Florida producers may be less affected by fresh tomato imports from Central America than other domestic and foreign suppliers.

Miscellaneous Change

In our proposed provisions concerning the placement of Medfly traps in the buffer area surrounding each production site, we referred to Medfly traps with an approved protein bait. In this final rule, those provisions (§ 319.56–2dd(f)(2)(iii)(C)) refer to Medfly traps with an approved lure, as it will be parapheromone lures, rather than protein baits, that will be used outside of the greenhouses.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made

effective less than 30 days after publication in the **Federal Register**.

This rule relieves restrictions on the importation of tomatoes from Central America while continuing to protect against the introduction of plant pests into the United States. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers, importers, shippers, and others to benefit immediately from the relief in restrictions. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

We are amending the regulations governing the importation of fruits and vegetables in order to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. The conditions to which the importation of tomatoes will be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action will allow for the importation of pink and red tomatoes from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

Central American Production and Exports

While agriculture is an important industry in the countries that will be affected by this rule, it does not account for the largest share of gross domestic product in any of the countries. Tomatoes do not appear to be major crops in those Central American countries. However, production and exports of tomatoes are following upward trends.

Tomato production in Central America has been steadily increasing since the early 1960s. Over this period, production has increased almost 300 percent. In conjunction with this increase in production, exports of tomatoes from the region have also increased. Exports in 2003 were 42 times the exports in 1962. Between 1980 and 2003, exports increased by 45 percent.

Nearly all of this trade has been intraregional. From 1962 to 2003, 96 percent of Central American tomato exports were to other countries within Central America. Thus, the vast majority of the tomatoes exported from any Central American country are destined for another country within the same region.

U.S. Import Levels

U.S. imports of Central American tomatoes have fluctuated greatly over the last 15 years.[2] In fact, 2003 was the end of a 10-year period during which the United States did not import tomatoes from any Central American country. U.S. imports of fresh tomatoes principally originate in Mexico, Canada, and the Netherlands, with Mexico being by far the largest supplier.

Although this rule will allow for more liberal importation of tomatoes from certain Central American countries, it is unlikely that the changes will lead to dramatic increases in U.S. import levels from that region.

Effects on Small Entities

This rule will affect domestic producers of tomatoes as well as importers that deal with these commodities. It is likely that the entities affected will be small according to Small Business Administration (SBA) guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities will not be significant.

Two alternatives to this course of action are as follows: Maintaining the status quo with respect to the importation of tomatoes from these Central American countries (*i.e.*, green tomatoes only) or allowing importation without establishing the risk mitigations in this rule.

The first alternative would maintain current safeguards against the entry of quarantine pests. However, this option would also mean that those specified Central American countries as well as the United States would forgo the economic benefits expected to be afforded by the trade of Central American tomatoes.

Allowing the importation of fresh tomatoes from certain Central American countries under less restrictive phytosanitary requirements could potentially lead to the introduction of pests not currently found in the United States. This option could result in significant damage and costs to domestic production and is not desirable for those reasons.

Affected U.S. tomato producers are expected to be small based on the 2002 Census of Agriculture data and SBA guidelines for entities in two farm categories: Other Vegetable (except Potato) and Melon Farming (North American Industry Classification System [NAICS] code 111219) and Other Food Crops Grown Under Cover (NAICS code 111419). The SBA classifies producers in these farm categories as small entities if their total annual sales are $750,000 or less. APHIS does not have information on the size distribution of domestic tomato producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States.[3] Of this number, approximately 97 percent had total annual sales of less than $500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms.[4] This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 19,539 tomato farms that could be affected by the rule would also qualify as small. In the case of fruit and vegetable wholesalers (NAICS code 422480),[5] those entities with fewer than 100 employees are considered small by SBA standards.[6] In 1997, there were a total of 4,811 fruit and vegetable wholesale trade firms in the United States.[7] Of these firms, 4,610

[2] It is important to note here that this discussion refers to imports of all varieties of tomatoes. Disaggregated data were not available for this analysis.

[3] This number represents the total number of farms in the United States, thus includes barley, buckwheat, corn, millet, oats, rice, soybean, and sugarcane farms.

[4] Source: SBA and 2002 Census of Agriculture.

[5] Note that this NAICS code relates to the 1997 Economic Census. The 2002 NAICS code for this group is 424480.

[6] For NAICS 424480, SBA guidelines state that an entity with not more than 100 employees should be considered small unless that entity is a Government contractor. In this case, the size standard increases to 500 employees. However, in this instance, it is fair to assume that fruit and vegetable importers will not be under Government contract since it is against regulations for imports to be used in relevant Government programs (*e.g.*, school lunch programs).

[7] Source: SBA and 1997 Economic Census.

or 95.8 percent employed fewer than 100 employees and were considered small by SBA standards. Between 1997 and 2002, there were not likely to have been substantial changes in the fruit and vegetable wholesale trade industry, thus we expect that a similar percentage of entities would have been small in 2002. Therefore, domestic producers and importers that may be affected by this rule are predominantly small entities.

Economic analysis of the expected increase in imports of tomatoes from Central America shows that the importation of this commodity will lead to negligible changes in domestic prices. APHIS estimates that an additional 13,092 metric tons of tomatoes may be imported from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama on a yearly basis. Using historical consumption data to estimate an elasticity of demand for tomatoes, an increase in imports of this size will result in a price decrease of $0.50 per hundredweight (cwt) overall.

TABLE 1.—U.S. SUPPLY, UTILIZATION, AND FARM WEIGHT PRICE OF FRESH TOMATOES, 2000–2005

Year	Supply			Utilization			Season-average price	
	Production	Imports	Total	Exports	Domestic	Per capita use	Current dollars	Constant 2000 dollars
	(Million pounds)					(Pounds)	($/cwt)	
2000	4,162.0	1,609.5	5,771.5	410.4	5,361.2	19.0	$30.70	$30.70
2001	4,061.1	1,815.6	5,876.7	398.2	5,478.5	19.2	30.00	29.30
2002	4,289.3	1,896.2	6,185.5	332.1	5,853.4	20.3	31.60	30.36
2003	3,909.8	2,070.7	5,980.5	314.1	5,666.4	19.5	36.70	34.62
2004	3,975.7	2,054.6	6,030.3	367.5	5,662.8	19.3	36.70	33.92
2005[f]	4,086.0	2,000.0	6,086.0	360.0	5,726.0	19.4	.....	.....

Notes: — = not available, f = ERS forecast.
Source: USDA/ERS, ''Vegetables and Melons Yearbook,'' *http://usda.mannlib.cornell.edu/data-sets/specialty/89011/.*

For this analysis, it is assumed that imports of tomatoes from Central America will compete with all fresh tomatoes produced domestically. In 2004, U.S. fresh tomato production totaled 3,976 million pounds (table 1). APHIS estimates that an additional 13,092 metric tons (28.7 million pounds) of tomatoes will be imported from Central America. These import levels equate to only 0.7 percent of domestic production in 2004 and 1.4 percent of 2004 imports. Given the additional imports, it is possible that the domestic price will fall by as much as $0.50 per cwt. In 2004, the average producer price was $36.70 per cwt. Thus, the expected price decline will represent a 1.4 percent decline. However, this percentage is likely overstated because the new imports will be close substitutes for tomatoes from other countries. Imports from Central America will probably displace at least some of those imports from other countries. This likely substitution is not taken into account in the analysis.

In order to put this price change into perspective, we consider it in terms of average revenue for small-entity tomato producers. Due to the lack of data on tomato farming, it is difficult to determine an accurate potential change in revenues for all producers. Averaging the total drop in revenues across all firms will overstate the loss to small producers while understating that for the larger ones. Data from the 2002 Census of Agriculture were used to estimate tomato production by small and large firms. This, in turn, was used to estimate revenues for these two categories. An average revenue per firm was then calculated. We conclude that any producer with fewer than 80 acres of tomatoes may be considered small, based on industry yields and revenues and the small-entity definition of not more than $750,000 in annual revenue. For small-entity producers with fewer than 100 acres (the reported category closest to 80 acres), a price change of $0.50 per cwt will lead to an estimated per firm decline in annual revenue of $293, or 1.6 percent. Given this small change and recalling that these effects are likely overstated, domestic producers are not likely to be significantly impacted by the rule.

Although domestic producers may face slightly lower prices as a result of the potential increase in the tomato supply, these price changes are expected to be negligible. Domestic import firms, on the other hand, may actually benefit from more open trade with Central America resulting from increased opportunities that could be made available as a result of establishing new sources of tomatoes at a more advanced stage of ripeness. In both instances, changes of the magnitude presented here should not have large repercussions for either domestic producers or importers of tomatoes.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This rule will allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. State and local laws and regulations regarding tomatoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of tomatoes under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were

prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[8] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0286.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

[8] Go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0009, click on *Submit,* then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–2dd is amended by adding a new paragraph (f) and revising the OMB citation at the end of the section to read as follows:

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

* * * * *

(f) *Tomatoes (fruit) (Lycopersicon esculentum) from certain countries in Central America.* Pink or red tomatoes may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama only under the following conditions:

(1) From areas free of Mediterranean fruit fly:

(i) The tomatoes must be grown and packed in an area that has been determined by APHIS to be free of Mediterranean fruit fly (Medfly) in accordance with the procedures described in § 319.56–2(f) of this subpart.

(ii) A pre-harvest inspection of the production site must be conducted by the national plant protection organization (NPPO) of the exporting country for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests are found to be generally infesting the production site, the NPPO may not allow exports from that production site until the NPPO and APHIS have determined that risk mitigation has been achieved.

(iii) The tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(iv) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These tomatoes were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pests listed in the requirements.''

(2) From areas where Medfly is considered to exist:

(i) The tomatoes must be grown in approved registered production sites. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato production sites must consist of pest-exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(iii) Registered sites must contain traps for the detection of Medfly both within and around the production site as follows:

(A) Traps with an approved protein bait for Medfly must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(B) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export tomatoes to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(C) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(D) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of tomatoes from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(E) The greenhouse must be inspected prior to harvest for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, exports from that production site will be halted until the exporting country's NPPO and APHIS determine that the pest risk has been mitigated.

(iv) The exporting country's NPPO must maintain records of trap

placement, checking of traps, and any Medfly captures in addition to production site and packinghouse inspection records. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS's review.

(v) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(vi) During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered approved production sites.

(vii) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These tomatoes were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements.'' The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0131, and 0579–0286)

Done in Washington, DC, this 22nd day of August 2006.

Nick Gutierrez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14219 Filed 8–25–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–109–FOR]

West Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised the Code of West Virginia (W. Va. Code) as amended by Senate Bill 461 concerning water rights and replacement, and revised the Code of State Regulations (CSR) as amended by Committee Substitute for House Bill 4135 by adding a postmining land use of bio-oil cropland, and the criteria for approving bio-oil cropland as a postmining land use for mountaintop removal mining operations.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, E-mail address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 17, 2006 (Administrative Record Number WV–1462), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its permanent regulatory program in accordance with SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of State Committee Substitute for House Bill 4135, which amends CSR 38–2 by adding a postmining land use of bio-oil cropland and criteria for approving bio-oil cropland as an alternative postmining land use for mountaintop removal mining operations with variances from approximate original contour (AOC). The State also submitted State Senate Bill 461, which amends W. Va. Code section 22–3–24 relating to water rights and replacement. In its submittal of the amendment, the WVDEP stated that the codified time table for water replacement is identical to the one contained in the agency's policy dated August 1995 (Administrative Record Number WV–1425) regarding water rights and replacement that is referenced in the Thursday, March 2, 2006, **Federal Register** (71 FR 10764, 10784–85).

The West Virginia Governor also signed Senate Bill 774, on April 4, 2006, which amends language concerning definitions, offices, and officers within the WVDEP. The amendments to Senate Bill 774 are non-substantive changes to the West Virginia program that do not require OSM approval. Therefore, the amendments to Senate Bill 774 can take effect as provided therein on June 9, 2006.

We announced receipt of the proposed amendment in the June 2, 2006, **Federal Register** (71 FR 31996). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV–1464). We did not hold a hearing or a meeting, because no one requested one. The public comment period closed on July 3, 2006. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings that we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment in full. Any revisions that we do not specifically discuss below concern non-substantive wording or editorial changes and are approved herein without discussion.

Senate Bill 461

Senate Bill 461, which was passed by the Legislature on March 11, 2006, and signed into law by the Governor on April 4, 2006, amends Article 3 of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). Specifically, section 22–3–24 concerning water rights and replacement, waiver of replacement is amended at subsection (c) by deleting the last sentence and by adding new subsections (d) and (h). As amended, section 22–3–24 provides as follows:

22–3–24. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person's interest in water resources affected by a surface mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the surface mining operation, unless waived by the owner.

(c) There is a rebuttable presumption that a mining operation caused damage to an owner's underground water supply if the inspector determines the following: (1) Contamination, diminution or damage to an owner's underground water supply exists; and (2) a preblast survey was performed, consistent with the provisions of section thirteen-a of this article, on the owner's property, including the underground water supply, that indicated that contamination, diminution or damage to the underground water supply did not exist prior to the mining conducted at the mining operation.

(d) The operator conducting the mining operation shall: (1) Provide an emergency drinking water supply within twenty-four hours; (2) provide temporary water supply within seventy-two hours; (3) within thirty days begin activities to establish a permanent water supply or submit a proposal to the secretary outlining the measures and timetables to be utilized in establishing a permanent supply. The total time for providing a permanent water supply may not exceed two years. If the operator demonstrates that providing a permanent replacement water supply can not be completed within two years, the secretary may extend the time frame on [a] case-by-case basis; and (4) pay all reasonable costs incurred by the owner in securing a water supply.

(e) An owner aggrieved under the provisions of subsections (b), (c) or (d) of this section may seek relief in court or pursuant to the provisions of section five, article three-a of this chapter.

(f) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this section.

(g) The provisions of subsection (c) of this section shall not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods.

(h) Notwithstanding the denial of the operator of responsibility for the damage of the owners [owner's] water supply or the status of any appeal on determination of liability for the damage to the owners [owner's] water supply, the operator may not discontinue providing the required water service until authorized by the division. Notwithstanding the provisions of subsection (g) of this section, on and after the effective date of the amendment and reenactment of this section during the regular legislative session of two thousand six, the provisions of this section shall apply to all mining operations for water replacement claims resulting from mining operations regardless of when the claim arose.

The sentence that was deleted from Subsection (c) provided as follows:

The operator conducting the mining operation shall: (1) Provide an emergency drinking water supply within twenty-four hours; (2) provide a temporary water supply within seventy-two hours; (3) provide a permanent water supply within thirty days; and (4) pay all reasonable costs incurred by the owner in securing a water supply.

The deleted information quoted above was added, with modifications, as new Subsection 22–3–24(d). The language at new Subsection (d) is substantively identical to the language deleted from Subsection (c) and can be approved with the following understanding. At Subsection (d), item (3) no longer requires the operator to provide a permanent water supply within thirty days. As revised, the operator is required to begin, within 30 days, activities to establish a permanent water supply or submit a proposal to the WVDEP Secretary outlining the measures and timetables to be utilized in establishing a permanent water supply. The total time for providing a permanent water supply may not exceed two years. The new language also provides that if the operator demonstrates that providing a permanent replacement water supply can not be completed within two years, the WVDEP Secretary may extend the time frame on a case-by-case basis. Our evaluation of the new language at Subsection (d), item (3) follows.

SMCRA at section 717 addresses water rights and replacement. Section 717(b) provides as follows:

(b) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such surface coal mine operation.

The implementing Federal regulations at 30 CFR 816.41(h) is substantively identical to section 717(b).

Section 720(a)(2) of SMCRA concerning subsidence and replacement of a water supply provides that underground coal mining operations conducted after October 24, 1992, shall:

(2) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

The implementing Federal regulation at 30 CFR 817.41(j) essentially repeat the requirement provided at section 720(a)(2) of SMCRA.

The SMCRA provisions and implementing Federal regulations described above require prompt replacement of water supplies, but they do not provide specific timetables for replacement. Moreover, neither SMCRA section 720(a)(2) nor the implementing Federal regulations at 30 CFR 817.41(j) define the term ''prompt replacement'' of a water supply.

The Federal provision at 30 CFR 817.41(j), concerning a drinking, domestic or residential water supply affected by underground mining activities conducted after October 24, 1992, was promulgated on March 31, 1995 (60 FR 16722, 16749). In the preamble to that promulgation, OSM provided the following guidance concerning the meaning of the term ''prompt replacement'' that was intended to assist regulatory authorities in deciding if water supplies have been ''promptly'' replaced:

OSM believes that prompt replacement should typically provide: Emergency replacement, temporary replacement, and permanent replacement of a water supply. Upon notification that a user's water supply was adversely impacted by mining, the permittee should reasonably provide drinking water to the user within 48 hours of such notification. Within two weeks of notification, the permittee should have the user hooked up to a temporary water supply. The temporary water supply should be connected to the existing plumbing, if any, and allow the user to conduct all normal domestic usage such as drinking, cooking, bathing, and washing. Within two years of notification, the permittee should connect the user to a satisfactory permanent water supply. (60 FR 16727)

We believe that the State's proposed provision, which provides that if the operator demonstrates that providing a permanent replacement water supply cannot be accomplished within two years, the WVDEP Secretary may extend the time frame on a case-by-case basis, is not unreasonable and provides the WVDEP with appropriate flexibility while continuing to require a replacement permanent water supply. Overall, the State's provision at W. Va. Code 22–3–24(d) provides for emergency, temporary, and permanent replacement of a water supply that is no less effective than the Federal requirements.

We believe that the proposed flexibility is necessary because in some instances public water lines have to be extended by public service districts and in some rare instances these extensions may take longer than two years to complete. During this period, operators cannot provide the affected water supply owner a permanent water supply hook up. This may also be true in situations where private replacement wells are to be drilled, but drilling is delayed due to very unusual circumstances. In either situation, during the period of delay, the operator will have to post a performance bond in the amount of the estimated cost to replace the water supply, as provided by 30 CFR 817.121(c)(5). The State counterpart to this Federal provision at CSR 38–2–16.2.c.4 was previously approved by OSM on May 1, 2002 (67 FR 21918–21919). It essentially requires that an escrow bond be posted whenever water supply replacement takes longer than 90 days to complete. Therefore, we find that W. Va. Code 22–3–24(d), item (3), is not inconsistent with SMCRA section 720(a)(2), which requires prompt replacement of water supplies, or the Federal regulations at 30 CFR 817.41(j) concerning the prompt replacement of water supply, and it can be approved.

New subsection (e) is being amended by including a reference to subsection (d). As amended, it states that a water supply owner aggrieved under the provisions of subsection (d) may seek relief in court or under the State claims procedures. We find that the proposed revision is in accordance with SMCRA section 720(a)(2) and consistent with the Federal water replacement requirements at 30 CFR 817.41(j) and it can be approved.

The State proposes to redesignate Subsection (f) as subsection (g). Newly designated Subsection (g) limits the applicability of Subsection (c). While there have been no substantive changes in this new subsection, it is important to note that this provision was initially approved by OSM on November 12, 1999, with the understanding that it would not relieve an operator of replacing a water supply which is adversely affected by an underground mining operation. This same understanding continues in force (64 FR 61513).

Under new Subsection (h), an operator cannot discontinue providing water service to an owner of an adversely affected water supply until authorized by the WVDEP. In addition, with the enactment of Subsection (h), the water supply replacement provisions of W.Va. Code 22–3–24 apply to all surface and underground mining operations regardless of when the claim arose. We find that the proposed statutory provisions are not inconsistent with the Federal requirements at SMCRA sections 717(b) and 720(a)(2) and they can be approved.

House Bill 4135

Committee Substitute for House Bill 4135, which was passed by the Legislature on March 11, 2006, and signed into law by the Governor on April 4, 2006, amends CSR 38–2 by authorizing the WVDEP to promulgate legislative rules. The CSR 38–2–7.2 concerns premining and postmining land use categories. The CSR 38–2–7.2.e, concerning cropland land use category is amended by adding new paragraph 38–2–7.2.e.1 concerning ''Bio-oil Cropland.'' As amended, Subsection 7.2.e provides as follows:

7.2.e. Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included;

7.2.e.1. Bio-oil Cropland. Agricultural production of renewable energy crops through long-term intensive cultivation of close-growing commercial biological oil species (such as soybeans, rapeseed or canola) for harvest and ultimate production of bio-fuels as an alternative to petroleum based fuels and other valuable products;

The Federal regulations at 30 CFR 701.5, under the definition of ''Land use'' define ''Cropland,'' at paragraph (a) as land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops. While the Federal regulations do not specifically define ''bio-oil'' cropland, we find that as proposed, the State's definition of ''Bio-oil Cropland'' is consistent with and no less effective than the Federal definition of ''Cropland'' at 30 CFR 701.5 and it can be approved.

New Subsection 7.8, concerning bio-oil cropland, is added to provide as follows:

7.8. Bio-oil Crop Land.

7.8.1. Criteria for Approving Bio-oil Cropland Postmining Land Use.

7.8.1.a. An alternative postmining land use for bio-oil cropland may be approved by the secretary after consultation with the landowner and or land management agency having jurisdiction over state or federal lands: Provided, That [that] the following conditions have been met.

7.8.1.a.1. There is a reasonable likelihood for the achievement of bio-oil crop production (such as soybeans, rapeseed or canola) as witnessed by a contract between the landowner and a commercially viable individual or entity, binding the parties to the production of bio-oil crops for a measurement period of at least two years after the competition [completion] of all restoration activity within the permitted boundaries;

7.8.1.a.2. The bio-oil crop reclamation plan is reviewed and approved by an agronomist employed by the West Virginia Department of Agriculture. The applicants shall pay for any review under this section;

7.8.1.a.3. The use does not present any actual or probable hazard to the public health or safety or threat of water diminution or pollution;

7.8.1.a.4. Bio-oil crop production is not:

7.8.1.a.4.A. Impractical or unreasonable;

7.8.1.a.4.B. Inconsistent with applicable land use policies or plans;

7.8.1.a.4.C. Going to involve unreasonable delays in implementation; or

7.8.1.a.4.D. In violation of any applicable law.

7.8.2. Soil reconstruction specifications for bio-oil crop postmining land use shall be established by the W. Va. Department of Agriculture in consultation with the U. S. Natural Resources Conservation Service and based upon the standards of the National Cooperative Soil Survey and shall include, at a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that constructed soils will have the capability of achieving levels of yield equal to, or higher that [than], those required for the production of commercial seed oils species (such as soybeans, rapeseed or canola) and meets the requirement of 14.3 of this rule.

7.8.3. Bond Release.

7.8.3.a. Phase I bond release shall not be approved until W. Va. Department of Agriculture certifies and the secretary finds that the soil meets the criteria established in this rule and has been placed in accordance with this rule. The applicants shall pay for any review under this section.

7.8.3.b. The secretary may authorize in consultation with the W. Va. Department of Agriculture, the Phase III bond release only after the applicant affirmatively demonstrates, and the secretary finds, that the reclaimed land can support bio-oil

production; and there is a binding contract for production which meets the requirements of subdivision 7.8.1.a of this rule; and the requirements of paragraph 9.3.f.2 of this rule are met. The applicant shall pay for any review under this section.

7.8.3.c. Once final bond release is authorized, the permittee's responsibility for implementing the bio-oil cropland reclamation plan shall cease.

As noted above, W.Va. Code 22–3–24, CSR 38–2–7.8.1.a, 7.8.1.a.1 and 7.8.2 contain typographical errors. We have inserted words in brackets which are intended to correct those errors. The most substantive change concerns Subsection 7.8.1.a.1. Instead of competition, we believe that the State intends that the measurement period for bio-oil cropland last for at least two years after ''completion'' of all restoration activities within the permitted boundaries. We encourage the State to correct both typographical errors at its earliest convenience.

It is important to note that, as required by Subsection 7.8.2, constructed bio-oil cropland soils will have to achieve levels of yield equal to, or higher than those required for the production of commercial seed oil species (such as soybeans, rapeseed, or canola) and meet the requirements of Subsection 14.3. Subsection 14.3 contains the topsoil requirements for all surface coal mining operations. In addition to meeting the reconstruction requirements of Subsection 7.8 as established by the West Virginia Department of Agriculture and the U.S. Natural Resources Conservation Service, all bio-oil cropland soils will have to meet the requirements of Subsection 14.3. The cross reference to subsection 14.3 ensures that Subsection 7.8.2 is no less effective than the Federal topsoil requirements at 30 CFR 816.22.

In addition, we should note that that bond release requirements at subsection 7.8.3.b provide that the WVDEP secretary may authorize final bond release, in consultation with the West Virginia Department of Agriculture, only after the applicant demonstrates and the secretary finds that (1) The reclaimed land can support bio-oil crop production, (2) there is a binding contract for that production, and (3) the requirements of Subsection 9.3.f.2 are met. Subsection 9.3.f.2 contains the reclamation success standards for areas to be used for cropland. Consistent with the Federal requirements at 30 CFR 816.116(c)(2), the State rules provide that, for areas to be used for cropland, the success of crop production from the mined area must be equal to or greater than that of the approved standard for the crop being grown over the last two consecutive growing seasons of the five growing season liability period, which commences at the date of the initial planting of the crop being grown. In addition to requiring that the area attain certain soil standards, the proposed rule requires a demonstration of actual bio-oil crop production. Because the proposed State rule references other requirements used to demonstrate attainment of revegetation success for cropland, we find that Subsection 7.8.3.b is no less effective than the Federal requirements at 30 CFR 816.116 and 800.40(c) and it can be approved.

The new provisions at CSR 38–2–7.8 provide supplemental criteria for the approval of bio-oil cropland as an alternative postmining land use for mountaintop removal mining operations with variances from AOC. The existing State provisions at W. Va. Code 22–3–13(c) and CSR 38–2–14.10 continue to provide the requirements for approval and the environmental performance standards for a mountaintop removal mining operation with a variance from AOC.

We note that the proposed provisions do not specifically provide that other applicable provisions of the approved State surface mining program continue to apply. However, there is nothing in proposed Subsection 7.8 that supersedes or negates compliance with other applicable provisions such as the permit approval requirements at W. Va. Code 22–3–22(c), the general provisions concerning premining and postmining land use at CSR 38–2–7.1, the alternative postmining land use requirements at CSR 38–2–7.3, the bond release requirements at CSR 38–2–12.2 or the topsoil requirements at CSR 38–2–14.3, as mentioned above. It is our understanding that the other applicable provisions of the West Virginia program will continue to apply to the extent they are consistent with promoting bio-oil cropland as an approved postmining land use for mountaintop removal mining operations with AOC variances. Therefore, we find that the State's proposed bio-oil cropland provisions at CSR 38–2–7.8, as described above, are consistent with and no less stringent than SMCRA section 515(c) concerning mountaintop removal mining operations with AOC variances, and no less effective than the Federal regulations governing mountaintop removal mining activities at 30 CFR 785.14 and they can be approved. Our approval of CSR 38–2–7.8 is based upon the understandings discussed above.

CSR 38–2–7.3 concerning criteria for approving alternative postmining use of land is amended by adding new paragraph 38–2–7.3.d to provide as follows:

7.3.d. A change in postmining land use to bio-oil cropland constitutes an equal or better use of the affected land, as compared with pre-mining use for purposes of W. Va. Code 22–3–13(c) in the determination of variances of approximate original contour for mountaintop removal operations subject to Subsection 38–2–7.8 of this rule;

SMCRA at section 515(c)(2) provides for a variance from the requirement to restore land to AOC for mountaintop removal mining operations in which an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except for areas required to be retained in place as a barrier to slides and erosion under section 515(c)(4)(A)) will be removed. SMCRA at section 515(c)(3) provides that in cases where an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the postmining use of the affected land, the regulatory authority may grant a permit for a surface mountaintop removal mining operation where, at section 515(c)(3)(A), after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use.

Proposed Subsection 7.3.d differs from section 515(c)(3)(A) of SMCRA and 30 CFR 785.14(c)(1)(i) in one important respect. Unlike its Federal counterparts, the State's proposed provision does not specifically require consultation with appropriate land use planning agencies, if any, on a permit-by-permit basis in order to determine whether bio-oil cropland is an equal or better use of the affected land, as compared with the premining use. Rather, CSR 38–2–7.3.d categorically states that a postmining land use of bio-oil cropland does constitute an equal or better use of the affected land, as compared with the premining use for purposes of W. Va. Code 22–3–13(c), which is the State's counterpart to SMCRA section 515(c) concerning AOC variance for mountaintop removal mining operations. Nevertheless, we believe that the West Virginia program at Subsection 7.3.d is not rendered less stringent than section 515(c)(3)(A) of SMCRA, or less effective than 30 CFR 785.14(c)(1)(i), for the following reasons.

Land use planning is a function of State law and land use planning agencies operate solely under a grant of authority under West Virginia law (W. Va. Code Chapter 8A, Articles 1 through 12). If the State Legislature elects to

withdraw that grant of authority, it has the right to do so and is thus not inconsistent with SMCRA, which only requires consultation with ''appropriate land use planning agencies, if any.'' In this case, the West Virginia Legislature has effectively determined that there are no appropriate land use planning agencies with which consultation is needed on the question as to whether bio-fuels production is an equal or better land use.

Finally, we note that all the other requirements of the approved West Virginia program, including the alternative postmining land use approval criteria at CSR 38–2–7.3.a, will have to be met prior to the approval of an AOC variance for a mountaintop removal mining operation with a postmining land use of bio-oil cropland. Bio-oil cropland is an agricultural postmining land use that is one of the five approved postmining land uses provided for by W. Va. Code 22–3–13(c) for mountaintop removal mining operations with AOC variances; and, W. Va. Code 22–3–13(c)(3)(C) requires a determination that the proposed use would be compatible with adjacent land uses, and existing State and local land use plans and programs. Therefore, based upon the discussion above, we find that the proposed provision at CSR 38–2–7.3.d does not render the West Virginia program less stringent than SMCRA section 515(c)(3)(A) nor less effective than the Federal regulations at 30 CFR 785.14(c)(1)(i) and it can be approved.

In approving these requirements, we should note that it is our understanding that rapeseed and canola are not currently produced in West Virginia. Only soybeans are grown in commercial quantities within the State. According to the 2005 Agricultural Statistics Bulletin, West Virginia produced 828,000 bushels of soybeans in 2004. Mason and Jefferson Counties produced about 86 percent of the State's soybeans. Other unidentified counties produced 118,000 bushels of soybeans (USDA National Agricultural Statistics Service, 2005 West Virginia Bulletin No. 36 (Administrative Record Number WV–1465)). Currently, there are no coal mining activities in Mason or Jefferson Counties. Furthermore, it is believed that no soybeans were produced in counties where mountaintop removal mining activities occurred during 2005. The proposed rules are intended to encourage production of bio-crops in areas within the State where mountaintop removal mining activities occur in order to ease our Nation's dependency on foreign sources of oil.

During 2005, 70 percent of the State's surface coal production was produced by mountaintop mining operations, which include both steep slope and mountaintop removal mining operations. There were approximately 70 mountaintop mining operations in West Virginia in 2005. As mentioned above, mountaintop removal mining activities remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill. Steep slope mining activities do not remove the entire coal seam or seams and occur on slopes that are more than 20 degrees. It must be noted that the State's steep slope mining requirements at CSR 38–2–14.12.a.1, like the Federal requirements at SMCRA section 515(e)(2), do not provide for an approved postmining land use of agriculture, and therefore, steep slope mining operations cannot be approved with a postmining land use of bio-oil cropland. This postmining land use will be limited to only mountaintop removal mining operations with AOC variances.

As of April 2006, there were 65 biodiesel production plants in the United States (Administrative Record Number WV–1470). The total annual production of these plants is 395 million gallons. There are also plans to construct 50 new plants and to expand eight existing plants, according to the National Biodiesel Board. The anticipated annual production capacity for these plants will be 714 million gallons. The primary feedstock of most of these plants is soybean oil.

Currently, there are no production plants in the State that convert rapeseed, canola, or soybeans to bio-fuel. The closest plants are in Pennsylvania and Virginia. In April 2006, the West Virginia Department of Agriculture started a pilot project of selling soy-based bio-diesel. The biodiesel is sold at a farmers market in Berkeley County and purchased from a plant near Richmond, Virginia. Biodiesel is available for $3.89 per gallon, but the price is expected to decline as biodiesel supplies increase. This is one of three facilities (farmers markets) operated by the West Virginia Department of Agriculture (Administrative Record Number WV–1471).

Biodiesel is used to power farm machinery and school buses within the State. At least 13 counties in West Virginia use a biodiesel mixture to operate their school buses as reported by The Associated Press in *The Charleston Gazette* on June 9, 2006 (Administrative Record Number WV–1466). The State usually pays 85 percent of a county's maintenance and operational expenses, but it will pay 95 percent of those costs to counties as an incentive for using alternative fuels.

IV. Summary and Disposition of Comments

Public Comments

We published a **Federal Register** notice on June 2, 2006, and asked for public comments on the proposed State amendment (Administrative Record Number WV–1464). The public comment period closed on July 3, 2006. No comments were received from the public. However, two Federal agencies commented on the amendment (see below).

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1463). We received comments from the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) on June 27, 2006 (Administrative Record Number WV–1467). MSHA stated that its review revealed that none of the proposed changes are relevant to miners' health and safety. MSHA stated that it has determined that there is no inconsistency or conflicts with MSHA standards.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11) (ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number WV–1463). EPA responded by letter dated June 29, 2006 (Administrative Record Number WV–1468), and stated that it has reviewed the proposed revisions and has not identified any apparent inconsistencies with the Clean Water Act, Clean Air Act, or other statutes and regulations under EPA's jurisdiction. EPA also provided the following comments on the proposed use of bio-oil cropland for postmining land use.

EPA urged that bio-oil cropland be approved as a postmining land use for a particular mine only after due consideration is given to the broader watershed context in which the mine is located. If the mining proposal is part of, or should be made part of, a broader watershed mitigation or stewardship plan, the EPA stated, such a plan should take precedence over bio-oil cropland, particularly if the plan requires reforestation. In addition, the EPA stated, the impacts to downstream water quality from this kind of agricultural practice should also be considered in determining whether to approve bio-cropland for a particular mine. Tilling and fertilizing practices for bio-oil crops, the EPA stated, should be factored into potential downstream impacts as stressors to streams that may be already stressed from the mine in question as well as from mines, past and present, in other areas of the same watershed.

We concur with these comments and note that the approved State provisions currently require consideration of post-reclamation water quality. The State provisions at CSR 38–2–7.3 provide the criteria for approving an alternative postmining land use. Subsection 7.3.a.2 provides that an alternative postmining land use may be approved by the WVDEP Secretary if, among other required criteria, the use does not present any actual or probable hazard to the public health or safety or threat of water diminution or pollution. As discussed above, the State's proposed bio-oil cropland provisions at Subsection 7.8 do not supersede or negate the existing State provisions at CSR 38–2–7.3.

V. OSM's Decision

Based on the above findings, we are approving the program amendment West Virginia sent us on April 17, 2006 (Administrative Record Number 1462). To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 2006.

Brent Wahlquist,

Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description
* * * * * * *		
April 17, 2006	August 28, 2006	W. Va. Code 22–3–24(c), (d), (e), and (h). CSR 38–2–7.2.e.1; 7.3.d; and 7.8 (qualified approval).

[FR Doc. E6–14228 Filed 8–25–06; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY–034–FOR]

Wyoming Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Wyoming regulatory program (''Program'' or ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). It involves revisions to and additions of rules about bonding, revegetation and highwall retention. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations, and clarify ambiguities and improve operational efficiency.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: 307/261–6550, E-mail address: *JFleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Submission of the Proposed Amendment

By letter dated October 24, 2005, Wyoming sent us an amendment to its program (Administrative Record No. WY–39–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a June 19, 1997, letter (Administrative Record No. WY–39–7) that we sent to Wyoming in accordance with 30 CFR 732.17(c) and to include changes made at its own initiative. We announced receipt of the proposed amendment in the February 13, 2006, **Federal Register** (71 FR 7492). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. WY–39–8). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 14, 2006. We received comments from one industry group and two Federal agencies. A third Federal agency mailed us a ''no comment'' letter.

III. OSM's Findings

The Federal regulation at 30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the

requirements of 30 CFR part 700. In 30 CFR 730.5, OSM defines consistent with and in accordance with to mean (a) with regard to the SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment in its entirety.

A. Minor Revisions to Wyoming's Rules

Wyoming proposed minor wording changes (from ''SCS'' to ''NRSC,'' (Natural Resources Soil Conservation) in Chapter 4, Section 2(d)(ix)) as well as an addition of an administrative paragraph (Chapter 15, Section 1(a)), to Wyoming's Coal Rules.

Because these changes to Wyoming's rules are minor and do not alter their meaning, we find that the revised rules are consistent with the corresponding Federal regulations.

B. Proposed Revisions to Wyoming's Coal Rules To Adopt Language With the Same Meaning as the Corresponding Provisions of the Federal Regulations

Wyoming Coal Rule Chapter 15, Section 1(b); [Federal Regulations 30 CFR 800.40(a)(2) and (3)]

Wyoming proposed revisions to its regulations for applications for bond release. These revisions are in response to a letter we sent dated June 19, 1997, under 30 CFR 732.17, informing Wyoming of changes to Federal regulations and the need to make corresponding changes to the State regulations. Wyoming's proposed revisions contain language that is nearly the same as the corresponding Federal provisions and is therefore consistent with the Federal regulations.

C. Proposed Revisions to Wyoming's Rules That Are Not the Same as the Corresponding Federal Regulations and Require an Explanation and Basis for Approval

1. Chapter 4, Section 2(d)(x)(J): Technical Standards for Evaluating Revegetation Success [Federal Regulations at 30 CFR 816.116(a)(2) and (b)]

Wyoming proposes to add a new rule at Chapter 4, Section 2(d)(x)(J) to state that the Administrator (of Wyoming's Land Quality Division, (LQD)) may set technical success standards for cover and production based on data collected from undisturbed portions of the permit area or adjacent areas for a minimum of five independent sampling programs over a minimum of five years and that the technical success standards may be set for a single mine or a group of mines in the same geographical area.

The Federal regulations at 30 CFR 816.116(b)(1), and (2) require that for grazing land, pastureland, and cropland, the cover and production of the revegetated area shall be at least equal to that of the reference area or such other success standards approved by the regulatory authority. Wyoming states the purpose of the proposed rule is to provide an alternate method to evaluate revegetation success, specifically, the development of technical standards for cover and production. The proposed standards are calculated from baseline vegetation data and the cover and production of the reclaimed area would be compared to those standards.

Wyoming believes that a five-year period is necessary to account for differing climatic factors during the collection of baseline information for the development of these technical standards.

Vegetation does vary across Wyoming and within smaller regions such as the Powder River Basin. However, smaller sub-regions (such as the southern portion of the Powder River Basin) and individual permit areas may have similar vegetation that could lend itself, or might be conducive to, development of technical standards. Mine operators could opt to apply for mine-specific technical standards in the event the LQD has not developed standards for the sub-region in which the mine is located. Alternatively, an operator could apply to ''fine tune'' technical standards developed by LQD for a particular sub-region.

We have determined that the new technical standards Wyoming proposes to allow permittees to use are representative of unmined lands in the area being reclaimed. They were developed using baseline vegetation information collected from areas proposed for mining thereby ensuring that the success standards will be representative of the extent of cover compared to the cover occurring in the natural vegetation of the area. For these reasons, we find Wyoming's new technical standards to be consistent with the Federal regulations.

2. Chapter 4, Section 2(d)(x)(E)(III) & (F): Tree Density [Federal Regulations at 30 CFR 816.116(a)(2) and (b)(3)(i) & (ii)]

Wyoming proposes changing Section 2(d)(x)(E)(III) to require that trees be returned to a number equal to the premining number by substituting the word ''number'' for the word ''density''. In its submission, Wyoming states the proposed rule clarifies that the standard is the number of trees (sometimes the number of trees per species) on the affected lands, not on a unit area. Wyoming also proposes revisions to Section 2(d)(x)(F) to allow the inclusion of volunteer trees in evaluations of revegetation success. The revised rule requires that on affected lands, the total number of postmining trees must be at least equal to the premining total number on those lands. The reclamation plan will be required to specify the tree species, the number per species, and the location of tree plantings. To be included in success measurements, volunteer tree species which invade the reclaimed lands must support the postmining land use and must be approved by the Administrator. Planted trees must be healthy, and at least 80 percent must have been planted for at least eight years. Invading trees that are counted to meet the approved stocking rate must be healthy and may be of any age. Preference is given to those species that are native or which are known not to be ''weedy'' (e.g. species approved by the Natural Resources Conservation Service). Wyoming states that trees that invade indicate an evolving self-renewing ecosystem and therefore the age of trees that invade is not an issue as long as they are healthy.

The Federal regulation at 30 CFR 816(a)(2) requires, in part, that standards for success shall include criteria representative of unmined lands in the area being reclaimed. 30 CFR 816.116(b)(3) establishes criteria for revegetation success standards for tree and shrub establishment.

OSM agrees with Wyoming that the proposed wording change from ''density'' to ''number'' reflects the actual intent of the existing rule language, which is replacement of premine tree numbers. It should be noted that replacement of premine tree numbers is the same as replacement of premine tree density (total number of trees over the total disturbed area).

We also agree with Wyoming's proposal to include volunteer trees that support the postmining land use and are not considered weedy. Section 515(b)(19) of the Act requires the operator to establish vegetation that is ''capable of self-regeneration and plant

succession at least equal in extent of cover to the natural vegetation of the area.'' Volunteer plants represent either regeneration of species already present on the reclaimed area or invasion of native species from adjacent undisturbed areas, which is an indication of plant succession. Live volunteer plants are as likely to continue to grow and mature as transplants of the same species that may be little more than two years old. Therefore, counting the first products of plant regeneration or invasion is a clear and reasonable indicator of successful reclamation. The proposed changes to the Wyoming rules are in accordance with Section 515(b)(19) of the Act which requires the operator to establish vegetation that is ''capable of self regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area.'' The proposed changes are also consistent with 30 CFR 816.116 governing revegetation standards for success.

3. Chapter 4, Section 2(d)(xiv): Noxious Weeds [Federal Regulation at 30 CFR 816.111(b)(5)]

Wyoming proposes to revise Section 2(d)(xiv) to require that the operator must control and minimize the introduction of noxious weeds in accordance with Federal and State requirements until bond release.

Section 2(d)(xiv) currently requires that in those areas where there were no or very few noxious weeds prior to being affected by mining, the operator must control and minimize the introduction of noxious weeds into the revegetated areas for a period of at least five years after the initial seeding.

The Federal regulation at 30 CFR 816.111(b)(5) requires, in part, that reestablished plant species shall meet the requirements of applicable State and Federal noxious plant laws or regulations.

In its submission, Wyoming indicated that the current rule was enacted in 1975 prior to the passage of SMCRA when the State's time period for bond release was five years. The intent of the original rule was to control noxious weeds until bond release. The period for bond release is now ten years as required by SMCRA. While Wyoming's current rule was found to be consistent with the Federal rule when the Wyoming Program was approved in 1980, OSM revised the Federal rule in 1983. Wyoming's current rule could be interpreted to mean that noxious weeds are only controlled for the first five years after seeding. The Federal rule does not include a time restriction for the control of noxious weeds. To clarify and ensure consistency, with the ten year liability period, the existing language concerning five years has been struck and replaced with ''until bond release.''

The proposed State rule ensures that control of noxious weeds will continue throughout the period of responsibility in accordance with State and Federal requirements. This is consistent with the Federal regulations.

4. Chapter 4, Section 2(d)(x); Appendix A, Subsections III.A and VIII.A: Timeframes for Evaluating Revegetation Success [Federal Regulation at 30 CFR 816.116(c)(3)(i)]

The revised rule will require that the Administrator not release the entire bond of any operator until such time as revegetation is complete, if revegetation is the method of reclamation as specified in the operator's approved reclamation plan. Revegetation shall be deemed to be complete when: (1) The vegetation cover of the affected land is shown to be capable of renewing itself under natural conditions prevailing at the site, and the vegetative cover and total ground cover are at least equal to the cover on the area before mining; (2) the productivity is at least equal to the productivity on the area before mining; (3) the species diversity and composition are suitable for the approved postmining land use; and (4) the requirements in (1), (2), and (3) are met for the last two consecutive years of the bonding period for those mines using native area comparisons, or the requirements in (1), (2), and (3) are met for two out of four years beginning no sooner than year eight of the bonding period for those mines using technical standards.

In addition, Subsections III.A.8 and VIII.A.4 of Appendix A are being revised to require attainment of cover, production, diversity and composition requirements for the last two consecutive years for those mines using reference areas, or for those mines using an approved technical standard two out of four years beginning no sooner than year eight of the bonding period.

The Federal regulation at 30 CFR 816.116(c)(3)(i) requires, in part, that in areas of 26 inches or less average annual precipitation, vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period. The major difference between the Federal regulation and Wyoming's proposal is that Wyoming's proposal would allow measurement in nonconsecutive years for areas evaluated using a technical standard.

In discussing the proposed change in the timeframes for evaluating revegetation success, the State has indicated that the climatic conditions in Wyoming vary greatly from one year to the next. The climatic variability is not considered a problem in the use of a reference area because the reference area would be impacted by drought or other adverse environmental conditions in a manner similar to the corresponding reclaimed area. However, the climatic variability may impact an operator's ability to achieve two consecutive years of vegetation success when using a technical standard because the standard would not be based on drought conditions but on a mean or median of several years of differing climatic conditions (see approval of the use of technical standards in this review under Chapter 4, Section 2(d)(x)(J)). Wyoming hopes that allowing success to be measured in two out of four years beginning no sooner that year eight in lieu of requiring measurement in consecutive years will encourage operators to start bond release demonstrations sooner. Wyoming notes that the existing requirement for success to be measured in consecutive years means a failure to meet the criteria during the second year of sampling will force the sampling period to start over.

Wyoming also notes that OSM regulations recognize climatic variability in the east and operators can meet the bond release criteria in any two years after year one. Wyoming states that eastern states have only a five-year bond period due to the amount of rainfall received and the positive effect the added moisture has on the ability to meet reclamation standards. Conversely, the western states have a ten-year bond period because of the limited rainfall and the longer time required for vegetation to become established during reclamation.

Originally the Federal regulation applicable for areas with greater than 26 inches of annual precipitation (30 CFR 816.116(c)(2)) required success standards to be met for the last two consecutive years of the responsibility period. This regulation was amended (53 FR 34636, September 7, 1988) to allow the standard to be met during any two years of the five year responsibility period excluding the first year for areas with a land use of crop land, pasture land or grazing land, and only for the last year for all other postmining land uses. The change eliminated the requirement to measure revegetation success during the last two (consecutive) years of the responsibility

period. The basis for the change was that measurements in nonconsecutive years avoid unduly penalizing the permittee for negative effects of climatic variability.

Previously, we approved New Mexico regulations stating that ground cover and productivity shall equal the approved standard for at least two of the last four years, starting no sooner than year eight of the responsibility period. New Mexico, like Wyoming, experiences less than 26 inches of annual precipitation. We based our approval on the fact that the climatic variability of New Mexico was greater than that in areas with greater than 26 inches of precipitation. We stated it is appropriate to avoid penalizing permittees in New Mexico for the negative effects of climatic variability (the same reasoning used for areas receiving greater than 26 inches of precipitation). See New Mexico's approval at 65 FR 65770, November 2, 2000.

Wyoming's mines are located in areas that represent variable precipitation ranges as shown on the table below. The data in the following table is from the monthly climate data, Western Regional Climate Center (*http://www.wrcc.dri.edu/summary/climsmwy.html*), and the November 2, 2000, **Federal Register** (Volume 65, Number 213, pages 65776–65777).

HISTORICAL PRECIPITATION

Geographical area	Years of record	Precipitation range (inches)	Mean	Standard deviation	Coefficient of variation
Gillette, WY	1925–2005	8.13–15.90	15.60	3.77	0.24
Rock Springs, WY	1948–2005	4.53–14.54	8.71	2.64	0.30
Medicine Bow, WY	1949–2005	5.34–15.90	10.16	2.22	0.22
Henderson, KY	1978–1998	30.94–63.27	45.64	8.89	0.19

As seen in the table above, the coefficient of variation (a measure of the variability of the data) for the Wyoming locations is greater than the Henderson, Kentucky, location, which is representative of conditions in the east. Given the variability in precipitation, a dry year may present an obstacle to the second year of revegetation success sampling, particularly when the success standard is a technical standard based on a cover or production mean or median from several years of sampling during differing climatic conditions. Flexibility in vegetation success sampling is needed to skip the drought year(s), and allow the operator to sample in one of the two following non-consecutive years. A demonstration of successful revegetation following a drought would clearly indicate the revegetation could withstand drought and the variable climatic conditions. Arguably, revegetation that is capable of meeting the performance standards both before and after a period of drought or pestilence would provide a better demonstration of resilience, effectiveness, and permanence than revegetation meeting the standards during two consecutive years of more or less normal precipitation and damage. The likelihood of drought in Wyoming needs to be recognized. The proposed rule changes ensure that performance standards will be met without undue costs or extensions of the ten year liability period.

Wyoming's proposed rules prohibit the inclusion of measurements taken during the first seven years of the responsibility period and are applicable only to reclaimed areas using technical standards for evaluation of revegetation success. This ensures that the plants will have the opportunity to become well established prior to any evaluation of the vegetation. This also provides the same level of flexibility in evaluating revegetation success provided by the Federal regulations for States receiving more than 26 inches of precipitation. The proposed rules do not affect the length of the extended period of responsibility, which is 10 years in Wyoming.

The preamble to 30 CFR 816.116(c)(3)(i) published in the **Federal Register** on March 23, 1982, (47 FR 12600) and applicable to areas of 26 inches or less precipitation, does not provide rationale for the measurement being made in consecutive years. The preamble does state that for areas of less than 26 inches average annual precipitation, because of the greater variability in climatic conditions in such areas, especially precipitation, it is difficult to base success on a single year's data. Thus, there is support for requiring two years of success, but not necessarily for consecutive years.

Wyoming's proposed rules at Chapter 4, Section 2(d)(x)and Appendix A, Subsections III.A and VIII.A are consistent with the corresponding Federal regulations at 30 CFR 816.116(c)(3) and in accordance with the achieving the revegetation requirements of sections 515(b)(19) and (b)(20) of SMCRA.

5. Chapter 4, Section 2(b)(iv): Retention of Portions of Highwalls [SMCRA at Section 515(b)(3)]

Wyoming is proposing in Section 2(b)(iv) to allow the retention of limited stretches of highwall to replace escarpments and cliffs that exist naturally in the area of the mine prior to the mine operations. Previously. OSM approved similar provisions for the New Mexico and Utah State regulatory programs (45 FR 86464, December 31, 1980 and 60 FR 28040, May 30, 1995).

In the New Mexico and Utah approvals, OSM required the State programs to contain the following provisions: (1) Requirement for regulatory authority approval; (2) restrictions on allowable height and length of the retained highwall in relation to natural escarpments and cliffs; (3) requirement that a retained highwall replace a preexisting cliff or similar natural premining feature that was removed by the mining operation; and (4) requirement for the permit applicant to demonstrate that the retained highwall feature is stable and will achieve a long term static safety factor of 1.3 and will not pose a hazard to the public health and safety. With these restrictions, OSM found provisions for limited highwall retention in the New Mexico and Utah regulatory programs to be in accordance with the requirements in section 515(b)(3) of the Act and consistent with 30 CFR 816.102(a)(2) to backfill and grade to achieve the approximate original contour (AOC). AOC in these requirements includes the provision to eliminate all highwalls. The establishment of the above restrictions, however ensures that for a limited stretch of highwall to be retained, it must replace a similar feature that exists in the original contours thereby meeting the requirement to restore AOC. In the approval of the provision for New Mexico, OSM found that if an operator

can demonstrate to the satisfaction of the Director (State) that all of the above criteria can be met, then the limited highwall retention is available. Such retention in these instances actually reflects the intent of ''approximate original contour'' since these features were part of the natural pre-mined landscape.

Wyoming's provisions for highwall retention to replace existing natural features are contained in Chapter 4, Section 2(b)(iv) of Wyoming's Coal Rules. As we required in the Utah and New Mexico programs, Wyoming requires the features to be approved by the regulatory authority (Administrator). In addition, Wyoming's provisions ensure stability and a factor of safety of 1.3; contain restrictions on allowable height and length in relation to premine features; require restoration of wildlife habitat; and replacement of natural features that were mined out or are planned to be mined out under the current mine plan. For these reasons, we find Wyoming's provisions for highwall retention to be in accordance with section 515(b)(3) of SMCRA and consistent with 30 CFR 816.102(a)(2).

D. Revisions to Wyoming's Rules With No Corresponding Federal Regulations

1. Chapter 4, Section 2(d),(x), and Appendix A, Subsections III.A, VII.E, VIII.A and VIII.F: Grazing

Wyoming proposes to revise this rule to eliminate the requirement that the revegetated area be capable of withstanding grazing pressure at least comparable to that which the land could have sustained prior to mining unless Federal, State or local regulations prohibit grazing on such lands. There is no Federal counterpart to this Wyoming Coal Rule.

The State requirement now being eliminated corresponded to Federal regulations promulgated in 1979 at 30 CFR 816.115, but removed by OSM on September 2, 1983 (48 FR 40160) in response to a U.S. District Court ruling ''Permanent Surface Mining Regulation Litigation,'' No. 79–1144 (D.D.C., February 26, 1980). Eliminating Wyoming's requirement is consistent with the Federal regulations.

2. Chapter 4, Section 2(d)(x)(E)(I) & (II): Reinstatement of Pre-1996 Shrub Goal

Wyoming proposes to reinstate its shrub goal rule for the postmining land use of grazing and wildlife and also clarify that this is to be applied from May 3, 1978, to August 6, 1996. The rule establishes postmining requirements for density, composition and distribution of shrubs. There is no Federal counterpart to this Wyoming Coal Rule.

In its submission, Wyoming indicated that in 1978 rules were adopted that required shrubs to be replaced to a density equal to the premining density. For the postmining land use of grazing land and wildlife, and other areas, the amount of shrubs required by the rule was not desirable. In 1981, Wyoming changed the rules to establish a goal of returning shrubs to one shrub per square meter across 10% of the reclaimed lands. In 1996, a rule was approved which changed the requirement for the reestablishment of shrubs from a 10% goal to a 20% standard. The effective date of the new rules was the date those rules were approved by OSM. Lands disturbed before that date retained the shrub goal requirement.

Unfortunately, the 1996 rule inadvertently deleted the shrub goal rule. The deletion of the shrub goal rule was an oversight, and it was intended that the shrub goal rule still applied to those lands affected after the initial date of the shrub reestablishment requirement (1978) and prior to the approval of the shrub standard rule (1996). In practice, both the LQD and the operators have been working with the understanding that the shrub goal would be reinstated.

The proposed change reinstates the goal and clarifies that prior to May 3, 1978, there was no specific requirement for shrub reestablishment. The change clarifies that the shrub goal is to be applied from May 3, 1978, to August 6, 1996.

OSM concurs with Wyoming's analysis of the shrub density requirements applicable to lands reclaimed under Wyoming's regulatory program. Since neither SMCRA nor the Federal regulations contain shrub goals, Wyoming's proposal to reinstitute this previously-approved rule is consistent with the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. WY–39–3), but did not receive any from State agencies or individuals. Since no one requested a public hearing or meeting, none was held.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming program (November 1, 2005, Administrative Record No. WY–39–3).

The U.S. Fish and Wildlife Service (FWS or the Service) commented in a December 23, 2005, memorandum (Administrative Record No. WY–39–06), and the Bureau of Land Management (BLM) commented in a November 30, 2005, e-mail (Administrative Record No. WY–39–05). The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) also commented in a November 28, 2005, letter (Administrative Record No. WY–39–04).

NRCS stated that it reviewed the Amendment and had no comments.

BLM stated that the requirement in existing Section 2(b) Backfilling, Grading and Contouring, for covering the uppermost minable coal seam should be changed from 4 feet to at least 20 feet. BLM states this is necessary to ''prevent outcrop burn in the future'' and that ''this is important in SW Wyoming.''

The State's proposed revision is only applicable to areas subject to the AOC Alternative. OSM's regulation in this matter, 30 CFR 816.102(f), that all exposed coal seams be ''adequately covered,'' and does not define a minimum depth. Wyoming stated that, while 4 feet is the minimum cover requirement, it often requires 10 or 15 feet or more depending upon the circumstances. The preamble to 30 CFR 816.102(f) (see 48 FR 23362, May 24, 1983) rejects a national standard for cover thickness and relies on the regulatory authority to set whatever standards, specific or otherwise, which provide the best solution within the State. The State's proposed regulation requiring a minimum of 4 feet of cover is consistent with the Federal provisions. Wyoming can require additional depth should it determine that is necessary.

The FWS stated that it ''supports the rule package as written;'' however, it was providing specific comments that it believed would assist in clarifying the rule changes. The FWS provided seven specific comments listed below. Each comment is followed by OSM's response:

1. *FWS:* Revegetation Success, Chapter 4, Section 2(d)(x): It is unclear whether the Administrator is qualified to measure whether reclamation meets with the postmining land use or whether the Administrator will seek assistance in the matter. Therefore, the Service recommends that a recognized authority assist the Administrator in determining whether the vegetative diversity and composition meet the postmining land use.

OSM: The Wyoming regulatory authority employs vegetation experts to

assist with the administration of this provision.

2. *FWS:* Native trees, Chapter 4, Section 2(d)(x)(EIII): The Service is concerned that the rules do not mention the importance of replanting tree species that are native to Wyoming. The Service recommends that trees and shrubs native to Wyoming be planted at a number equal to or greater than what existed premining and that distribution of trees be similar to premining distribution.

OSM: In its Statement of Principal Reasons for changing the rule cited by FWS, Wyoming states that ''preference is given to those species that are native or which are known not to be weedy.'' In addition, the Wyoming rules in, in Chapter 4, Section 2(d)(i) require that the operator establish on all affected lands a diverse, permanent vegetative cover of the same seasonal variety native to the area or a mixture of species that will support the approved postmining land use in a manner consistent with the approved reclamation plan. This will result in the use of native tree species in a large percentage of permits. As discussed in this rulemaking, the State is requiring replacement of premine number of trees. Planting plans are included in permit applications, which are available for review and comment.

3. *FWS:* Critical habitat, Chapter 4(IV): The Service is concerned with the use of the term ''critical habitat'' when not referencing listed species. The Service uses this term to identify specific areas within a geographical area occupied by a listed species. We recommend that the rules clearly define this term as it pertains to the document or use some other terminology less agency-specific.

OSM: Critical Habitat Is Defined in Chapter 1, Section 2(v) of Wyoming's Coal Rules.

4. *FWS:* Invading trees, Chapter 4(F): The Service is concerned that such species as Russian olive and/or tamarisk may ''invade'' the reclaimed lands and crowd out native species. The Service recommends that tree species be native to Wyoming and that the permittee not receive credit for non-natives.

OSM: Again, Wyoming's Statement of Principal Reasons (for the Amendment) states that ''preference is given to those species that are native or which are known not to be 'weedy' ''.

5. *FWS:* Bond release and wildlife, Chapter 15, Section 1(b): The Service is concerned that no information is required regarding fish or wildlife resources or status of listed species prior to bond release. Therefore, prior to bond release the Service recommends a status review of fish and wildlife resources and a comparison to the baseline information to determine whether changes have occurred that should be addressed prior to bond release.

OSM: The only changes made to Chapter 15, Section 1(b) relate to a notarized statement. Also, Appendix B of Wyoming's Coal Rules includes the monitoring requirements related to wildlife. An operator must submit wildlife information which includes consultation with FWS prior to issuing a permit to mine. Inspections, annual reports and other information submitted will form the basis of the Administrator's decision of whether or not to release the bond.

6. *FWS:* Appendix A, Subsection VIII(F)(8): The Service recommends that the qualitative assessment include whether native vegetation is present and at densities equal to or greater than premining.

OSM: This Section was merely renumbered and none of the previously-approved language was changed.

7. *FWS:* Highwall retention and wildlife habitat, Chapter 4, Section (b)(iv): The Service is concerned that the decision to retain highwalls may not consider the needs of local raptors. The Service recommends that highwall retention be considered as raptor nesting habitat in coordination with the Service and other qualified biologists.

OSM: OSM is approving in III.C.5 above Wyoming's requirements for highwall retention that are contained in Chapter 4, Section 2(b)(iv) of Wyoming's Coal Rules. One of the requirements is that the retained highwall will enhance or restore important wildlife habitat. This would include raptor nesting habitat. Also, Appendix B, Section C of Wyoming's Coal Rules contains requirements for raptor production and monitoring so consideration of raptor nesting habitat will be taken into account when considering highwall retention. In addition, State and Federal wildlife agencies are provided opportunity to review and comment on proposed permits.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. WY–39–3). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 1, 2005, we requested comments on Wyoming's amendment (Administrative Record No. WY–39–3), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve Wyoming's October 24, 2005 amendment, as discussed in: finding no. A; finding no. B; findings no. C.1, C.2, C.3, C.4, and C.5; and finding nos. D.1, and D.2.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and

reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an Unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 2006.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set forth in the preamble, 30 CFR part 950 is amended to read as follows:

PART 950—WYOMING

■ 1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 950.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
10/24/05	8/28/06	Chapter 4, Section 2(b)(iv) Chapter 4, Section 2(d)(ix) Chapter 4, Section 2(d)(x) Chapter 4, Section 2(d)(x), Appendix A, Subsection III.A; VII.E; VIII.A & VIII.F Chapter 4, Section 2(d)(x)(E)(I)&(II) Chapter 4, Section 2(d)(x)(E)(III) & (F) Chapter 4, Section 2(d)(x)(J) Chapter 4, Section 2(d)(xiv) Chapter 15, Section 1(a) Chapter 15, Section 1(b)

[FR Doc. E6–14225 Filed 8–25–06; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7788]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Mitigation Division, Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities that are participating and suspended from the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of properties located in the communities listed below.

DATES: *Effective Dates:* The effective date for each community is listed in the fourth column of the following tables.

ADDRESSES: Flood insurance policies for properties located in the communities listed below can be obtained from any licensed property insurance agent or broker serving the eligible community or from the NFIP by calling 1–800–638–6620.

FOR FURTHER INFORMATION CONTACT: David H. Stearrett, Chief, Floodplain Management Section, Risk Reduction Branch, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance that is generally not otherwise available. In return, communities agree to adopt and implement local floodplain management regulations that contribute to protecting lives and reducing the risk of new construction from future flooding. Because the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for properties in these communities.

FEMA has identified the Special Flood Hazard Areas (SFHAs) in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 202 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4016(a), requires the purchase of flood insurance as a condition of Federal or Federally-related financial assistance for acquisition or construction of buildings in the SFHAs shown on the map.

The Administrator finds that delayed effective dates would be contrary to the public interest and that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 is revised to read as follows:

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

§ 64.6 [Amended]

The tables published under the authority of § 64.6 are amended as follows:

State	Location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles: Emergency Program				
Region V				
Minnesota	Apple Valley, City of, Dakota County.	270050	April 14, 2006	Never Mapped.
Region VI				
Arkansas	Datto, Town of, Clay County ..	050190	May 23, 2006	Never Mapped.
Do *	Nimmons, Town of, Clay County.	050332	.....do	Do.
Region VII				
Missouri	Merriam Woods, Village of, Taney County.	290069	June 21, 2006	Adopted Preliminary FIRM dated September 26, 2006.
Region IV				
Alabama	Phil Campbell, Town of, Franklin County.	010333	June 26, 2006	FHBM dated of, October 29, 1976.
Georgia	Oxford, City of, Newton County.	130367	.....do	April 11, 1975.
New Eligibles: Regular Program				
Region VII				
Missouri	Cedar County, Unincorporated Areas.	290791	April 11, 2006	July 17, 2002.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Region VI				
Arkansas	Lonsdale, Town of, Garland County.	050586	April 14, 2006	Use Garland County (CID 050433) FIRM panel 125C, dated February 15, 1991.
Region VII				
Iowa	Grundy County, Unincorporated Areas.	190870	April 21, 2006	October 19, 2005.
Do	Hancock, City of, Pottawattamie County.	190236	.....do	Use Pottawattamie County (CID 190232) FIRM panel 338E, dated February 4, 2005.
Do	Wellsburg, City of, Grundy County.	190680	.....do	Use Garland County (CID 190870) FIRM panels 160B and 170B, dated October 19, 2005.
Region IV				
Florida	Lake Placid, City of, Highlands County.	120028	April 25, 2006	Use Highland County (CID 120111) FIRM panels 150B and 175B, dated February 16, 1983.
Do	West Park, City of, Broward County.	120222	.....do	Use Broward County (CID 125093) FIRM panels 312F, 0314F, 316F and 318F, dated August 18, 1992.
Region VII				
Missouri	Linn, City of, Osage County ...	290708	April 28, 2006	Use Osage County (CID 290268) FIRM panel 255D, dated September 2, 2005.
Region X				
Washington	** Republic, Town of, Ferry County.	530042	May 2, 2006	May 2, 2006.
Region V				
Michigan	Powell, Township of, Marquette County.	260452	May 4, 2006	November 20, 2000.
Region VII				
Iowa	Tama County, Unincorporated Areas.	190908	May 4, 2006	January 9, 2006.
Region IV				
Georgia	** Hampton, Town of, Henry County.	130107	May 16, 2006	May 16, 2006.
Do	Rutledge, Town of, Morgan County.	130363	May 19, 2006	February 15, 2002.
Region VII				
Nebraska	Pawnee County, Unincorporated Areas.	310463	June 6, 2006	July 5, 2005.
Do	Johnson County, Unincorporated Areas.	310122	.....do	April 17, 2006.
Region VI				
Louisiana	Stonewall, Town of, De Soto Parish.	220411	June 21, 2006	December 16, 2003.
Region V				
Michigan	Stevensville, Village of, Berrien County.	260557	June 23, 2006	April 17, 2006.
Region IV				
Alabama	Garden City, Town of, Cullman County.	010436	June 26, 2006	Use Cullman County (CID 010247) FIRM panels 345D,365D, and 485D, dated December 2, 2004.
Do	Holly Pond, Town of, Cullman County.	010440	.....do	Use Cullman County (CID 010247) FIRM panel 265D dated December 2, 2004.
Do	Somerville, City of, Morgan County.	010363	.....do	December 16, 2005.
Do	Vance, Town of, Tuscaloosa and Bibb Counties.	010428	.....do	Use Tuscaloosa County (CID 010201) FIRM panels 575E and 600E, dated September 7, 2000.
Georgia	Grantville, City of, Coweta County.	130443	.....do	May 16, 2006.
Do	Locust Grove, City of, Henry County.	130032	.....do	Do.
Do	Sharpsburg, City of, Coweta County.	130581	.....do	Do.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Turin, City of, Coweta County	130475	.....do	Do.
Region VI				
Arkansas	Cedarville, City of, Crawford, County.	050505	.....do	Use Crawford County (CID 050428) FIRM panels 100E and 175E, dated December 20,2000.
Region VII				
Missouri	Moscow Mills, City of, Lincoln County.	290546	.....do	Use Lincoln County (CID 290869) FIRM panel 185C, dated April 3, 1993.
Reinstatements				
Region V				
Ohio	Washington County, Unincorporated Areas.	390566	April 6, 2006	February 16, 2006.
Region IV				
North Carolina	Carolina Beach, Town of, Hanover County.	375347	April 7, 2006	April 3, 2006.
Region V				
Michigan	Michiana, Village of, Berrien County.	260275	May 16, 2006	April 17, 2006.
Do	Niles, Township of, Berrien County.	260041	.....do	Do.
Region VII				
Missouri	Creighton, City of, Cass County.	290063	.....do	March 16, 2006.
Do	East Lynne, City of, Cass County.	290065	.....do	Do.
Region V				
Michigan	Buchanan, City of, Berrien County.	260554	May 17, 2006	April 17, 2006.
Do	New Buffalo, Township of, Berrien County.	260039	May 18, 2006	Do.
Do	Niles, City of, Berrien County	260040	.....do	Do.
Region I				
Vermont	Alburg, Town of, Grand Isle County.	500221	June 20, 2006	May 5, 1981.
Do	Brookline, Town of, Windham County.	500208	.....do	September 4, 1985.
Region IV				
Georgia	Arlington, City of, Calhoun and Early Counties.	130026	June 26, 2006	June 3, 1986.
Withdrawals Suspensions				
Region IV				
North Carolina	Carolina Beach, Town Hanover County.	275347	April 5, 2006	April 3, 2006.
Region V				
Michigan	Benton, Township of, Berrien County.	260031	April 19, 2006	April 17, 2006.
Do	Benton Harbor, City of, Berrien County.	260032	.....do	Do.
Do	Buchanan, City of, Berrien County.	260554	.....do	Do.
Do	Coloma, City of, Berrien County.	260556	.....do	Do.
Do	Lake, Township of, Berrien County.	260036	.....do	Do.
Do	Michiana, Village of, Berrien County.	260275	.....do	Do.
Do	New Buffalo, Township of, Berrien County.	260039	.....do	Do.
Do	Niles, City of, Berrien County	260040	.....do	Do.
Do	Niles, Township of, Berrien County.	260041	.....do	Do.
Do	Watervliet, City of, Berrien County.	260047	.....do	Do.
Region IV				
North Carolina	Fuquay-Varina, Town of, Wake County.	370239	May 8, 2006	May 2, 2006.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Wake Forest, Town of, Wake County.	370244	.....do	Do.
		Probation		
Region IV				
North Carolina	Erwin, Town of, Harnett County.	370456	April 28, 2006	April 16, 1990.
Region V				
Indiana	Patriot, Town of, Switzerland County.	180309	Probation Lifted December 4, 2006.	June 30, 1979.
		Suspension Rescissions		
Region IV				
North Carolina	Kure Beach, Town of, New Hanover County.	370170	April 4, 2006 Suspension Notice Rescinded.	April 3, 2006.
Do	New Hanover County, Unincorporated Areas.	370168	.....do	Do.
Do	Wilmington, City of, New Hanover County.	370171	.....do	Do.
Do	Wrightsville Beach, Town of, New Hanover County.	375361	.....do	Do.
Region V				
Ohio	Adena, Village of, Jefferson County.	390295	.....do	April 5, 2006.
Do	Bellaire, Village of, Belmont County.	390025	.....do	Do.
Do	Belmont County, Unincorporated Areas.	390762	.....do	Do.
Do	Bethesda, Village of, Belmont County.	390674	.....do	Do.
Do	Bridgeport, Village of, Belmont County.	390026	.....do	Do.
Do	Brookside, Village of, Belmont County.	390027	.....do	Do.
Do	Columbiana County, Unincorporated Areas.	390076	.....do	Do.
Do	Holloway, Village of, Belmont County.	390028	.....do	Do.
Do	Irondale, Village of, Jefferson County.	390741	.....do	Do.
Do	Martins Ferry, City of, Belmont County.	390029	.....do	Do.
Do	New Waterford, Village of, Columbiana County.	390663	.....do	Do.
Do	Rogers, Village of, Columbiana County.	390645	.....do	Do.
Do	Salineville, Village of, Columbiana County.	390628	.....do	Do.
Do	Shadyside, Village of, Belmont County.	390031	.....do	Do.
Do	Steubenville, City of, Jefferson County.	390302	.....do	Do.
Do	Stratton, Village of, Jefferson County.	390303	.....do	Do.
Do	Tiltonsville, Village of, Jefferson County.	390634	.....do	Do.
Do	Washingtonville, Village of, Columbiana County.	390087	.....do	Do.
Do	Wellsville, Village of, Columbiana County.	390088	.....do	Do.
Do	Yorkville, Village of, Belmont and Jefferson Counties.	390033	.....do	Do.
Region VII				
Missouri	Arnold, City of, Jefferson County.	290188	.....do	Do.
Do	Byrnes Mill, City of, Jefferson County.	290891	.....do	Do.
Do	Festus, City of, Jefferson County.	290191	.....do	Do.
Do	Herculaneum, City of, Jefferson County.	290192	.....do	Do.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Hillsboro, City of, Jefferson County.	290573	.....do	Do.
Do	Jefferson County, Unincorporated Areas.	290808	.....do	Do.
Do	Kimmswick, City of, Jefferson County.	290193	.....do	Do.
Do	Pevely, City of, Jefferson County.	290677	.....do	Do.
Do	Scotsdale, Town of, Jefferson County.	290949	.....do	Do.
Region V				
Michigan	Berrien Springs, Village of, Berrien County.	260330	April 17, 2006 Suspension Notice Rescinded.	April 17, 2006.
Do	Coloma, Township of, Berrien County.	260034	.....do	Do.
Do	Hagar, Township of, Berrien County.	260035	.....do	Do.
Do	Lincoln, Township of, Berrien County.	260037	.....do	Do.
Do	New Buffalo, City of, Berrien County.	260038	.....do	Do.
Do	Oronoko, Township of, Berrien County.	260042	.....do	Do.
Do	Watervliet, Township of, Berrien County.	260048	.....do	Do.
Minnesota	Big Stone County, Unincorporated Areas.	270652	.....do	Do.
Do	Clinton, City of, Big Stone County.	270024	.....do	Do.
Do	Graceville, City of, Big Stone County.	270026	.....do	Do.
Do	Odessa, City of, Big Stone County.	270027	.....do	Do.
Do	Ortonville, City of, Big Stone County.	270028	.....do	Do.
Region VII				
Nebraska	Sterling, Village of, Johnson County.	310126	.....do	Do.
Region IV				
North Carolina	Apex, Town of, Wake County	370467	May 5, 2006 Suspension Notice Rescinded.	May 2, 2006.
Do	Cary, Town of, Wake County	370238	.....do	Do.
Do	Durham, City of, Durham County.	370086	.....do	Do.
Do	Durham County, Unincorporated Areas.	370085	.....do	Do.
Do	Garner, Town of, Wake County.	370240	.....do	Do.
Do	Holly Springs, Town of, Wake County.	370403	.....do	Do.
Do	Knightdale, Town of, Wake County.	370241	.....do	Do.
Do	Morrisville, Town of, Wake County.	370242	.....do	Do.
Do	Raleigh, City of, Wake County	370243	.....do	Do.
Do	Rolesville, Town of, Wake County.	370468	.....do	Do.
Do	Wake County, Unincorporated Areas.	370368	.....do	Do.
Do	Wendell, Town of, Wake County.	370245	.....do	Do.
Do	Zebulon, Town of, Wake County.	370246	.....do	Do.
Region I				
New Hampshire	Cornish, Town of, Sullivan County.	330155	May 30, 2006 Suspension Notice Rescinded.	May 23, 2006.
Do	Marlow, Town of, Cheshire County.	330025	.....do	Do.
Do	Newport, Town of, Sullivan County.	330161	.....do	Do.
Do	Roxbury, Town of, Cheshire County.	330172	.....do	Do.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Westmoreland, Town of, Cheshire County.	330238	.....do	Do.
Region III				
Virginia	Fairfax, City of, Independent City.	515524	June 12, 2006 Suspension Notice Rescinded.	June 2, 2006.
Region IV				
North Carolina	Bald Head Island, Village of, Brunswick County.	370442	.....do	Do.
Do	Belville, Town of, Brunswick County.	370545	.....do	Do.
Do	Boiling Spring Lake, City of, Brunswick County.	370453	.....do	Do.
Do	Bolivia, Town of, Brunswick County.	370394	.....do	Do.
Do	Bolton, Town of, Columbus County.	370274	.....do	Do.
Do	Brunswick County, Unincorporated Areas.	370295	.....do	Do.
Do	Calabash, Town of, Burnswick County.	370395	.....do	Do.
Do	Carolina Shores, Town of Brunswick County.	370517	.....do	Do.
Do	Caswell Beach, Town of Brunswick County.	370391	.....do	Do.
Do	Cerro Gordo, Town of, Columbus County.	370311	.....do	Do.
Do	Chadbourn, Town of, Columbus County.	370065	.....do	Do.
Do	Columbus County, Unincorporated Areas.	370305	.....do	Do.
Do	Fair Bluff, Town of, Columbus County.	370067	.....do	Do.
Do	Holden Beach, Town of, Brunswick County.	375352	.....do	Do.
Do	Lake Waccamaw, Town of, Columbus County.	370069	.....do	Do.
Do	Leland, Town of, Brunswick County.	370471	.....do	Do.
Do	Navassa, Town of, Brunswick County.	370593	.....do	Do.
Do	Northwest, City of, Brunswick County.	370513	.....do	Do.
Do	Oak Island, Town of, Brunswick County.	370523	.....do	Do.
Do	Shallotte, Town of, Brunswick County.	370388	.....do	Do.
Do	Southport, City of, Brunswick County.	370028	.....do	Do.
Do	St. James, Town of, Brunswick County.	370530	.....do	Do.
Do	Sunset Beach, Town of, Brunswick County.	375359	.....do	Do.
Do	Tabor City, Town of, Columbus County.	370070	.....do	Do.
Do	Varnamtown, Town of, Brunswick County.	370648	.....do	Do.
Do	Whiteville, City of, Columbus County.	370071	.....do	Do.
Region IV				
Florida	Alachua, City of, Alachua County.	120664	June 19, 2006 Suspension Notice Rescinded.	June 16, 2006.
Do	Gainesville, City of, Alachua County.	125107	.....do	Do.
Do	Micanopy, Town of, Alachua County.	120344	.....do	Do.
Do	Newberry, City of, Alachua County.	120679	.....do	Do.
Tennessee	Saltillo, Town of, Hardin County.	470083	.....do	Do.
Region VI				
Arkansas	Austin, City of, Lonoke County	050383	.....do	Do.
Do	Cabot, City of, Lonoke County	050309	.....do	Do.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Carlisle, City of, Lonoke County.	050312	.....do	Do.
Do	England, City of, Lonoke County.	050133	.....do	Do.
Do	Ward, City of, Lonoke County	050372	.....do	Do.
Region IX				
California	Shasta County, Unincorporated Areas.	060358	.....do	Do.

* -do- =Ditto.
** Designates communities converted from Emergency Phase of participation to the Regular Phase of participation.
Code for reading fourth and fifth columns: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA.-Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 16, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 06–7181 Filed 8–25–06; 8:45 am]

BILLING CODE 9110–12–P

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation; Solicitation Provisions and Contract Clauses

CFR Correction

In Title 48 of the Code of Federal Regulations, Parts 52 to 99, revised as of October 1, 2005, on pages 32 and 33, section 52.208–9 is corrected to read as follows:

52.208–9 Contractor Use of Mandatory Sources of Supply or Services.

As prescribed in 8.004, insert the following clause:

Contractor Use of Mandatory Sources of Supply or Services (JUL 2004)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:

(1) National Industries for the Blind (NIB), 1901 North Beauregard Street, Suite 200, Alexandria, VA 22311-1705, (703) 998-0770.

(2) NISH, 2235 Cedar Lane, Vienna, VA 22182-5200, (703) 560-6800.

(End of clause)

[61 FR 2631, Jan. 26, 1996, as amended at 61 FR 67430, Dec. 20, 1996; 66 FR 65368, Dec. 18, 2001; 67 FR 56120, Aug. 30, 2002; 69 FR 34230, June 18, 2004]

[FR Doc. 06–55525 Filed 8–25–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR parts 350, 390, and 392

[Docket No. FMCSA–2002–13015]

RIN 2126–AA78

Enforcement of Operating Authority Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA or the Agency) adopts as final, with minor changes, its interim regulations as published in the **Federal Register** in August 2002. Since that time, enforcement officials have discovered many carriers operating without the required operating authority or beyond the scope of their authority. By making minor changes to the rule, FMCSA facilitates enforcement of these regulatory requirements by the agency's employees and its State counterparts. Clarifying that operating authority means registration as required by statute assists State enforcement officers in identifying the correct violation and not confusing operating authority with other registration requirements.

DATES: *Effective Date:* September 27, 2006. *Petitions for Reconsideration* must be received by the Agency not later than September 27, 2006.

FOR FURTHER INFORMATION CONTACT: David Mancl, phone (202) 493–0442, e-mail *david.mancl@dot.gov*, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Docket: For access to the docket to read background documents or comments received on the interim final regulations, including all correspondence referenced in this document, 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., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, April 11, 2000). This statement is also available at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Section 205 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Pub. L. 106–159, 113 Stat. 1748] amended 49 U.S.C. 13902 by authorizing the Secretary of Transportation to place out of service vehicles operated by motor carriers that fail to comply with registration requirements under 49 U.S.C. 13902. Paragraph (e)(1) of section 13902 reads as follows:

(e) Penalties for failure to comply with registration requirements.—In addition to other penalties available under law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to the following penalties:

(1) Out-of-service orders.—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this section is operating without a registration or beyond the scope of its registration, the Secretary may order the vehicle out-of-service. Subsequent to the issuance of the out-of-service order, the Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

Under 49 CFR 1.73(a)(5), the Secretary's authority to carry out the functions relating to section 13902 registration requirements is delegated to the FMCSA Administrator. On August 28, 2002 (67 FR 55162), FMCSA published an interim final rule (IFR) implementing section 205 by requiring that a vehicle providing transportation requiring registration under 49 U.S.C. 13902 be ordered out of service if determined to be operating without registration or beyond the scope of the carrier's registration. Accordingly, the IFR and this final rule are authorized by section 13902(e).

Background

The IFR added a new section (392.9a) to 49 CFR part 392 to prohibit a commercial motor vehicle (CMV) providing transportation requiring registration under 49 U.S.C. 13902 from operating unless the carrier complies with the registration requirements. For example, a motor carrier fails to obtain registration pursuant to section 13902 but is later discovered hauling appliances in a CMV for a department store from one State to another. Under 49 CFR 392.9a(b), the vehicle would be placed out of service and the carrier may be subject to additional penalties under 49 U.S.C. 14901. Under 49 CFR 392.9a(c), the carrier would be entitled to a hearing to review the out-of-service order within 10 days of the issuance of the order. In addition, the IFR amended the reference to registration requirements enforced by the States in 49 CFR 350.201(t)(1) to add 49 CFR 392.9a.

The IFR became effective September 27, 2002 and closed a loophole that could have been used to circumvent the Federal Motor Carrier Safety Regulations (FMCSRs). Before the issuance of the IFR, motor carriers who operated without registration would be cited for a violation during a roadside inspection and then be allowed to continue operating.

The States are currently required to enforce these registration requirements as a condition for receiving Motor Carrier Safety Assistance Program (MCSAP) funds. States had until September 27, 2005 to adopt the new regulations. To date, all States have adopted 49 CFR 392.9a. The States, acting through the Commercial Vehicle Safety Alliance (CVSA), have amended or revised their enforcement tolerances (the North American Standard Out-of-Service Criteria) to include a new part for registration enforcement to ensure uniformity in implementing section 205 of MCSIA. From the September 2002 effective date through May 2004, FMCSA completed 840 enforcement reports citing violations of 49 CFR 392.9a. Out of 4,405 violations discovered, 1,315 counts were asserted in Notices of Claim. FMCSA settled 1,045 of these counts with penalties totaling $1,109,648.00.

Revisions to the IFR

Since implementation of the IFR, operational experience with 49 CFR 392.9a has been positive, although a few problems have been identified. Most issues that have arisen in implementing the IFR could be resolved through policy directives rather than regulatory change but a few issues are best resolved by minor revisions in the rule text.

1. The use of the word ''registration'' has been inconsistently interpreted by Federal and State enforcement personnel because the term is used in several different contexts at the Federal and State levels. Enforcement personnel have mistakenly cited other registration violations, such as vehicle registration and failure to submit the MCS–150, under 49 CFR 392.9a. FMCSA has revised the rule to make it easier to understand and has replaced the term ''registration'' with the term ''operating authority'' in 49 CFR 350.201(t) and 49 CFR 392.9a. The final rule amends the definitions in 49 CFR 390.5 to include the term ''operating authority.'' This definition clarifies that operating authority means registration required under 49 U.S.C. 13902.

2. Currently, the definition of ''out-of-service order'' in 49 CFR 390.5 includes references to other parts of the FMCSRs that specifically call for a driver or vehicle to be placed out of service. Adding 49 CFR 392.9a to the definition of out-of-service order in 49 CFR 390.5 updates this definition to reflect FMCSA's current out-of-service rules.

3. Since the effective date of the IFR, numerous violations of 49 CFR 392.9a have been discovered. To strengthen the quality of data FMCSA collects in the Motor Carrier Management Information System (MCMIS), it is more effective to list the two violations separately rather than listing both violations in the same paragraph. The final rule lists operating without authority as 49 CFR 392.9a(a)(1) and operating beyond the scope of authority as 49 CFR 392.9a(a)(2). This clarifies which violation is being cited in enforcement actions.

Discussion of Public Comments

FMCSA received 18 public comments on the IFR from 17 commenters. Commenting were seven State Police and State DOTs—Iowa DOT (Iowa), Oregon DOT (Oregon), Idaho State Police (Idaho), Georgia Department of Motor Vehicle Safety (Georgia), New York State DOT and New York Division of State Police (New York), California Highway Patrol (California), and Missouri State Highway Patrol (Missouri); four trade associations—National School Transportation Association (NSTA), Health and Personal Care Logistics Conference (H&PCLC), Pennsylvania Farm Bureau (PA Farm Bureau), and American Bus Association (ABA); one North American enforcement association—Commercial Vehicle Safety Alliance; three motor carriers—Wertz Motor Carriers (Wertz), United Parcel Service (UPS), and Adirondack Transit Lines, Inc. (Adirondack); one individual—Ken Carr; and Advocates for Highway and Auto Safety (Advocates).

Of the 18 comments, four (from Iowa, Wertz, Advocates, and Adirondack) supported the IFR and the resulting enforcement actions. One comment (from CVSA) suggested that the term ''out-of-service'' be changed to ''cease operations'' in several locations. This comment was addressed separately in FMCSA's disposition of a September 4, 2003 petition submitted by CVSA. In its petition, CVSA requested amending the FMCSRs by changing the term ''out-of-service'' to ''cease operations.'' CVSA also proposed adding a definition for the term ''cease operations order'' to 49 CFR 390.5. FMCSA was not able to

substantiate CVSA's concern regarding lack of uniform enforcement and concluded CVSA's petition did not set forth sufficient safety or enforcement concerns to warrant initiation of a rulemaking proceeding. Accordingly, the petition was denied.

The other comments are discussed below together with FMCSA's responses on the issues raised.

Implementation & Training

Several comments concerned training materials and training sessions for employees and the databases that will be used for roadside inquiries. Another concern with implementation is the requirement that the States adopt this rule and implement it as part of their standard roadside inspection. As the Missouri State Highway Patrol stated, ''This places the entire enforcement effort on the shoulders of the state MCSAP agencies, agencies that do not process registration forms nor grant operating authority.'' CVSA stated that most jurisdictions do not have the legislative authority to enforce the requirements. Commenters pointed out that to avoid issuing erroneous out-of-service orders for administrative violations, enforcement personnel must base such orders on accurate and real-time registration information. Those commenters suggested that currently this information must be obtained from several databases, which are not all sufficiently accurate and consistent even if they could be made available to enforcement personnel at any time. Several States, including Idaho, Georgia, and New York, have questioned the reliability of FMCSA's database to provide quality information in a timely manner. Comments have also arisen concerning the need for training of inspectors to help them identify when a carrier is required to have operating authority. Idaho suggested that States will need time to phase in the requirements because of training issues. New York argued that FMCSA will need to provide training to States.

FMCSA Response: In November 2002, FMCSA provided all of its field offices with procedures for enforcing the operating authority requirements during roadside inspections. FMCSA recognizes the necessity of timely and accurate data. FMCSA's Licensing and Insurance (L&I) Web site contains ''real time'' data that identifies the most current information available for each motor carrier. This site, which is the only Web site that must be checked to verify compliance, is accessible 24 hours a day. If officers and inspectors do not have Internet access during roadside inspections, a toll-free number (1–800–832–5660) is available from 7:15 a.m. to 4:15 p.m., e.t., Monday through Friday to access the same current information that is on the Web site.

FMCSA is currently developing training materials and incorporating the requirements for operating authority into existing courses to help the roadside officer or inspector identify when operating authority is required. This training will also address which operating authority violations discovered result in placing the vehicle out of service. To ensure proper enforcement, FMCSA will continually review policies and procedures to identify the training needs necessary to fully implement and enforce this rule.

FMCSA and the States currently identify out-of-service violations through the FMCSRs and the CVSA's North American Standard Out-of-Service Criteria (CVSA Criteria). The FMCSRs require compliance with all applicable requirements at all times. The FMCSRs are the real out-of-service criteria. The CVSA Criteria represent enforcement tolerances and ensure that the decision by Federal and State personnel to place a vehicle out of service is not an arbitrary action based solely on the discretion of the inspector. The use of the CVSA Criteria by State officials is covered through either a documented policy or State laws and regulations. This process will continue. To date, all States have adopted and are enforcing the provisions of the rule.

Out-of-Service Orders

Some commenters argued that FMCSA has inappropriately determined that out-of-service orders be mandatory for any registration violation, even administrative violations that are not based on safety concerns. Ken Carr stated, ''I question the proposition that failure to register or operating beyond the scope of registration rises to that level.'' Given their limited resources, States are concerned that the time enforcement personnel spend on placing these vehicles out of service could be better spent on getting hazardous vehicles off the road. As Georgia pointed out, ''* * * the time spent by enforcement personnel to run down the information takes officers away from time that could be spent doing more safety inspections.''

Commenters, including Oregon, H&PCLC, ABA, Missouri, and New York, also stated that operating authority violations are not an imminent hazard and CMVs should not be placed out of service during a roadside inspection. They recommend that these violations be noted on the inspection report and forwarded to the local FMCSA office. The local FMCSA office would make contact with the company and place the entire fleet out of service if the investigation confirmed the violation. Once the carrier's operation has been placed out of service, any of the carrier's vehicles discovered to be operating could be placed out of service by the roadside officer or inspector.

FMCSA Response: Section 205 of MCSIA amended 49 U.S.C. 13902 by creating section (e), which requires the Agency to assess penalties for failure to comply with the motor carrier registration requirements under that statute. Specifically, if a motor carrier operates without the required authority or operates beyond the scope of its authority, the carrier would be subject to certain enforcement penalties. On August 28, 2002, FMCSA amended its regulations to require that a motor carrier subject to the registration requirements in 49 U.S.C. 13902 may not operate a CMV in interstate commerce unless it has registered with the Agency and been granted the required authority.

In order to restrict commercial highway transportation to those entities having the appropriate operating authority and possessing adequate insurance, FMCSA specifically mandated placing out of service any driver and vehicle discovered to be operating without the required authority or beyond the scope of the carrier's authority. Prior to this requirement, unauthorized or improperly authorized drivers and vehicles could travel our Nation's highways unchecked. FMCSA believes this action—the placing of a vehicle out of service during a roadside inspection when the carrier operating that vehicle is operating without authority or beyond the scope of its authority—is necessary in light of the current heightened security environment. FMCSA further believes that this action ensures that all carriers are apprised of and compliant with the applicable FMCSRs, operate only within the scope of their authority, and operate safe vehicles within the United States. Given FMCSA's mission of ensuring safe transportation, it is incumbent upon the Agency to close this potential loophole. As further discussed under Rulemaking Analyses and Notices later in this rule, experience has taught FMCSA that carrier noncompliance with the operating authority requirements correlates with carrier noncompliance with the safety regulations.

In response to the suggestion that FMCSA put the carrier's entire fleet out of service, 49 U.S.C. 13902(e)(1) states that if, upon inspection or investigation,

the Secretary determines that a motor vehicle is found to be providing transportation without the required registration or beyond the scope of the carrier's registration, the Secretary may order the vehicle out of service. The statutory requirement at the roadside is vehicle-specific and it does not authorize FMCSA to place the carrier's entire fleet out of service.

Exemptions From 49 U.S.C. 13902

Certain categories of CMV operations are exempted by 49 U.S.C. 13506 from the operating authority (registration) requirement of 49 U.S.C. 13902. NSTA requested clarification concerning the exemption at 49 U.S.C. 13506(a)(1) for ''a motor vehicle transporting only school children and teachers to or from school.'' NSTA noted that during the period from 1976 through 1984, the former Interstate Commerce Commission (ICC) issued ''rulings that established an interpretation of the exemption to include interstate transportation of students in school buses on trips that are directly connected with school-related activities and are sponsored and supervised by school authorities.'' It requested FMCSA to support this interpretation and clarify that the exemption includes for-hire motor carriers transporting students to school-related activities across State lines.

The PA Farm Bureau, while not requesting that agricultural-related commercial vehicle operations be exempted from section 13902, commented on the disproportionate burden an out-of-service order could place on certain agricultural operations, such as livestock hauling, transportation of perishable commodities, and agricultural-operation owners driving their own farm vehicles. The PA Farm Bureau requested that trucks licensed as farm vehicles under State law not be automatically placed out of service when found in violation of the registration requirement.

FMCSA Response: In response to NSTA's request for clarification, FMCSA has not issued any interpretations contradicting those of the former ICC. FMCSA recodified, at 49 CFR 372.103, the former ICC rule implementing the exemption for motor vehicles employed solely in transporting school children and teachers to or from school. FMCSA does not require contractors providing interstate transportation of school children and teachers to or from school to obtain operating authority from the Agency.

With regard to the PA Farm Bureau's comment, 49 CFR part 372, subpart A—Exemptions contains several provisions implementing 49 U.S.C. 13506. 49 CFR 372.115 includes a list of commodities that are not exempt under 49 U.S.C. 13506(a)(6). Under this statute, motor vehicles used in carrying ordinary livestock, fish, and manufactured agricultural commodities are exempt from the section 13902 operating authority requirements.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is a non-significant regulatory action within the meaning of Executive Order 12866 and DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). FMCSA's full Final Rule Regulatory Evaluation, explaining in detail the estimated cost impacts of the rulemaking, is in the docket. This Final Rule results in no changes to the Regulatory Evaluation of the IFR.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to take small businesses' particular concerns into account when developing, writing, publicizing, promulgating, and enforcing regulations. FMCSA has prepared a Final Regulatory Flexibility Analysis (FRFA) of this rule and has determined that this rule will not impose a significant economic impact on a substantial number of small entities.

Using the Small Business Administration's criteria, FMCSA estimates that 75 to 80 percent of motor carriers are small. Thus, this rule could theoretically affect a large number of motor carriers. However, the rule does not impose any new requirement on these motor carriers. It merely increases the penalty for carriers operating without the required operating authority or beyond the scope of their authority.

More details on our evaluation can be found in the FRFA in the docket.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). FMCSA has determined that this action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

As we stated in the IFR (67 FR 55163), FMCSA administers a grant-in-aid program, MCSAP, as an incentive for State enforcement of motor carrier safety regulations. As a condition of participating in this program, States are required to adopt and enforce safety regulations compatible with the FMCSRs and the hazardous materials regulations. Section 207 of MCSIA required States, as a condition of receiving MCSAP funds, to cooperate in the enforcement of FMCSA's authority and financial responsibility requirements. In revising the agency's MCSAP regulations in March 2000 (65 FR 15102), FMCSA required the States to enforce the authority and financial responsibility requirements [49 CFR 350.201(t)]. The IFR clarified how the States are to implement their enforcement responsibilities by specifying that vehicles shall be placed out of service if discovered to be operated in violation of the authority requirements. The final rule makes no substantive changes to this requirement.

The basic nature of MCSAP and the level of total funding for the program are not affected by these changes. Nothing in this document preempts any State law or regulation. Therefore, this rulemaking does not have sufficient Federalism implications to warrant consultation with State and local elected officials or their representative national organizations early in the process of developing this proposed regulation, or in the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. The act requires that any agency promulgating a final rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the act. FMCSA uses a threshold value of $120.7 million, which is the value of 100 million 1995 dollars inflated to 2003 dollars. FMCSA has determined that this rulemaking will not have an impact of $120.7 million or more in 2003 dollars in any one year.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that this regulation does not constitute an information collection within the scope or meaning of the PRA.

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 *et seq.*] and determined under our environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) under paragraphs 6.e, 6.f, and 6.g of the Order from further environmental documentation. These CEs relate to establishing regulations and actions taken pursuant to these regulations concerning the application for operating authority and certificates of registration, enforcement activities, and procedures that promote adoption and enforcement of State laws that are compatible with the FMCSRs. In addition, the Agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this proposed rule under the Clean Air Act (CAA), as amended section 176(c) [42 U.S.C. 7401 *et seq.*], and implementing regulations promulgated by the Environmental Protection Agency. As stipulated in 40 CFR 93.153(c)(2), approval of this action is exempt from the CAA's General conformity requirement since it involves rulemaking activities. This action would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers. This action merely clarifies terms and actions involved with the enforcement of operating authority.

Executive Order 13045 (Protection of Children)

This rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children. The Agency has determined that this rule is not a ''covered regulatory action'' as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. Second, the Agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 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.

List of Subjects

49 CFR Part 350

Grant programs—transportation, highway safety, motor carriers.

49 CFR Part 390

Highway safety, motor carriers.

49 CFR Part 392

Highway safety, motor carriers.

■ Accordingly, FMCSA amends 49 CFR parts 350, 390, and 392 as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for 49 CFR 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 49 CFR 350.105 by adding a definition for *operating authority* in alphabetical order to read as follows:

§ 350.105 What definitions are used in this part?

* * * * *

Operating authority means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

* * * * *

■ 3. Amend 49 CFR 350.201 to revise paragraph (t) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

* * * * *

(t)(1) Enforce operating authority requirements under 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a by placing out of service a vehicle operated by a motor carrier without operating authority or beyond the scope of its operating authority.

(2) Enforce financial responsibility requirements under 49 U.S.C. 13906, 31138, 31139, and 49 CFR part 387.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 4. The authority citation for 49 CFR part 390 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.

■ 5. Add the definition of *operating authority* in alphabetical order and revise the definition of *out-of-service order* in 49 CFR 390.5 to read as follows:

§ 390.5 Definitions.

Unless specifically defined elsewhere in this subchapter:

* * * * *

Operating authority means the registration required by 49 U.S.C. 13902,

49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

* * * * *

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

* * * * *

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 6. The authority citation for 49 CFR part 392 continues to read as follows:

Authority: 49 U.S.C. 13902, 31136, 31502, and 49 CFR 1.73.

■ 7. Revise 49 CFR 392.9a to read as follows:

§ 392.9a Operating authority.

(a) *Operating authority required.* A motor vehicle providing transportation requiring operating authority must not be operated—

(1) Without the required operating authority or

(2) Beyond the scope of the operating authority granted.

(b) *Penalties.* Every motor vehicle providing transportation requiring operating authority shall be ordered out of service if it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section. In addition, the motor carrier may be subject to penalties in accordance with 49 U.S.C. 14901.

(c) *Administrative Review.* Upon issuance of the out-of-service order under paragraph (b) of this section, the driver shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554 not later than 10 days after issuance of such order.

Issued on: August 21, 2006.

David H. Hugel,

Deputy Administrator.

[FR Doc. E6–14248 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 71, No. 166
Monday, August 28, 2006

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

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–147–FOR]

Pennsylvania Regulatory Program

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

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

SUMMARY: We are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter, the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposes to revise its program concerning reclamation fees, financial guarantees for bonding, money received from fees, the definition of reclamation, reclamation of bond forfeiture sites, alternate reclamation plans for bond forfeiture sites, bond forfeiture sites where reclamation is unreasonable, unnecessary or impossible, and evaluation of bond sites.

The proposed amendments are intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations and to amend provisions at its own initiative.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing.

DATES: We will accept written comments until 4 p.m., local time, September 27, 2006. If requested, we will hold a public hearing on September 22, 2006. We will accept requests to speak until 4 p.m., local time on September 12, 2006.

ADDRESSES: You may submit comments, identified by ''PA–147–FOR'', by any of the following methods:

- E-mail: *grieger@osmre.gov.* Mail/Hand Delivery: George Rieger, Director, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101; Telephone: (717) 782–4036.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number ''PA–147–FOR'' for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' Section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Docket: You may review copies of the Pennsylvania program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Pittsburgh Field Division Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Pittsburgh Field Division's Harrisburg Office. In addition, you may receive a copy of the submission during regular business hours at the following location:

Joseph P. Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. E-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated May 23, 2006 (Administrative Record Number PA 793.11), Pennsylvania sent OSM a proposed program amendment to revise their program regulations at 25 Pa. Code. The submission includes the following: (1) Revisions to the Pennsylvania program initiated by Pennsylvania at 25 Pa. Code 86.17(e), 86.187(a)(2) and 86.283(c); (2) revisions intended to correct a typographical error in the State program at 25 Pa. Code 86.187(a)(1); (3) revisions intended to satisfy five required amendments codified in the Federal regulations at 30 CFR 938.16(mm)–(qq); and (4) revisions to address a previous OSM disapproval of language at 25 Pa. Code 86.188 (Administrative Record Number PA 793.11). The Pennsylvania Department of Environmental Protection (PADEP or Department) believes that this amendment will make its program consistent with the Federal program and satisfy the required amendments at 30 CFR 938.16(mm)–(qq). The letter described Pennsylvania's intended program changes at 25 Pa. Code 86.17(e), 86.187(a)(1), 86.187(b), 86.187(c) and 86.189(c)(2)–(c)(5), 86.188(b) and (c), 86.190(a), and 86.283(c). The full text of the proposed amendments is available for you to read

at the locations listed above under **ADDRESSES**.

On October 24, 1991, OSM published a final rule requiring the PADEP to amend its program to be no less effective than the Federal program (56 FR 55080–55087). The required amendments concern reclamation of bond forfeiture sites, alternate reclamation plans for bond forfeiture sites, bond forfeiture sites where reclamation is unreasonable, unnecessary or impossible, and evaluation of bond forfeiture sites. In response, PADEP submitted an informal amendment on March 27, 2002, with draft proposed changes intended to satisfy five required amendments codified at 30 CFR 938.16(mm)–(qq). The regulatory process in Pennsylvania was delayed until the State proposed the changes to the Mining and Reclamation Board in 2005.

On March 31, 2005, Pennsylvania sent a summary of the findings for those proposed regulatory changes to OSM (Administrative Record Number PA 793.09). By letter dated April 15, 2005 (Administrative Record Number PA 793.10), we provided Pennsylvania with our comments on their draft amendments.

A summary of the proposed changes are as follows.

25 Pa. Code 86.17(e) Reclamation Fees

Pennsylvania has proposed a revision of this Subsection that would discontinue the collection of the Alternative Bonding System (ABS) $100 per acre reclamation fee. Pennsylvania believes that this fee is no longer needed because the State now uses a Conventional Bonding System (CBS).

Until 2001, Pennsylvania's bonding program was funded under its ABS, which included a central pool of money used for reclamation which was funded in part by a per-acre reclamation fee paid by operators of permitted sites, and supplemented by site bonds posted by those operators for each mine site. Because of growing problems with the solvency of ABS, in 2001, Pennsylvania began converting all active surface coal mining permits issued under the ABS, to a Full Cost Bonding (FCB) program. This FCB requires a permittee to post bonds in an amount sufficient to cover the estimated costs to complete reclamation in the event of bond forfeiture. The State believes that because all of its permittees are now subject to FCB, there is no longer a basis for maintaining the per acre reclamation fee, and is therefore, proposing to delete the per-acre fee requirement.

25 Pa. Code 86.187(a)(2) Use of Monies and 25 Pa. Code 86.188 Definition of Reclamation—Eligible Sites Statement

PADEP proposes to revise Section 86.187(a)(2), to include a requirement that the forfeited bond money be used ''only to reclaim land and restore water supplies affected by the surface mining operation upon which liability was charged on the bond, except as provided in Section 86.190 * * *'' The State also provided clarification of its policy on bond collection in a letter to OSM dated May 23, 2006 (Administrative Record No. PA 793.11). The clarification indicates that ''when a bond is collected, Pennsylvania earmarks the bond, assigning it to the site for which it was forfeited. It can only be used for that site unless it is released, pursuant to Section 86.190.'' Before releasing the funds, PADEP stated that it ''conducts a rigorous review to assure that the bond money is not needed for the reclamation at the site for which the bond was forfeited.''

25 Pa. Code 86.283(c) Procedures (Financial Guarantees Program)

Pennsylvania has proposed to remove the requirement relating to the per acre reclamation fees for remining areas for mine operators approved to participate in the financial guarantees program. The State has proposed this change for consistency with the change proposed in Section 86.17(e); PADEP believes that the removal of the $100 per acre reclamation fee, as discussed in the previous Section of this proposed amendment, will make this provision inapplicable.

25 Pa. Code 86.187(a)(1) Money Received From Fees

Pennsylvania has proposed a revision of this Subsection to correct a typographical error. PADEP is deleting the reference to Section 86.17(b) and replacing that correction with a reference to Section 86.17(e).

30 CFR 938.16(mm), 25 Pa. Code 86.187(b) Reclamation of Bond Forfeiture Sites

Required Amendment: Pennsylvania has proposed revisions of these Subsections to address a required amendment codified in the Federal regulations at 30 CFR 938.16(mm) (56 FR 55080–55087). The required program amendment requires that Pennsylvania delete 25 Pa. Code 86.187(b)(1), or otherwise amend its program, by requiring that alternative reclamation plans comply with all applicable performance standards in accordance with 86.189(c)(2), (c)(3) or (c)(4), whichever is appropriate to be consistent with 30 CFR 800.50.

The State is proposing to revise Section 86.187(b) to make clear that an alternative reclamation plan must meet applicable performance standards identified in Section 86.189(c) and to assure that the Department will notify and consult with the landowner prior to expending funds for reclamation of a bond forfeiture site in all cases and not just when an alternative reclamation plan is being considered.

30 CFR 938.16(nn)–(oo), 25 Pa. Code 86.187(c) and 86.189(c)(2)–(c)(5) Alternate Reclamation Plans for Bond Forfeiture Sites

Required Amendment: Pennsylvania has proposed revisions of these Subsections to address required amendments published in the Federal regulations at 30 CFR 938.16(nn) and (oo) (56 FR 55080–55087). The required amendment requires that Pennsylvania amend 25 Pa. Code 86.187(c) and Section 18(c) of the Pennsylvania Surface Mining and Conservation Act or otherwise amend its program to be no less effective than the Federal regulations at 30 CFR 816.133(a) and 817.133(a). The required amendments require Pennsylvania to require that alternative postmining land use determinations for sites with forfeited bonds under the Federal interim program or under Pennsylvania's permanent program be made to ensure that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

The State is proposing to revise Subsection 86.189(c)(5), to delete the language requiring reclamation plans for bond forfeiture sites allowing the sites to be made suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation. Subsection 86.187(c) is proposed to be revised further by adding language requiring the alternate reclamation plans to provide for restoration of the disturbed land to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses. Paragraphs (c)(2)–(4) of Section 86.189 are proposed to be revised to delete the reference to paragraph (5). The Federal regulations at 30 CFR 816.133(a) and 817.133(a) require that all disturbed areas be restored to uses they were capable of supporting before any mining, or to a higher or better use. Paragraph (c)(5) is being deleted to render Section 86.189 consistent with the Federal provisions.

Both 30 CFR 938.16(nn) and (oo) require that Pennsylvania amend 25 Pa. Code 86.187(b)(1) and Section 18(c) of the Pennsylvania Surface Mining and Conservation Act or otherwise amend its program to be no less effective than 30 CFR 816.133(a) and 817.133(a) by requiring that alternative postmining land use determinations for sites with forfeited bonds under the Federal interim program or under Pennsylvania's permanent program be made to ensure that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

30 CFR 938.16(pp)–(qq), 25 Pa. Code 86.190(a) Bond Forfeiture Sites Where Reclamation Is Unreasonable, Unnecessary Or Impossible

Required Amendment: Pennsylvania has proposed revisions of these Subsections to address required program amendments codified in the Federal regulations at 30 CFR 938.16(pp) and (qq) (56 FR 55080–55087), which require that the State delete words ''but are not limited to'' from the introductory paragraph of Section 86.190(a), as well as the entire Subsection (a)(3) to be consistent with 30 CFR 800.50.

Pennsylvania proposes to delete Subsection (a)(3) which allows the landowner of a bond forfeiture site to prevent reclamation. The State is also proposing to revise Subsection (a) to delete language that allows for additional reclamation of bond forfeiture sites for reasons beyond those specifically listed in Subsection (a).

30 CFR 938.15, 25 Pa Code 86.188(b) and (c) Evaluation of Bond Forfeiture Sites

Required Amendment: Pennsylvania has proposed revisions of these Subsections to address an OSM disapproval of Section 86.188 to the extent that Subsections (b) and (c) would allow bond forfeiture funds posted for and needed to complete reclamation of a specific site be used for reclamation of other sites. In that disapproval, OSM stated that the provision would render the Pennsylvania program less effective than the Federal regulations at 30 CFR 800.50(b)(2). (See 56 FR 55084, October 24, 1991).

In this submission, the State is proposing to revise Subsections 86.188(b) and (c) to delete the language in paragraphs (b)(5) and (c)(3). The PADEP stated in its May 23, 2006, letter to OSM that this proposed revision will make it clear that bond forfeiture funds posted for and still needed to complete reclamation of the specific site for which the bonds were forfeited will not be used for reclamation of other sites until reclamation of the forfeited site has been completed. The PADEP also stated that the Department fully intends to maintain adequate bonding so that funds are available for the completion of reclamation should the bonds be forfeited (Administrative Record No. PA 793.11).

III. Public Comment Procedures

In accordance with 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendments, they will become part of the Pennsylvania program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Pittsburgh Field Division identified above may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: PA–147–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Pittsburgh Field Division's Harrisburg Office at (717) 782–4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time on September 12, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that, to the extent

allowable by law, this rule meets the applicable standards of Subsections (a) and (b) of that Section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 2006.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. E6–14229 Filed 8–25–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter 1

Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the fifth meeting of the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area (GGNRA).

DATES: The Committee will meet on Thursday, September 21, 2006 in the Officer's Club, upper Fort Mason. The meeting will begin at 3 p.m., and is open to the public.

Although the Committee may modify its agenda during the course of its work, the proposed agenda for this meeting is as follows: agenda review; approval of July 31, 2006 meeting summary; update on activities since July meeting; discuss Technical Subcommittee report; discuss potential selection/evaluation criteria; next steps; public comment; adjourn.

The Committee provides for a public comment period during the meeting; written comments may also be sent to: Superintendent, GGNRA, Ft. Mason, Bldg. 201, San Francisco, CA 94123, Attn: Negotiated Rulemaking.

To request a sign language interpreter, please call the park TDD line (415) 556–2766, at least a week in advance of the meeting. Please note that federal regulations prohibit pets in public buildings, with the exception of service animals.

FOR FURTHER INFORMATION CONTACT: Go to the *http://www.parkplanning.nps.gov/goga* and select *Negotiated Rulemaking for Dog Management at GGNRA* or call the project information line at 415–561–4728.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570) to consider developing a special regulation for dogwalking at GGNRA.

Dated: August 15, 2006.

Bernard C. Fagan,

Acting Chief, Office of Policy.

[FR Doc. E6–14205 Filed 8–25–06; 8:45 am]

BILLING CODE 4312–FN–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AM25

Vocational Rehabilitation and Employment Program—Initial Evaluations

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend regulations of the Department of Veterans Affairs (VA) concerning initial evaluations of individuals who apply for vocational rehabilitation and employment benefits. These proposed regulations are intended to reflect changes in law, VA's interpretation of applicable law and its determinations of procedures appropriate for use in the initial evaluation, to improve readability, and to make other nonsubstantive changes.

DATES: Comments must be received on or before October 27, 2006.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail through *http://www.Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AM25.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Catherine Kruger, Senior Policy Analyst, (202) 273–7344, or Mark Hawkins, Vocational Rehabilitation Counselor, (202) 273–6923, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: We propose to amend VA's regulations in 38 CFR Part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31, concerning initial evaluations of individuals who apply for vocational rehabilitation and employment benefits. These proposed regulations are intended to reflect changes in law regarding initial evaluations and VA's interpretation of applicable law and its determinations of procedures appropriate for use in the initial evaluation, and to improve readability. We also propose to make a nonsubstantive conforming change in 38 CFR Part 21, Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects.

In *Davenport* v. *Brown*, 7 Vet. App. 476 (1995), the United States Court of Appeals for Veterans Claims (then the United States Court of Veterans Appeals) set aside VA regulations that require a veteran's service-connected disability to cause the employment handicap or serious employment handicap that establishes the veteran's entitlement to vocational rehabilitation and employment benefits. The court held that the requirement of 38 CFR 21.51(c) that a veteran's service-connected disability must ''materially contribute'' to the veteran's employment handicap is inconsistent with 38 U.S.C. 3102. Thus, the court set aside § 21.51(c)(2), (e), (f)(1)(ii), and (f)(2) to the extent that they require a causal nexus between a veteran's service-connected disability and that veteran's employment handicap. The court found unlawful the noted provisions of § 21.51(c)(2), which require that, while a veteran's service-connected disability need not be the sole or primary cause of an employment handicap or serious employment handicap, it must ''materially contribute'' to the handicap.

On October 9, 1996, Congress enacted the Veterans' Benefits Improvements Act of 1996 (Pub. L. 104–275), which redefined the terms ''employment handicap'' and ''serious employment handicap'' to include a requirement that an individual's vocational impairment be one ''resulting in substantial part from'' one or more service-connected disabilities, with respect to applications received on or after the date of enactment.

To reflect the dates of applicability of these changes in legal requirements, the proposed rule would provide that for determinations made on any applications filed on or after March 30, 1995, the date of the *Davenport* v. *Brown* decision, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall vocational impairment or significant vocational impairment.

For clarification, the table below summarizes the standards used to determine entitlement to vocational rehabilitation and employment benefits and services for applicants during these three distinct time periods. These concern entitlement determinations made for:

(1) Claims filed prior to the *Davenport* decision;

(2) Claims filed after the *Davenport* decision but prior to enactment of Public Law 104–275; and

(3) Claims filed following enactment of Public Law 104–275.

Time period	Standard	Explanation
Prior to *Davenport* decision (claims filed from April 1, 1981 (Public Law 96–466), to March 29, 1995).	The individual's service-connected disability(ies) must materially contribute to the impairment of employment. The serious employment handicap determinations are based on level of service-connected disability(ies) and other criteria as provided in 38 CFR 21.52.	A person found to have an employment handicap who is rated 50 percent or more service-connected is automatically found to have a serious employment handicap. Those rated less than 50 percent service-connected have to meet certain specific percent of service-connected disability(ies) and other criteria to be determined to have a serious employment handicap.
After *Davenport* decision, but prior to Public Law 104–275 (claims filed from March 30, 1995, to October 8, 1996).	The individual's service-connected disability(ies) need not contribute to the impairment which results in the employment handicap. The issues for determination are the existence of vocational impairment and the extent or significance of the impairment.	The requirements that service-connected disability(ies) contribute to the employment handicap and serious employment handicap are removed, as are the 50 percent, 30–40 percent, and 10–20 percent requirements for finding a serious employment handicap.
After Public Law 104–275 (claims filed on or after October 9, 1996).	The individual's service-connected disability(ies) must contribute ''in substantial part'' to the impairment of employability.	This standard was provided under Public Law 104–275.

In our view, the phrase ''resulting in substantial part'' in the statutory definitions of ''employment handicap'' and ''serious employment handicap'' has the same meaning that ''material contribution'' has in current § 21.51(c)(2). We are proposing to amend the regulations to reflect the statutory language. We propose to revise §§ 21.50 through 21.52 in light of these changes in law, and for the additional reasons that we discuss in this preamble.

We propose to revise current § 21.50 to make clear what constitutes an initial evaluation for vocational rehabilitation and employment benefits, who is entitled to an initial evaluation, who conducts it, what questions it seeks to answer, and how a veteran's service-connected disability(ies) must contribute to vocational impairment. The initial evaluation is central to employment handicap and serious employment handicap determinations under § 21.51 and § 21.52, respectively.

We propose to further revise § 21.50 by consolidating and clarifying the factors VA develops and assesses in determining whether an individual has an employment handicap; if so, whether the individual has a serious employment handicap; and, lastly, whether the achievement of a vocational goal by the individual is currently reasonably feasible. Proposed § 21.50(c) would set forth various factors for development and assessment as part of the initial evaluation, with minor modifications to existing provisions to improve readability.

We propose to remove the provisions of current § 21.50(d)(1) as unnecessary and obsolete, because that paragraph concerns determinations made prior to the initial evaluation and the determinations it refers to are no longer made by staff outside the Vocational Rehabilitation and Employment Division.

Current § 21.50(d)(2) identifies who, within VA, is responsible for making initial evaluation determinations. We propose to remove these provisions from § 21.50 and to make appropriate references in § 21.51 and § 21.52, respectively, as to who is responsible for making each determination.

We propose to revise § 21.51 to reflect criteria that VA develops and assesses in determining the existence of an employment handicap. Certain factors for determining that the service-connected disability(ies) ''materially contribute'' to the impairment to employment set forth in current § 21.51(e) would be set forth in proposed § 21.51 for determining that the service-connected disability(ies) contribute ''in substantial part'' to the impairment to employment, as discussed above.

Current § 21.52 requires that the determination of serious employment handicap directly relate to differing levels of service-connected disability ratings. Current § 21.52 also requires a finding of serious employment handicap if an individual is found to have an employment handicap along with a neuropsychiatric service-connected disability rated at 30 percent or more or any other service-connected disability rated at 50 percent or more.

Public Law 104–275 redefined the term ''serious employment handicap'' to make clear that the impairment to employability must meet both of the following conditions:

- It must be a significant impairment of an individual's ability to prepare for, obtain or retain employment consistent with abilities, aptitudes, and interests.
- It must result in substantial part from service-connected disabilities rated at 10 percent or more.

We propose to revise § 21.52 to reflect the factors VA develops and assesses in making the determination of ''significant impairment.'' These factors differ, in part, from the factors used to develop and assess the lower level of ''impairment'' necessary for employment handicap in § 21.51, to ensure that an individual with a significant vocational impairment receives the rehabilitation services he or she needs.

Lastly, we propose to make a nonsubstantive change in subpart M to § 21.8032(a) by removing a reference to § 21.50(b)(5) and adding, in its place, a reference to § 21.50(b)(3).

Paperwork Reduction Act of 1995

This proposed rule contains no new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The Office of Management and Budget has approved collection of information provisions that are related to the provisions of proposed 38 CFR 21.50 under OMB control number 2900–0009 (entitled ''Disabled Veterans Application for Vocational Rehabilitation and 38 CFR 21.30'') and has approved collection of information provisions that are related to the provisions of proposed §§ 21.50 through 21.52 under OMB control number 2900–0092 (entitled ''Counseling Record—Personal Information'').

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would

have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it raises novel policy issues.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for programs that would be affected by this proposed rule are 64.116, Vocational Rehabilitation for Disabled Veterans, and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 8, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 21 (subparts A and M) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. Revise the authority citation for part 21, subpart A to read as follows:

Authority: 38 U.S.C. 501(a), ch. 31, and as noted in specific sections.

2. Revise § 21.50 to read as follows:

§ 21.50 Initial evaluation.

(a) *Entitlement to an initial evaluation.* VA will provide an initial evaluation to an individual who:

(1) Applies for benefits under 38 U.S.C. chapter 31; and

(2) Meets the service-connected disability requirements of § 21.40.

(Authority: 38 U.S.C. 3101(9), 3106)

(b) *Determinations to be made by VA during the initial evaluation.* A counseling psychologist (CP) or vocational rehabilitation counselor (VRC) will determine:

(1) Whether the individual has an employment handicap as determined in accordance with this section and § 21.51;

(2) Whether an individual with an employment handicap has a serious employment handicap as determined in accordance with this section and § 21.52; and

(3) Whether the achievement of a vocational goal is currently reasonably feasible as described in § 21.53.

(Authority: 38 U.S.C. 3102, 3103)

(c) *Factors for assessment as part of the initial evaluation.* In making the determinations under paragraph (b) of this section, the following factors will be developed and assessed:

(1) The handicapping effects of the individual's service-connected and nonservice-connected disability(ies) on employability and on independence in daily living;

(2) The individual's physical and mental capabilities that may affect employability and ability to function independently in daily living activities in family and community;

(3) The impact of the individual's identified vocational impairments on the individual's ability to prepare for, obtain, and keep suitable employment;

(4) The individual's abilities, aptitudes, and interests;

(5) The individual's personal history and current circumstances (including educational and training achievements, employment record, developmental and related vocationally significant factors, and family and community adjustment); and

(6) Other factors that may affect the individual's employability.

(Authority: 38 U.S.C. 3106(a))

(d) *Need for cooperation in evaluation.* The individual's cooperation is essential during the initial evaluation. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will discontinue the initial evaluation. A redetermination of entitlement as described in § 21.58 will be made in the case of an individual whose program has been discontinued due to failure to cooperate.

(Authority: 38 U.S.C. 3111)

3. Revise § 21.51 to read as follows:

§ 21.51 Determining employment handicap.

For the purposes of § 21.50, an employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(a) *Vocational impairment.* The individual has a vocational impairment; that is, an impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests.

(b) *Effects of impairment not overcome.* The individual has not overcome the effects of the individual's impairment of employability through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This situation includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(c) *Contribution of the service-connected disability(ies) to the individual's overall vocational impairment.* (1) Except as provided in paragraph (c)(3) of this section, the service-connected disability(ies) must contribute in substantial part to the

individual's overall vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall vocational impairment, but need not be the sole or primary cause of the employment handicap.

(2) When determining the individual's overall vocational impairment, the CP or VRC will consider the factors identified in § 21.50(c).

(3) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall vocational impairment.

(Authority: 38 U.S.C. 3101, 3102)

4. Revise § 21.52 to read as follows:

§ 21.52 Determining serious employment handicap.

(a) *Requirements for determining serious employment handicap.* For each individual who is found to have an employment handicap, a CP or VRC must make a separate determination of whether the individual has a serious employment handicap. For the purposes of an initial evaluation under § 21.50, a serious employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(1) *Significant vocational impairment.* The individual has a significant vocational impairment; that is, a significant impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests, considering the factors described in § 21.50 and paragraph (b) of this section.

(2) *Effects of significant impairment not overcome.* The individual has not overcome the effects of the significant vocational impairment through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(3) *Contribution of the service-connected disability(ies) to the individual's overall significant vocational impairment.* (i) Except as provided in paragraph (a)(3)(ii) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall significant vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall significant vocational impairment, but need not be the sole or primary cause of the serious employment handicap.

(Authority: 38 U.S.C. 3101)

(ii) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall significant vocational impairment.

(b) *Factors for assessment during the initial evaluation, when determining whether a significant vocational impairment exists.* The combination of all restrictions and their effects on the individual define the extent of the vocational impairment and its significance. When determining whether the individual has a significant vocational impairment, VA will develop and assess the following factors and their effects:

(1) Number of disabling conditions;

(2) Severity of disabling condition(s);

(3) Existence of neuropsychiatric condition(s);

(4) Adequacy of education or training for suitable employment;

(5) Number, length, and frequency of periods of unemployment or underemployment;

(6) A pattern of reliance on government support programs, such as welfare, service-connected disability compensation, nonservice-connected disability pension, worker's compensation, or Social Security disability;

(7) Extent and complexity of services and assistance the individual needs to achieve rehabilitation;

(8) Negative attitudes toward individuals with disabilities and other evidence of restrictions on suitable employment, such as labor market conditions; discrimination based on age, race, gender, disability or other factors; alcoholism or other substance abuse; and

(9) Other factors that relate to preparing for, obtaining, or keeping employment consistent with the individual's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3102, 3106)

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

5. Revise the authority citation for part 21, subpart M to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

§ 21.8032 [Amended]

6. In § 21.8032, amend paragraph (a) by removing ''§§ 21.50(b)(5)'' and adding, in its place, ''§§ 21.50(b)(3)''.

[FR Doc. E6–14079 Filed 8–25–06; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0590; FRL–8213–4]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Requests for Rescission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing, under the Clean Air Act, approval of revisions to the applicable state implementation plan for the State of Nevada and disapproval of other revisions. These revisions involve certain regulations and statutes for which the State of Nevada is requesting rescission. EPA is also proposing approval of certain updated statutes submitted by the State of Nevada as replacements for outdated statutes in the applicable plan. The approval proposed herein is contingent upon receipt of certain public notice and hearing documentation from the State of Nevada. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to rescind unnecessary provisions from the applicable plan, retain necessary provisions, and approve replacement provisions for certain statutes for which rescissions are proposed for disapproval. EPA is taking comments on this proposal and plans to follow with a final action.

DATES: Any comments must arrive by *September 27, 2006*.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0590, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov*.

3. Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Julie Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov*.

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

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I. The State's Submittal

A. Which rules and statutes did the state submit for rescission?

The State of Nevada's Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP) submitted a large revision to the applicable SIP on January 12, 2006. This 2006 SIP revision submittal supersedes the regulatory portion of the earlier SIP revision submittal dated February 16, 2005.[1] On March 26, 2006, we found that the Nevada SIP submittal dated January 12, 2006 satisfied the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The primary purpose of this SIP revision is to clarify and harmonize the provisions approved by EPA into the applicable SIP with the current provisions adopted by the State. Because this revision incorporates so many changes from the 1970s and 1980s vintage SIP regulations, EPA has decided to review and act on the submittal in a series of separate actions. The first such action was proposed in the **Federal Register** on September 13, 2005 (70 FR 53975) and finalized on March 27, 2006 (71 FR 15040). The second such action was proposed in the **Federal Register** on June 9, 2006 (71 FR 33413).

In today's action, we are taking another step in the process of acting on the State's January 12, 2006 SIP revision submittal by proposing action on the State's request for rescission of nearly 200 rules and statutes currently approved in the applicable SIP.[2] The remaining portions of the submittal will be acted on in future **Federal Register** actions.

B. What is the regulatory history of the Nevada SIP?

Pursuant to the Clean Air Amendments of 1970, the Governor of Nevada submitted the original Nevada SIP to EPA in January 1972. EPA approved certain portions of the original SIP and disapproved other portions under CAA section 110(a). See 37 FR 10842 (May 31, 1972). For some of the disapproved portions of the original SIP, EPA promulgated substitute provisions under CAA section 110(c).[3] This original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980's, Nevada reorganized and re-codified its air quality rules into sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B (''Air Pollution'') of title 40 (''Public Health and Safety'') of the NRS.

Nevada adopted and submitted many revisions to the original set of regulations and statutes in the SIP, some of which EPA approved on February 6, 1975 at 40 FR 5508; on March 26, 1975 at 40 FR 13306; on January 9, 1978 at 43 FR 1341; on January 24, 1978 at 43 FR 3278; on August 21, 1978 at 43 FR 36932; on July 10, 1980 at 45 FR 46384; on April 14, 1981 at 46 FR 21758; on August 27, 1981 at 46 FR 43141; on March 8, 1982 at 47 FR 9833; on April 13, 1982 at 47 FR 15790; on June 18, 1982 at 47 FR 26386; on June 23, 1982 at 47 FR 27070; on March 27, 1984 at 49 FR 11626. Since 1984, EPA has approved very few revisions to Nevada's applicable SIP despite numerous changes that have been adopted by the State Environmental Commission. As a result, the version of the rules enforceable by NDEP is often quite different from the SIP version enforceable by EPA.

C. What is the purpose of this proposed rule?

The purpose of this proposal is to present EPA's conclusions with respect to the State's request contained in NDEP's January 12, 2006 SIP revision submittal for rescission of nearly 200 rules and statutes in the applicable SIP. We provide our reasoning in general terms below but provide a more detailed analysis for each of the relevant rules and statutes in the technical support document (TSD) that has been prepared for this proposed rulemaking.

[1] The February 16, 2005 SIP submittal also includes documentation of public notice and hearing for new or amended rules. The January 12, 2006 SIP submittal was not a complete re-submittal of the earlier submittal in that it did not include this documentation.

[2] Of the nearly 200 rules and statutes for which NDEP requests rescission, we are proposing action today on all but 15, including 12 that we are deferring to separate rulemakings and 3 that we plan to take no action on. The rules and statutes that we are deferring include rule 25 of general order number 3 of the Nevada Public Service Commission; article 1.60—Effective date; article 1.72—Existing facility; NAC 445.535—Kilogram-calorie; NAC 445.655 Abbreviations; article 13.1.3(3) [related to minor source BACT]; article 16.3.3.1—Opacity from kilns; NAC 445.667—Excess emissions: scheduled maintenance, testing, malfunctions; NAC 445.694—Emission discharge information; NAC 445.706(2)—Application date; payment of fees; NAC 445.715—Operation permits: revocation; and NRS 704.820 to 704.900—Construction of utility facilities: utility environmental protection act. We do not plan to take action on article 1.207—vehicle trip, article 14 (14.1 to 14.5.1.4)—supplementary control system (submitted June 14, 1974), and article 14.1—supplementary control system (submitted November 17, 1981) because they are not in the applicable SIP.

[3] Provisions that EPA promulgates under CAA section 110(c) in substitution of disapproved State provisions are referred to as Federal Implementation Plans (FIPs).

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules and statutes requested for rescission?

Under CAA section 110(k)(2), EPA is obligated to take action on submittals by States of SIPs and SIP revisions. CAA section 110(k)(3) authorizes EPA to approve or disapprove, in whole or in severable part, such submittals. EPA has reviewed the regulations and statutes submitted on January 12, 2006 by NDEP for rescission for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a)(2) and 40 CFR part 51 and also for compliance with CAA requirements for SIP revisions in CAA sections 110(l) and 193.[4] We have also applied the principles set forth in a policy memorandum from Johnnie L. Pearson, Chief Regional Activities Section, U.S. EPA Office of Air Quality Planning and Standards, dated February 12, 1990, and entitled, ''Review of State Regulation Recodifications.'' As described below, EPA is proposing approval and disapproval of portions of the State's rescission request and approval of certain replacement provisions.

B. Do the rescissions meet the evaluation criteria?

We are proposing to approve most of the rules for which NDEP has requested rescission (see Table 1), but are proposing disapproval for rescission requests related to certain rules and statutes (see Table 2), and are proposing to approve submitted replacement provisions (see Table 3) for certain provisions for which we believe the State's rescission request should be disapproved.

Table 1 lists all of the SIP (or FIP) provisions for which the State's rescission request is proposed for approval along with the related submittal and approval dates. The vast majority of the provisions in table 1 represent defined terms that, although approved by EPA and therefore made part of the applicable SIP, are not relied upon by any rule or statute in the existing applicable SIP nor in any rule or statute in the submitted SIP revision and thus are unnecessary and appropriate for rescission. We are also proposing approval of the rescission request with respect to certain other rules and statutes (and one FIP) that we have found to be unnecessary because they are not needed generally in a SIP under CAA section 110(a)(2) or under 40 CFR part 51 or because there are other federally enforceable provisions that would provide equivalent or greater control. Neither NDEP's February 16, 2005 nor January 12, 2006 SIP submittal contained documentation of notice and public hearing for repeal or rescission of these provisions as required under CAA section 110(l) for all SIP revisions. Thus, we are making our proposed approval of these rescissions contingent upon receipt of this documentation from NDEP.

The TSD provides more details concerning our proposal and rationale with respect to each of the items listed in table 1.

TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR APPROVAL

SIP (or FIP) provision	Title	Submittal date	Approval date
NAC 445.440	Aluminum equivalent	10/26/82	03/27/84
NAC 445.442	Anode bake plant	10/26/82	03/27/84
NAC 445.443	Asphalt concrete plant	10/26/82	03/27/84
NAC 445.446	Barite dryer	10/26/82	03/27/84
NAC 445.451	Basic oxygen process furnace	10/26/82	03/27/84
NAC 445.453	Bituminous coal	10/26/82	03/27/84
NAC 445.454	Blast furnace	10/26/82	03/27/84
NAC 445.455	Blowing tap	10/26/82	03/27/84
NAC 445.456	Brass or bronze	10/26/82	03/27/84
NAC 445.459	Calcium carbide	10/26/82	03/27/84
NAC 445.460	Calcium silicon	10/26/82	03/27/84
NAC 445.461	Capture system	10/26/82	03/27/84
NAC 445.462	Charge chrome	10/26/82	03/27/84
NAC 445.463	Charge period	10/26/82	03/27/84
NAC 445.465	Coal preparation plant	10/26/82	03/27/84
NAC 445.466	Coal processing and conveying equipment	10/26/82	03/27/84
NAC 445.467	Coal refuse	10/26/82	03/27/84
NAC 445.468	Coal storage system	10/26/82	03/27/84
NAC 445.469	Coke burn-off	10/26/82	03/27/84
NAC 445.474	Commercial fuel oil	10/26/82	03/27/84
NAC 445.475	Complex source	10/26/82	03/27/84
NAC 445.476	Condensate	10/26/82	03/27/84
NAC 445.477	Confidential information	10/26/82	03/27/84
NAC 445.481	Control device	10/26/82	03/27/84
NAC 445.483	Copper converter	10/26/82	03/27/84
NAC 445.484	Custody transfer	10/26/82	03/27/84
NAC 445.485	Cyclonic flow	10/26/82	03/27/84
NAC 445.487	Diesel fuel	10/26/82	03/27/84
NAC 445.489	Direct shell evacuation system	10/26/82	03/27/84
NAC 445.490	Drilling and production facility	10/26/82	03/27/84
NAC 445.491	Dross reverberatory furnace	10/26/82	03/27/84
NAC 445.493	Dust handling equipment	10/26/82	03/27/84
NAC 445.494	Dusts	10/26/82	03/27/84
NAC 445.495	Electric arc furnace	10/26/82	03/27/84
NAC 445.496	Electric furnace	10/26/82	03/27/84
NAC 445.497	Electric smelting furnace	10/26/82	03/27/84

[4] CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 193 prohibits modifications in control requirements that were in effect before the CAA of 1990 in any nonattainment area unless the modification ensures equivalent or greater emission reductions of the nonattainment pollutant.

TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR APPROVAL—Continued

SIP (or FIP) provision	Title	Submittal date	Approval date
NAC 445.498	Electric submerged arc furnace	10/26/82	03/27/84
NAC 445.502	Equivalent P_2O_5 feed	10/26/82	03/27/84
NAC 445.503	Equivalent P_2O_5 stored	10/26/82	03/27/84
NAC 445.509	Ferrochrome silicon	10/26/82	03/27/84
NAC 445.510	Ferromanganese silicon	10/26/82	03/27/84
NAC 445.511	Ferrosilicon	10/26/82	03/27/84
NAC 445.514	Fossil fuel-fired steam generating unit	10/26/82	03/27/84
NAC 445.515	Fresh granular triple superphosphate	10/26/82	03/27/84
NAC 445.518	Fuel gas	10/26/82	03/27/84
NAC 445.519	Fuel gas combustion device	10/26/82	03/27/84
NAC 445.522	Furnace charge	10/26/82	03/27/84
NAC 445.523	Furnace cycle	10/26/82	03/27/84
NAC 445.524	Furnace power input	10/26/82	03/27/84
NAC 445.526	Granular diammonium phosphate plant	10/26/82	03/27/84
NAC 445.527	Granular triple super-phosphate storage facility	10/26/82	03/27/84
NAC 445.528	Heat time	10/26/82	03/27/84
NAC 445.529	High-carbon ferrochrome	10/26/82	03/27/84
NAC 445.530	High level of volatile impurities	10/26/82	03/27/84
NAC 445.531	High terrain	10/26/82	03/27/84
NAC 445.532	Hydrocarbon	10/26/82	03/27/84
NAC 445.534	Isokinetic sampling	10/26/82	03/27/84
NAC 445.539	Low terrain	10/26/82	03/27/84
NAC 445.543	Meltdown and refining	10/26/82	03/27/84
NAC 445.544	Meltdown and refining period	10/26/82	03/27/84
NAC 445.546	Molybdenum	10/26/82	03/27/84
NAC 445.547	Molybdenum processing plant	10/26/82	03/27/84
NAC 445.551	Nitric acid production unit	10/26/82	03/27/84
NAC 445.554	Nuisance	10/26/82	03/27/84
NAC 445.566	Petroleum liquids	10/26/82	03/27/84
NAC 445.567	Petroleum refinery	10/26/82	03/27/84
NAC 445.568	Pneumatic coal-cleaning equipment	10/26/82	03/27/84
NAC 445.572	Potroom	10/26/82	03/27/84
NAC 445.573	Potroom group	10/26/82	03/27/84
NAC 445.576	Primary aluminum reduction plant	10/26/82	03/27/84
NAC 445.577	Primary control system	10/26/82	03/27/84
NAC 445.578	Primary copper smelter	10/26/82	03/27/84
NAC 445.579	Primary lead smelter	10/26/82	03/27/84
NAC 445.580	Primary zinc smelter	10/26/82	03/27/84
NAC 445.582	Process gas	10/26/82	03/27/84
NAC 445.583	Process upset gas	10/26/82	03/27/84
NAC 445.586	Product change	10/26/82	03/27/84
NAC 445.587	Proportional sampling	10/26/82	03/27/84
NAC 445.591	Refinery process unit	10/26/82	03/27/84
NAC 445.593	Reid vapor pressure	10/26/82	03/27/84
NAC 445.594	Reverberatory furnace	10/26/82	03/27/84
NAC 445.595	Reverberatory smelting furnace	10/26/82	03/27/84
NAC 445.596	Ringelmann chart	10/26/82	03/27/84
NAC 445.598	Roof monitor	10/26/82	03/27/84
NAC 445.600	Run-of-pile triple superphosphate	10/26/82	03/27/84
NAC 445.602	Secondary control system	10/26/82	03/27/84
NAC 445.603	Secondary lead smelter	10/26/82	03/27/84
NAC 445.604	Shop	10/26/82	03/27/84
NAC 445.605	Shop opacity	10/26/82	03/27/84
NAC 445.608	Silicomanganese	10/26/82	03/27/84
NAC 445.609	Silicomanganese zirconium	10/26/82	03/27/84
NAC 445.610	Silicon metal	10/26/82	03/27/84
NAC 445.611	Silvery iron	10/26/82	03/27/84
NAC 445.614	Sinter bed	10/26/82	03/27/84
NAC 445.615	Sintering machine	10/26/82	03/27/84
NAC 445.616	Sintering machine discharge end	10/26/82	03/27/84
NAC 445.617	Six-minute period	10/26/82	03/27/84
NAC 445.619	Smelting	10/26/82	03/27/84
NAC 445.620	Smelting furnace	10/26/82	03/27/84
NAC 445.626	Standard ferromanganese	10/26/82	03/27/84
NAC 445.629	Steel production cycle	10/26/82	03/27/84
NAC 445.631	Storage vessel	10/26/82	03/27/84
NAC 445.632	Structure, building, facility or installation	10/26/82	03/27/84
NAC 445.634	Sulfuric acid plant	10/26/82	03/27/84
NAC 445.635	Sulfuric acid production unit	10/26/82	03/27/84
NAC 445.636	Superphosphoric acid plant	10/26/82	03/27/84
NAC 445.637	Tapping	10/26/82	03/27/84
NAC 445.638	Tapping period	10/26/82	03/27/84

TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR APPROVAL—Continued

SIP (or FIP) provision	Title	Submittal date	Approval date
NAC 445.639	Tapping station	10/26/82	03/27/84
NAC 445.640	Thermal dryer	10/26/82	03/27/84
NAC 445.641	Thermit process	10/26/82	03/27/84
NAC 445.642	Total fluorides	10/26/82	03/27/84
NAC 445.643	Total smelter charge	10/26/82	03/27/84
NAC 445.644	Transfer and loading system	10/26/82	03/27/84
NAC 445.645	Triple superphosphate plant	10/26/82	03/27/84
NAC 445.646	True vapor pressure	10/26/82	03/27/84
NAC 445.648	Vapor recovery system	10/26/82	03/27/84
NAC 445.652	Weak nitric acid	10/26/82	03/27/84
NAC 445.654	Wet-process phosphoric acid plant	10/26/82	03/27/84
Article 2.7.4	Confidential Information	12/10/76	08/21/78
Articles 2.10.1 and 2.10.1.1	Appeal procedures	01/28/72	05/31/72
Articles 2.10.1.2, 2.10.2 and 2.10.3	Appeal procedures	10/31/75	01/09/78
Article 3.3.4	Stop orders	01/28/72	05/31/72
Article 4.3.4	Emissions from any mobile equipment	01/28/72	05/31/72
Article 7.2.5	Basic Refractory	11/05/80	06/18/82
Article 7.2.9	Sierra Chemical Co	11/05/80	06/18/82
Article 8.1	Primary Non-Ferrous Smelters	06/14/74	02/06/75
Articles 8.1.1, 8.1.2, & 8.1.4	Primary Non-Ferrous Smelters	10/31/75	01/09/78
Article 8.3.4	Basic	11/05/80	06/18/82
Article 16.3.1.2	Regulations controlling cement (Applying to Portland cement plants)	12/29/78	06/18/82
Articles 16.3.2, 16.3.2.1, & 16.3.2.2	Standard of particulate matter for clinker cooler (Applying to Portland cement plants).	12/29/78	06/18/82
Article 16.15	Primary lead smelters	12/29/78	06/18/82
Articles 16.15.1 to 16.15.1.2	Standard for Particulate Matter (Applying to primary lead smelters)	12/29/78	06/18/82
Articles 16.15.2 to 16.15.2.2	Standard for Opacity (Applying to primary lead smelters)	12/29/78	06/18/82
Articles 16.15.3 to 16.15.3.2	Standard for Sulfur (Applying to primary lead smelters)	12/29/78	06/18/82
Article 16.15.4	Monitoring Operations (Applying to primary lead smelters)	12/29/78	06/18/82
NAC 445.662	Confidential Information	10/26/82	03/27/84
NAC 445.695	Schedules for compliance	10/26/82	03/27/84
NAC 445.698	Appeal of director's decision: Application forms	10/26/82	03/27/84
NAC 445.700	Violations: Manner of paying fines	10/26/82	03/27/84
NAC 445.723	Existing copper smelters	10/26/82	03/27/84
NAC 445.815	Molybdenum processing plants	09/14/83	03/27/84
NAC 445.816(2) (a), (b), (c), (e), (f), (g), (h), and (i).	Processing Plants for Precious Metals	09/14/83	03/27/84
NAC 445.844	Odors	10/26/82	03/27/84
NRS 445.401	Declaration of public policy	12/29/78	07/10/80
Section 13(15) and (19) of Senate Bill No. 275.	[State commission of environmental protection—review recommendations of hearing board and delegation].	01/28/72	05/31/72
NRS 445.466	Commission regulations: Notice and hearing	12/29/78	07/10/80
NRS 445.497	Notice of regulatory action: Requirement; method; contents of notice	12/29/78	07/10/80
40 CFR 52.1475(c), (d), and (e)	Control strategy and regulations: Sulfur oxides	N.A.	02/06/75

Table 2 lists the rules and statutes for which the State's rescission request is proposed for disapproval along with the related submittal and approval dates. Generally, we believe that retention of these provisions is appropriate to satisfy certain specific requirements for SIPs under CAA section 110(a)(2) or that retention is appropriate because the State has not provided sufficient documentation to show that rescission would not interfere with continued attainment of the national ambient air quality standards (NAAQS) as required under CAA section 110(l). The TSD provides more details concerning our proposal and rationale with respect to each of the items listed in table 2.

TABLE 2.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR DISAPPROVAL

SIP provision	Title	Submittal date	Approval date
NAC 445.436	Air contaminant	10/26/82	03/27/84
NAC 445.570	Portland cement plant	10/26/82	03/27/84
Article 1.171	Single source	12/10/76	08/21/78
NAC 445.630	Stop order	10/26/82	03/27/84
NAC 445.660	Severability	10/26/82	03/27/84
NAC 445.663	Concealment of emissions prohibited	10/26/82	03/27/84
NAC 445.665	Hazardous emissions: Order for reduction or discontinuance	10/26/82	03/27/84
NAC 445.696	Notice of violations; appearance before commission	10/26/82	03/27/84
NAC 445.697	Stop Orders	10/26/82	03/27/84
NAC 445.764	Reduction of employees' pay because of use of system prohibited	10/26/82	03/27/84
NAC 445.816(3), (4) & (5)	Processing Plants for Precious Metals	09/14/83	03/27/84

TABLE 2.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR DISAPPROVAL—Continued

SIP provision	Title	Submittal date	Approval date
NRS 445.451*	State environmental commission: Creation; composition; chairman; quorum; salary, expenses of members; disqualification of members; technical support.	12/29/78	07/10/80
NRS 445.456*	Department designated as state air pollution control agency	12/29/78	07/10/80
NRS 445.473*	Department powers and duties	12/29/78	07/10/80
NRS 445.476*	Power of department representatives to enter and inspect premises	12/29/78	07/10/80
NRS 445.498*	Appeals to commission; Notice of appeal	12/29/78	07/10/80
NRS 445.499*	Appeals to commission; Hearings	12/29/78	07/10/80
NRS 445.501*	Appeals to commission: Appealable matters; commission action; rules for appeals.	12/29/78	07/10/80
NRS 445.526*	Violations: Notice and order by director; hearing; alternative procedures	09/10/75	01/24/78
NRS 445.529*	Violations: Injunctive relief	12/29/78	07/10/80
NRS 445.576*	Confidential information: Definitions; limitations on use; penalty for unlawful disclosure or use.	09/10/75	01/24/78
NRS 445.581*	Power of department officers to inspect, search premises; search warrants.	12/29/78	07/10/80
NRS 445.596*	Private rights and remedies not affected	12/29/78	07/10/80
NRS 445.598*	Provisions for transition in administration	12/29/78	07/10/80
NRS 445.601*	Civil penalties; fines not bar to injunctive relief, other remedies; disposition of fines.	12/29/78	07/10/80

Note: Asterisk (*) indicates applicable SIP provisions for which replacement provisions are being proposed for approval herein (see table 3, below).

Table 3 lists the submitted provisions for which EPA is proposing approval and that, upon final approval, will supersede corresponding outdated provisions in the applicable SIP. In its January 12, 2006 SIP revision submittal, NDEP requests EPA to approve new statutory provisions to replace any outdated State statutory provisions for which EPA determines that the rescission request should not be approved. As noted above, we are proposing to disapprove requests for rescission of certain statutory provisions, and thus, consistent with the State's request, we are proposing approval of 14 specific statutory provisions, submitted by NDEP in appendix III-E of the January 12, 2006 SIP revision submittal, to replace the corresponding statutory provisions in the applicable SIP (see table 3, below). In general, we find that the current statutory provisions listed in table 3 essentially mirror the corresponding outdated provisions in the applicable SIP and thus would not relax any existing requirement.[5]

The TSD provides more details concerning our proposal and rationale with respect to each of the items listed in table 3.

TABLE 3.—SUBMITTED PROVISIONS WHICH ARE PROPOSED FOR APPROVAL AS REPLACEMENTS FOR OUTDATED PROVISIONS IN THE APPLICABLE SIP

Submitted provisions	Title	Submittal date
NRS 445B.200	Creation and composition; chairman; quorum; compensation of members and employees; disqualification; technical support.	01/12/06
NRS 445B.205	Department designated as state air pollution control agency	01/12/06
NRS 445B.230	Powers and duties of department	01/12/06
NRS 445B.240	Power of representatives of department to enter and inspect premises	01/12/06
NRS 445B.340	Appeals to commission: notice of appeal	01/12/06
NRS 445B.350	Appeals to commission: hearings	01/12/06
NRS 445B.360	Appeals to commission: appealable matters; action by commission; regulations	01/12/06
NRS 445B.450	Notice and order by director; hearing; alternative procedures	01/12/06
NRS 445B.460	Injunctive relief	01/12/06
NRS 445B.570	Confidentiality and use of information obtained by department; penalty	01/12/06
NRS 445B.580	Officer of department may inspect or search premises; search warrant	01/12/06
NRS 445B.600	Private rights and remedies not affected	01/12/06
NRS 445B.610	Provisions for transition in administration	01/12/06
NRS 445B.640	Levy and disposition of administrative fines; additional remedies available; penalty	01/12/06

[5] Because the current statutory provisions essentially mirror the outdated provisions, we view our proposed approval of the current statutory provisions as a re-codification and, as such, we are not taking action to remedy pre-existing deficiencies in the applicable SIP. We note, however, that one of the provisions, NRS 445B.200 (''Creation and composition; chairman; quorum; compensation of members and employees; disqualification; technical support''), does not meet the related SIP requirements (CAA section 110(a)(2)(E)(ii) and CAA section 128) and could be the subject of some future EPA rulemaking, such as one under CAA section 110(k)(5).

C. Public Comment and Proposed Action

Under CAA section 110(k)(3), EPA is proposing approval of most of the State of Nevada's requests to rescind nearly 200 rules and statutes from the applicable SIP but is proposing disapproval of some of those requests. EPA is also proposing approval of certain statutory provisions submitted by the State of Nevada as replacements for outdated provisions in the applicable SIP. The approval proposed herein is contingent upon receipt of certain public notice and hearing documentation from the State of Nevada. We will accept comments from the public on this proposal for the next 30 days.

Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will rescind the rules and statutes shown in table 1, above, from the applicable SIP (contingent upon receipt of public notice and hearing documentation), retain certain rules and statutes in the applicable SIP (shown in table 2, above), and approve certain replacement provisions (shown in table 3, above).

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve or disapprove a State request for rescission and to approve certain replacement provisions as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve or disapprove a State request for rescission and to approve certain replacement provisions implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: August 16, 2006.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E6–14214 Filed 8–25–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 71, No. 166

Monday, August 28, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 23, 2006.

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) 720–8958.

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.

Animal Plant and Health Inspection Service

Title: Recognizing the Animal Disease Status of Regions in the European Union.

OMB Control Number: 0579–0218.

Summary of Collection: Regulations under which the Animal Plant and Health Inspection Service (APHIS) conducts disease prevention activities are contained in Title 9, Chapter 1, Subchapter D, Parts 91 through 99, of the Code of Federal Regulations. These regulations govern the importation of animals, birds, and poultry products, and animal germplasm. Under these regulations, certain regions of the European Union are allowed to import into the United States live breeding swine, pork, and pork products and swine semen. The specific regions are Greece, Austria, Belgium, France, Netherlands, Portugal, and Spain and designated sub-region in Germany and Italy. APHIS has determined that these items, imported from these specific regions in accordance with its other import requirements, will pose a low risk of introducing classical swine fever into the United States.

Need and Use of the Information: APHIS will collect information concerning the origin and history of the items destined for importation into the United States. APHIS will also collect information to ensure that swine, pork and pork products, and swine semen pose a negligible risk of introducing exotic swine diseases into the United States. If the information is not collected it would cripple APHIS ability to ensure that swine, pork and pork products, and swine semen pose a minimal risk of introducing classical swine fever and other exotic animal disease into the United States.

Description of Respondents: Business or other for profit; State, Local and Tribal Government.

Number of Respondents: 30.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 300.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–14212 Filed 8–25–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0136]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), we are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

DATES: The meeting sessions will be held from 8:30 a.m. to 5 p.m. on September 12 and 13, 2006.

ADDRESSES: The meeting will be held in Room 2A04 (Training Room 1) and Room 2A06 (Training Room 2) at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Teachman, Acting Director, Interagency Coordination, Emergency Management, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on the U.S. animal health emergency management system and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions.

You may obtain an agenda for the meeting by contacting Dr. Mark Teachman at the address listed under **FOR FURTHER INFORMATION CONTACT**.

You may file written statements on meeting topics with the Committee before or after the meeting by sending them to Dr. Mark Teachman at the

address listed under **FOR FURTHER INFORMATION CONTACT**. You may also file written comments at the time of the meeting. Please refer to Docket No. APHIS–2006–0136 when submitting your comments.

Parking and Security Procedures

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center. The machine accepts $1 bills and quarters.

Upon entering the building, visitors should inform security personnel that they are attending the Advisory Committee Meeting on Foreign Animal and Poultry Diseases, and contact the APHIS Veterinary Services Emergency Management office at (301) 734–8073 from the lobby telephone to be ushered to the meeting. Photo identification is required. Visitor badges must be worn at all times while inside the building.

Done in Washington, DC, this 23rd day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14220 Filed 8–25–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Iyouktug Timber Sales, Hoonah Ranger District, Tongass National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber in the Iyouktug valley on Chicagof Island, Hoonah Ranger District of the Tongass National Forest. The Proposed Action is to harvest an estimated 57 million board feet (MMBF) of timber from approximately 4,430 acres of forested land through various small sales, and one or more larger sales, offered over a 10-year period. Approximately 5 miles of National Forest System road would be constructed, and 12 miles of temporary road would be constructed; temporary road would be closed after timber management activities have been completed. The Proposed Action would include harvest of approximately 2,050 acres and construction of approximately 3 miles of National Forest System road and 6 miles of temporary road in inventoried roadless areas. The existing Long Island log transfer facility will be used as needed. In order to meet Tongass Land and Resource Management Plan (Forest Plan) criteria for old growth reserves, a non-significant Forest Plan amendment to change the boundaries of the small old-growth habitat reserves (OGRs) will be part of the Proposed Action.

DATES: Opportunities for comment are available throughout the analysis process. Those interested in receiving a scoping package should contact us at the address below. Comments concerning this stage of the project will be most helpful if received by October 2, 2006. Additional opportunities for comment will be provided after release of the Draft EIS, which is expected to be published September 2007. A 45-day comment period will begin the date the Environmental Protection Agency (EPA) publishes the Notice of Availability in the **Federal Register.** The final environmental impact statement and decision are expected December 2007.

ADDRESSES: Send or hand deliver written comments to: IDT Leader, Sitka Ranger District, Tongass National Forest, Attn: Iyouktug Timber Sales EIS, 204 Siginaka Way, Sitka, AK 99835. Send written e-mail comments to: *comments-alaska-tongass-hoonah@fs.fed.us* with ''Iyouktug EIS'' in the subject line. In all correspondence, include your name, address, and organization name if you are commenting as a representative of an organization.

FOR FURTHER INFORMATION CONTACT: Chris Budke, Acting District Ranger, Hoonah Ranger District, P.O. Box 135, Hoonah, AK 99829, phone (907) 945–3631 or Hans von Rekowski, Team Leader, Sitka Ranger District, 204 Siginaka Way, Sitka, AK 99835, phone (907) 747–4217.

SUPPLEMENTARY INFORMATION: This EIS will tier to the EIS for the 1997 Tongass Land and Resource Management Plan (Forest Plan) that provides overall guidance, goals, objectives, standards, guidelines, and management area direction to achieve the desired condition for the project area.

The project area is administered by the Hoonah Ranger District of the Tongass National Forest, Hoonah, Alaska and occurs in Value Comparison Units (VCU) 2080, 2090, and 2100 as designated by the Forest Plan. The project area includes approximately 40,650 acres. The Iyouktug project area is located northwest of Iyoukeen Peninsula on the northeastern part of Chichagof Island about 12 air miles east-southeast of Hoonah, Alaska, 30 air miles west of Juneau, Alaska, and 15 air miles northeast of Tenakee Springs. The project area lies north of Freshwater Bay, west of False Bay and Chatham Strait, and south of Icy Strait, along National Forest System Road #8530; it lies within the Iyouktug and Suntaheen Creek valleys and includes Whitestone Harbor. The project area is in Townships 43–44 South, and Ranges 62–64 East, Copper River Meridian.

Purpose and Need

The purpose and need for the Iyouktug Timber Sales project is to: (1) Maintain and promote wood production from suitable timber lands, providing a supply of wood to meet society's needs; (2) Seek to provide a stable supply of timber from the Tongass National Forest which meets the annual planning-cycle market demand, while managing these lands for sustained long-term yields, consistent with sound multiple-use and sustained-yield objectives; (3) Seek to provide a long-term, stable supply of timber for local sawmills and timber operators; and (4) Provide a diversity of opportunities for resource uses that contribute to the local and regional economies of Southeast Alaska to support a wide range of natural resource employment opportunities within Southeast Alaska's communities. The Iyouktug Timber Sales Proposed Action is consistent with the 1997 Tongass Forest Plan.

Proposed Action

The Proposed Action for the Iyouktug project area is to harvest an estimated 57 million board feet (MMBF) of timber from approximately 4,430 acres of forested land while meeting Forest Plan standards. The timber would be offered through various small sales, and one or more large sales over a 10-year period following the Record of Decision (ROD). It is anticipated that 1 to 5 MMBF (averaging 3 MMBF) of timber harvested through ground-based logging systems would be offered annually as small sales. The large sale(s) would be composed primarily of units harvested through helicopter logging. The larger timber sale(s) would be offered concurrently with the small sales.

Timber harvest would occur on an estimated 4,430 acres of the 9,290 acres within the entire timber unit pool. Some areas in the timber unit pool are not being considered for timber harvest in this Proposed Action; however, when other alternatives are developed, we may propose harvest in some of the other units in the pool. The Proposed Action includes approximately 2,680 acres of helicopter and 1,750 acres of ground-based shovel and cable yarding systems. Areas suitable for ground-based logging would be harvested either even-aged (clearcut) or uneven-aged

(group or single tree selection) harvest prescriptions depending on terrain, tree species, economics, or environmental concerns. Helicopter would be uneven-aged harvest with no more than 40% of the harvest-unit volume removed. All timber harvest will use silvicultural prescriptions suited to meet the standards and guidelines of the Tongass Forest Plan.

The Proposed Action includes construction of approximately 5 miles of National Forest System road and 12 miles of temporary road; it would also include reconstruction of 3 miles of existing road. The existing Long Island Log Transfer Facility (LTF) will be utilized for these sales, if needed.

Harvest activities are proposed to occur only on land allocated to the Timber Production Land Use Designation (LUD); the other LUDs in the project area are Scenic Viewshed and Old-growth Habitat.

The Iyouktug project area includes two small old-growth habitat reserves (OGRs) and a portion of a large OGR as designated in the Forest Plan. The small OGRs are located in Value Comparison Units (VCUs) 2080, 2090, and 2100; the portion of the large OGR is a VCU 2100. To meet Forest Plan criteria for old-growth reserves, changes to the small OGR boundaries will be proposed as part of this project. A non-significant Forest Plan amendment will be required to address these changes.

Harvest is proposed in unroaded areas including parts of three inventoried roadless areas. Approximately 25,590 acres of the Iyouktug project area are in three inventoried roadless areas; the Proposed Action would include harvest of approximately 2,050 acres and construction of approximately 3 miles of National Forest System road and 6 miles of temporary road in inventoried roadless areas.

Preliminary Issues

Tentative issues identified for analysis in this EIS relate to the location and design of small Old-Growth Habitat Reserves and connectivity, subsistence use, economics, and timber harvest in roadless areas. Resource concerns that will be considered and discussed in the analysis include heritage resources, fisheries, karst features, steep slopes, threatened, endangered, and sensitive species, scenery, and the potential for cumulative watershed impacts in the project area.

Public Participation

Public participation has been an integral component of the analysis process and will continue to be especially important at several points during the analysis. This Notice of intent (NOI) and the project scoping letter initiate the scoping process that guides the development of the Environmental Impact Statement. The Forest Service will be seeking information, comments and suggestions from Tribal Governments, Federal, State, and local agencies, as well as individuals and organizations that may be interested in, or affected by, the Proposed Action. This process will determine the scope of the project and significant issues to be analyzed in depth in the Environmental Impact Statement. A scoping letter has recently been mailed to interested people and organizations; the scoping letter is available upon request. The letter briefly describes the project and project area, the purpose and need for the project, the Proposed Action, and invites public comment. An open house meeting will be held in Hoonah, Alaska on September 6, 2006, at the Hoonah Ranger District Office. The meeting will be announced in local newspapers and on local radio stations.

Through the scoping process the Interdisciplinary Planning Team will review comments received during the scoping period to determine which issues are significant and within the scope of this project. The team will develop a range of alternatives to address the significant issues. One of these will be the ''No Action'' alternative, in which no additional timber harvest or road construction is proposed. Other alternatives will consider various levels and locations of timber harvest in response to issues and non-timber objectives. The team will then prepare a Draft Environmental Impact Statement (DEIS) that will display the alternatives and the direct, indirect, and cumulative effects of each alternative. Non-significant issues or those issues that have been covered by a previous environmental review will be discussed briefly and documented in the EIS or project planning record.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) by September 2007. The comment period on the DEIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. In addition to commenting on the Proposed Action and the DEIS when it is released, agencies and other interested persons or groups are invited to write to or speak with Forest Service officials at any time during the planning process. Subsistence hearings, as provided for in Title VIII, section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), will be conducted during the comment period on the Draft Environmental Impact Statement.

The Forest Service believes that at this early scoping stage, it is important to inform reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that comments and objections are made available to the Forest Service at a time during which the agency 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 DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request that the agency withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such

confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform persons requesting confidentiality of the agency's decision regarding their request, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address within seven days.

Permits or Licenses Required

The permits listed below are required to implement the project, if the Long Island LTF is used. These permits are current and are held by Huna Totem Corporation. The Forest Service has a cost-share agreement with the Huna Totem Corporation to utilize the LTF under the following permits:

1. U.S. Army Corps of Engineers

—Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
—Approval of the construction of structures or work in navigable waters of the United States under section 10 of the Rivers and Harbors Act of 1899;

2. U.S. Environmental Protection Agency

—Storm water discharge permit/ National Pollutant Discharge Elimination System review under section 402 of the Clean Water Act (402);
—Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Environmental Conservation

—Certification of Compliance with Alaska Water Quality Standards (401 Certification);
—Solid Waste Disposal Permit;

4. State of Alaska, Department of Natural Resources (DNR)

—Authorization for occupancy and use of tidelands and submerged lands. In addition to the above permits, the Forest Service is required to obtain concurrence from the State of Alaska, Office of Project Management & Permitting (in the Department of Natural Resources) on a coastal zone consistency determination to proceed with the Proposed Action.

Responsible Official

The Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, Alaska 99901, is the responsible official.

Nature of the Decision To Be Made

The responsible official will decide whether or not to authorize timber harvest within the Iyouktug project area, and if so, how this timber would be harvested. The responsible official would also determine the location of OGR boundaries. The Responsible Official will consider the comments, responses, and disclosure of environmental consequences displayed in the FEIS, and applicable laws, regulations, and policies in making a decision. The Responsible Official will state the decision and the rationale for the decision in the Record of Decision (ROD).

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 21, 2006.

Forrest Cole,

Forest Supervisor.

[FR Doc. 06–7198 Filed 8–25–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in Overgaard, Arizona. The purpose of the meeting is to evaluate project proposals for possible funding in accordance with Pub. L. 106–393 (the Secure Rural Schools and Community Self-Determination Act).

DATES: The meeting will be held September 22, 2006 starting at 11 a.m.

ADDRESSES: The meeting will be held in the fellowship room at the First Southern Baptist Church, 2727 Church Lane, Overgaard, Arizona 85933. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, project proponents, and Committee members. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 6, 2006, will have the opportunity to address the Committee at those sessions.

Dated: August 19, 2006.

Elaine J. Zieroth,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 06–7194 Filed 8–25–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Honey from the People's Republic of China: Notice of Extension of Time Limit for Final Results of 2004/2005 New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2006, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of these new shipper reviews. *Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews*, 71 FR 32923 (June 7, 2006).

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is

extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2).

At the request of interested parties, the Department extended the deadline for the submission of surrogate value information and case and rebuttal briefs by three weeks. As a result of the extensions and the extraordinarily complicated issues raised in this review segment, including the honey valuation and *bona fides* issues, it is not practicable to complete these new shipper reviews within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 30 days until September 27, 2006, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 21, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–14233 Filed 8–25–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–580–835)

Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on stainless steel sheet and strip in coils from the Republic of Korea (Korea) for the period January 1, 2004, through December 31, 2004. We preliminarily find that the net subsidy rate for the producer/exporter under review is *de minimis*. *See* the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani or Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0395 or (202) 482–2849, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department published in the **Federal Register** the CVD order on stainless steel sheet and strip in coils from Korea. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea*, 64 FR 42923 (August 6, 1999) (*Amended Sheet and Strip*). On August 1, 2005, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 31, 2005, we received a timely request for review from Dai Yang Metal Co., Ltd. (DMC). On September 28, 2005, the Department published a notice of initiation of the administrative review of the CVD order on stainless steel sheet and strip in coils from the Republic of Korea covering the period of review (POR) January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 56631 (September 28, 2005). On October 19, 2005, the Department sent questionnaires to DMC and the Government of Korea (GOK). On December 21, 2005, the Department received questionnaire responses from DMC and the GOK. On March 31, 2006, DMC and the GOK submitted responses to the Department's March 17, 2006, supplemental questionnaires. On April 26, 2006, the Department published in the **Federal Register** an extension of the preliminary results deadline. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Extension of Preliminary Results of Countervailing Duty Administrative Review*, 71 FR 24644. On July 14, 2006, DMC and the GOK submitted responses to the Department's June 30, 2006, supplemental questionnaires.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The only company subject to this review is DMC.

Scope of Order

The products subject to this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated), provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not

more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain specialtystainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 HI–C.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no mor than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''

Subsidies Valuation Information

Benchmark for Long–Term Loans issued through 2004: During the POR, DMC had both won–denominated and foreign currency–denominated long–term loans outstanding which it received from government–owned banks and Korean commercial banks. Based on our findings on this issue in prior investigations and reviews, we are using the following benchmarks to calculate the subsidies attributable to respondent's long–term loans obtained in the years 1991 through 2004:

(1) For countervailable foreign currency–denominated loans, pursuant to 19 CFR 351.505(a)(2)(i), and consistent with our practice to date, our preference is to use the company–

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

specific weighted–average foreign currency–denominated interest rates on the company's loans from foreign bank branches in Korea, foreign securities, and direct foreign loans received after April 1992. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30642 (June 8, 1999) (*Stainless Steel Sheet and Strip*). *See also Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15533 (March 31, 1999) (*Plate in Coils*). For variable–rate loans outstanding during the POR, pursuant to 19 CFR 351.505(a)(2)(i), our preference is to use, as the benchmark, an interest rate of a variable–rate lending instrument issued during the POR; and for long–term fixed–rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), our preference is to use a benchmark rate issued in the same year that the loan was issued. However, no such benchmark instruments were available, and consistent with our methodology in the prior administrative review, we relied on the lending rates as reported by the IMF's *International Financial Statistics Yearbook*. *See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (*2001 Sheet and Strip*), and the ''Subsidies Valuation Information'' section of the accompanying Issues and Decision Memorandum (*2001 Sheet and Strip Decision Memorandum*).

(2) For countervailable won–denominated long–term loans, our practice is to use the company–specific corporate bond rate on the company's public and private bonds, as we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. *See Plate in Coils*, 64 FR at 15531. Where unavailable, we use the national average of the yields on three-year corporate bonds, as reported by the Bank of Korea (BOK). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in *Plate in Coils*, in which we determined that, absent company–specific interest rate information, the corporate bond rate is the best indicator of a market rate for won–denominated long–term loans in Korea. *Id.*

I. Program Preliminarily Determined to Confer Subsidies: The GOK's Direction of Credit

In the 1993 investigation of steel products from Korea, the Department determined (1) that the GOK influenced the practices of lending institutions in Korea; (2) that the GOK regulated long–term loans provided to the steel industry on a selective basis; and (3) that the selective provision of these regulated loans resulted in a countervailable benefit. *See Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993) (*Steel Products*). Accordingly, all long–term loans received by the producers/exporters of the subject merchandise were treated as countervailable. The determination in that investigation covered all long–term loans bestowed through 1991. *See id.*, 58 FR at 37339. This finding of control was determined to be sufficient to constitute a government program and government action. *See id.*, 58 FR at 37342. We also determined that (1) the Korean steel sector, as a result of the GOK's credit policies and control over the Korean financial sector, received a disproportionate share of regulated long–term loans, so that the program was, in fact, specific, and (2) that the interest rates on those loans were inconsistent with commercial considerations. *Id.*, 58 FR at 37343. Thus, we countervailed all long–term loans received by the steel sector from all lending sources. As a result of subsequent litigation, the Department submitted final results of redetermination on remand pursuant to *Laclede Steel Co. v. United States*, 93 F. Supp. 2d. 1276 (CIT, April 5, 2000), finding that only government–owned or -controlled lending institutions directed credit to the steel industry.

In *Stainless Steel Sheet and Strip*, 64 FR at 30641–2, we determined that the provision of long–term loans to DMC resulted in a financial contribution within the meaning of section 771(5)(D)(i) of the Tariff Act of 1930, as amended (the Act). We also determined that all regulated long–term loans provided to the producers/exporters of the subject merchandise, including DMC, were provided to a specific enterprise or industry, or group thereof, within the meaning of section 771(5A)(D)(iii)(III) of the Act. *See also Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) (*H–beams*), and accompanying Issues and Decision Memorandum (*H–Beams Decision Memorandum*) at ''The GOK's Credit Policies through 1991'' section (finding loans made via the GOK's direction of credit policies provided a financial contribution that resulted in the conferral of a benefit, within the meaning of sections 771(5)(D)(i) and 771(5)(E)(ii) of the Act, respectively, and was specific to the Korean steel industry within the meaning of section 771(5A)(D)(iii) of the Act.)

In proceedings subsequent to the investigation, with regard to subsequent periods through 2001, the Department has consistently found that the GOK's control over lending practices of domestic commercial banks and government–owned banks continued to be specific to the steel industry and that such loans conferred a benefit on the producer of the subject merchandise to the extent that the interest rates on these loans were lower than the interest rates on comparable commercial loans, within the meaning of section 771(5)(E)(ii) of the Act. *See Stainless Steel Sheet and Strip*, 64 FR at 30641 (covering 1992 through 1997); *Plate in Coils*, 64 FR at 15332 (regarding 1992 through 1997); *H–beams*, 65 FR at 41051 and *H–Beams Decision Memorandum* at ''The GOK's Credit Policies from 1992 through 1998'' section (regarding 1998); *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 67 FR 1964 (January 15, 2002) (*1999 Sheet and Strip*) and accompanying Issues and Decision Memorandum (*1999 Sheet and Strip Decision Memorandum*) at ''The GOK's Direction of Credit'' section (regarding 1999); *Final Affirmative Countervailing Duty Determination: Certain Cut–to-Length Carbon–Quality Steel Plate From the Republic of Korea*, 64 FR 73176 at 73180, (December 29, 1999) (*CTL Plate*) (regarding 1999); *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold–Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102 (October 3, 2002) (*Cold–Rolled*), and accompanying Issues and Decision Memorandum (*Cold–Rolled Decision Memorandum*) at ''The GOK Directed Credit'' section (regarding 2000); *2001 Sheet and Strip*, 69 FR 2113 and *2001 Sheet and Strip Decision Memorandum* at ''The GOK's Direction of Credit'' section (regarding 2001).

During the POR, DMC continued to have outstanding loans that were received prior to the 2001 period. DMC also received a loan during the POR, but no interest payments were due until after the POR. As stated above, the Department has found direction of

credit by the GOK of domestic commercial banks and government–owned banks to be countervailable through 2001. DMC has not provided any new information that would warrant a change in these prior findings; therefore, we continue to find that DMC benefitted from this program which provides a countervailable subsidy of loans made by government–owned or -controlled banks through 2001. With regard to the loan received in 2004, because no interest payments were due during the POR, it is not necessary for the Department to make any finding on the direction of credit issue, as it pertains to loans made from 2002 through 2004.

Won–Denominated Loans:

DMC did not have won–denominated loans outstanding during the POR which could be used for benchmark purposes. For the won–denominated loans we used the national average of the yields on three-year corporate bonds, as reported by the BOK, as a benchmark. *See* ''Subsidies Valuation Information'' section above. To determine the subsidy amount for the POR from the fixed–rate loans received from GOK–owned or -controlled banks, we used the difference between the interest payments made during the POR on the directed loans and the benchmark interest payments, in accordance with 19 CFR 351.505(c)(2). We then summed the amounts from all of DMC's long–term fixed–rate won–denominated loans.

Foreign Currency–Denominated Loans:

DMC did not have foreign currency–denominated loans outstanding during the POR which could be used for benchmark purposes. For the foreign currency–denominated loans we used the lending rates as reported by the IMF's *International Financial Statistics Yearbook*. *See* ''Subsidies Valuation Information'' section above. To determine the subsidy amount for the POR from these loans, we used the difference between the interest payments that DMC made and the benchmark interest payments, in accordance with 19 CFR 351.505(c)(2). As the interest payments were denominated in foreign currencies, we multiplied the subsidy amount by the exchange rate to establish the subsidy amount in terms of Korean won.

To calculate the total subsidy amount for all directed credit, we added the subsidy amount related to foreign currency loans in Korean won to the subsidy amount related to won–denominated loans. We then divided the total subsidy amount by DMC's total f.o.b. sales value during the POR, as this program is not tied to exports or a particular product. On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem* for DMC.

II. Program Preliminarily Determined Not to Confer a Benefit

A. *Reserve Fund for Research and Manpower Development Fund under Article 8 of TERCL (RSTA Article 9)*

On December 28, 1998, the Tax Reduction and Exemption Control Act (TERCL) was replaced by the Restriction of Special Taxation Act (RSTA). Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover expenses related to the development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three percent reserve.

In *CTL Plate*, 64 FR at 73181, we determined that this program is specific because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. We also determined that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. Companies in the capital goods industry, which includes steel manufacturers, are provided a benefit by this program to the extent they enjoy differential tax savings when they contribute more than three percent to the reserve fund. *See CTL Plate*, 64 FR at 73181. In *Cold–Rolled*, we continued to find the program countervailable, but found that the company under review did not contribute more than three percent to the reserve fund and, therefore, did not receive a benefit. *See Cold–Rolled Decision Memorandum* at ''Programs Determined to be Not Used'' section. No new information, or evidence of changed circumstances has been presented in this review to warrant reconsideration of the countervailability of this program. DMC did use this program, but record evidence indicates that DMC did not contribute to the reserve fund in excess of three percent during the POR. Therefore, we continue to find this program to be countervailable, but as DMC did not enjoy any differential tax savings as a result, we do not find a benefit.

III. Programs Preliminarily Determined To Be Not Used

A. *Investment Tax Credits under RSTA Articles 11, 24, 25 and TERCL Articles 24 and 71*

B. *Reserve for Export Loss under Article 16 of TERCL*

C. *Reserve for Overseas Market Development under Article 17 of TERCL*

D. *Asset Revaluation under Article 56(2) of TERCL*

E. *Equipment Investment to Promote Worker's Welfare under Article 88 of TERCL*

F. *Special Cases of Tax for Balanced Development Among Areas under Articles 41–45 of TERCL*

G. *Requested Loan Adjustment Program*

H. *Emergency Load Reduction Program*

I. *Export Industry Facility Loan*

J. *Special Facility Loans*

K. *Energy Saving Facility Program*

L. *Research and Development Grants*

M. *Local Tax Exemption on Land Outside of Metropolitan Area*

N. *Short–Term Export Financing*

O. *Exemption of VAT on Imports of Anthracite Coal*

P. *Excessive Duty Drawback*

Q. *Special Depreciation of Assets on Foreign Exchange Earnings*

R. *Export Insurance Rates Provided by the Korean Export Insurance CorporationS.Loans from the National Agricultural Cooperation Federation*

T. *Tax Incentives for Highly–Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act*

III. Programs Preliminarily Determined To Be Not Countervailable

A. *Electricity Discounts under the Direct Load Interruption Program (DLI)*[5]

B. *Tax Credit for Temporary Investments under Article 27 of TERCL (RSTA Article 26)*

Article 27 of TERCL was replaced by Article 26 of RSTA in 1998. This article authorizes a tax credit equaling a maximum of ten percent of the amount a domestic company temporarily invests in eligible machinery and equipment. In

[5] *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11401 (March 7, 2006); *see also Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006).

the 1997 investigation for this case, the Department found this program to constitute an import substitution subsidy, as the program was contingent upon the use of domestic goods over imported goods. *See Stainless Steel Sheet and Strip*, 64 FR at 30646. Since the 1997 investigation, the Department has found that the import substitution advantage under this program was abolished in 1996 under the TERCL. *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAMS*), and accompanying Issues and Decision Memorandum at Page 29 and at Comments 25 and 26. In *DRAMS*, the Department found that the GOK no longer provides a favorable tax treatment for domestic goods over imported goods. *Id.* Therefore, we preliminarily determine this program to be not countervailable.

C. *Tax Credit for Improving Enterprise's Bill System under Article 7–2 of RSTA*

During the POR, DMC applied for a tax credit under Article 7–2 of RSTA. The GOK states that the program permits any company that uses a modern corporate billing/promissory note system to make payments for its purchases from small or medium enterprises to claim a tax credit on its income taxes. The GOK provided the Department with the language of the regulation, which allows for three possible methods of payment: (a) issuing a bill of exchange or settling a request for collection of sale proceeds, (b) using an exclusive–use card for business purchase, or (c) using a loan system against security of credit sales claims. The tax credit is calculated as 0.3 percent of the total amount paid pursuant to these methods described, but not to exceed 10 percent of a company's corporate income tax amount.

In conducting the Department's investigation of this tax credit program, the Department must determine whether the program is specific within the meaning of section 771(5A) of the Act. We preliminarily determine that the tax credit under Article 7–2 of RSTA is not *de jure* specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act, because (1) it is not based on exportation, (2) it is not contingent on the use of domestic goods over imported goods, and (3) the legislation and/or regulations do not expressly limit access to the subsidy to an enterprise or industry, or groups thereof, as a matter of law.

Where there are reasons to believe that a subsidy may be specific as a matter of fact, the Department must then examine the program under section 771(5A)(D)(iii) of the Act. If the Department finds that one of the following factors exist, then the program is *de facto* specific.

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

Pursuant to section 771(5A)(D)(iii)(I) of the Act, the Department preliminarily finds that under the tax credit under Article 7–2 of RSTA, the actual recipients of the subsidy are not limited in number. *See* the GOK's December 21, 2005, submission at Exhibit B–1.

Sections 771(5A)(D)(iii)(II) and (III) of the Act direct the Department to examine whether an enterprise or an industry is a predominant user of the subsidy or receives a disproportionately large amount of the subsidy. There is nothing on the record to indicate that the steel industry received a greater monetary benefit from the program than did other participants or that the steel industry was a dominant user or received disproportionate benefits. Rather, the GOK states that the tax credit is widely available and can be used by any Korean company, regardless of industry or location, by claiming the tax credit on the tax return. *See* the GOK's December 21, 2005, submission at page 12.

Therefore, we preliminarily determine that the information on the record does not support a finding that the percentage of the benefits DMC or the steel industry received were disproportionately high or that the company or the industry was a dominant user. Accordingly, we preliminarily find that the tax credit under Article 7–2 of RSTA is not *de facto* specific and is, therefore, not countervailable.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 2004, through December 31, 2004, we preliminarily determine the net subsidy for DMC to be 0.02 percent *ad valorem*, which is *de minimis*. *See* 19 CFR 351.106(c)(1).

If the final results of this review remain the same as these preliminary results, the Department intends to instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results, to liquidate shipments of certain stainless steel sheet and strip in coils from DMC, entered, or withdrawn from warehouse, for consumption from January 1, 2004, through December 31, 2004, without regard to countervailing duties. Also, the Department intends to instruct CBP to require a new cash deposit rate for estimated countervailing duties of 0.00 percent for all shipments of certain stainless steel sheet and strip in coils from DMC, entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review. The Department will issue appropriate instructions directly to CBP within 15 days of the final results of this review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs

are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: August 21, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–14230 Filed 8–25–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082306B]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) groundfish plan teams will meet in Seattle, WA.

DATES: The meetings will be held on September 19–22, 2006. The meetings will begin at 1 p.m. on Tuesday, September 19, and continue through Friday September 22. The meetings will end when business for the day is completed, each day.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 4, Observer Training Room (BS/AI Plan Team) and Traynor Room (GOA Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Principal business is to prepare and review the draft Economic Report, the draft Ecosystems Consideration Chapter, draft stock assessments for some target-categories, and recommend preliminary groundfish catch specifications for 2007/08.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 23, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–14227 Filed 8–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082306C]

Pacific Fishery Management Council; Public Meeting/Workshop

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

ACTION: Notice of a public meeting.

SUMMARY: NOAA Fisheries and The Pacific Fishery Management Council (Council) will hold a workshop to discuss the comparability of pre-recruit data collected from two existing west coast surveys and to evaluate methods for utilizing those data in groundfish assessments.

DATES: The Pre-recruit Survey workshop will be held Wednesday, September 13, 2006 through Friday, September 15, 2006. The workshop will start at 8:30 a.m. each day and end at 5 p.m. on Wednesday and Thursday and 12 noon on Friday, or as necessary to complete business.

ADDRESSES: The Pre-recruit Survey workshop will be held at the Southwest Fisheries Science Center, 110 Shaffer Road, Santa Cruz, CA 95060.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC); telephone: (206) 860–3480; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The workshop discussion will be guided by the following four questions: (1) Can data from the R/V David Starr Jordan and the F/V Excalibur be combined into a coast-wide index for young-of-the-year Pacific whiting and rockfish; (2) Is a power transformation an acceptable way of modeling these processes and, if not, what other analytical techniques are more appropriate; (3) What processes affect the relationship between a survey index of pre-recruit abundance and model estimates of recruitment; and (4) How influential are pre-recruit survey data on historical estimated time-series of stock abundance and projections into the near term and how can the informational value of a pre-recruit survey to a stock assessment be evaluated?

All participants are encouraged to pre-register for the workshop by contacting Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC) by phone at (206) 860–3480 or by email at *Stacey.Miller@noaa.gov*.

Although non-emergency issues not contained in the meeting agenda may come before the workshop participants for discussion, those issues may not be the subject of formal workshop action during this meeting. Workshop action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this

notice that require emergency action under section 305c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the workshop participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 23, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–14226 Filed 8–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081806D]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of the South Atlantic Council and Gulf of Mexico Fishery Management Councils' King and Spanish Mackerel Committees. The Council will also hold a joint meeting of its Executive and Finance Committees, Personnel Committee (CLOSED SESSION), King and Spanish Mackerel Committee, Snapper Grouper Committee, Advisory Panel Selection Committee (CLOSED SESSION), and a meeting of the full Council. In addition, the Council will hold a public hearing on Amendment 14 to the Snapper Grouper Fishery Management Plan (FMP), a public hearing regarding a regulatory amendment to the Coastal Migratory Pelagics FMP, and a public input session.

DATES: The meeting will be held September 18 through September–22, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Westin Hotel, 2 Grasslawn Avenue, Hilton Head, SC 29928; telephone: (1–800) 937–8461 or (843) 681–4000, fax: (843) 681–7004. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843/571–4366 or toll free at 866/SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Joint South Atlantic and Gulf Mackerel Committees Meeting: September 18, 2006, 1:30 p.m. - 5:30 p.m. and September 19, 2006, from 8:30 a.m. - 12 noon

The South Atlantic and Gulf of Mexico Fishery Management Councils' Mackerel Committees will meet jointly to receive and overview of issues affecting the mackerel fishery, review a draft decision document, and take action as appropriate. The Committees will also receive a review of the South Atlantic Council's regulatory amendment to reduce the Total Allowable Catch (TAC) for Atlantic Group king and Spanish Mackerel and change the Atlantic migratory group Spanish mackerel commercial trip limit to track recent changes in the fishing year.

2. Joint Executive Finance Committees Meeting: September 19, 2006, 1:30 p.m. - 3:30 p.m.

The Executive and Finance Committees will meet jointly to review the status of the Regional Operational Agreement (ROA) between the Council and NOAA Fisheries' Southeast Regional Office (SERO), receive an update on the Calendar Year 2006 budget, and status report of the Fiscal Year 2007 Congressional budget.

3. Personnel Committee Meeting: September 19, 2006, 3:30 p.m. - 5 p.m.(CLOSED SESSION)

The Personnel Committee will meet in Closed Session to discuss personnel issues.

September 19, 2006, 6 p.m. - The Council will hold two public hearings:

(1) Amendment 14 to the Snapper Grouper FMP - Proposed marine protected areas.

(2) Mackerel Regulatory Amendment - Changes in Total Allowable Catch for Atlantic group king and Spanish mackerel, and change to commercial trip limit for Atlantic group Spanish mackerel to reflect the new fishing year.

4. Mackerel Committee Meeting: September 20, 2006, 8:30 a.m. until 12 noon

The Council's Mackerel Committee will meet to review the regulatory amendment and develop recommendations. The Committee will also review the issues in the mackerel fishery included in the decision document and develop recommendations for public scoping for the mackerel fishery.

5. Snapper Grouper Committee Meeting: September 20, 2006, 1:30 p.m. until 4 p.m. and September 21, 2006, 8:30 a.m. until 12 noon

The Snapper Grouper Committee will receive an update on Oculina evaluation activities and develop recommendations to staff as necessary. The Committee will also receive a status report on Amendment 14 to the Snapper Grouper FMP regarding marine protected areas and provide direction/clarification on issues relevant to the amendment. In addition, the Committee will receive an update on the development of Amendment 15 regarding rebuilding schedules for overfished species of snapper and grouper, and provide direction to staff as necessary. NOAA Fisheries' SERO will provide presentations on (1) Final 2005 landings for species in Amendment 13C, (2) the status of Amendment 13C Final Rule, and (3) the status of the quota monitoring program and a report on the level of 2006 landings for species in Amendment 13C. The Committee will develop recommendations as necessary.

September 20, 2006, 4:30 p.m. - The Council will hold a Public Input Session.

Members of the public are invited to address the Council on items listed on the agenda or any other fishery issue that falls under the jurisdiction of the Council.

6. Advisory Panel Selection Committee Meeting: September 21, 2006, 1:30 p.m. - 3:30 p.m. (CLOSED SESSION)

The Advisory Panel Selection Committee will review advisory panel applications and develop recommendations for Council consideration.

7. Council Session: September 21, 2006, 4:00 p.m. - 5:30 p.m. and September 22, 2006, 8 a.m. - 12 noon

From 4 p.m. - 4:30 p.m., the Council will call the meeting to order, adopt the agenda, approve the June 2006 meeting minutes, and hold elections for Chairman and Vice-Chairman.

From 4:30 p.m. - 5:30 p.m., the Council will receive a report from the Mackerel Committee, take action on its Mackerel Regulatory Amendment following the public comment session, and take other actions as necessary.

September 21, 2006, 4:30 p.m., the Council will hold a public comment session on the Mackerel Regulatory Amendment.

Council Session: September 22, 2006, 8 a.m. - 12 noon.

From 8 a.m. - 8:30 a.m., the Council will receive a NOAA General Counsel briefing on litigation issues (CLOSED SESSION).

From 8:30 a.m. - 8:45 a.m., the Council will receive a report from the Advisory Panel Selection Committee and take action as appropriate.

From 8:45 a.m. - 9 a.m., the Council will receive a report from the Snapper Grouper Committee and take action as appropriate.

From 9 a.m. - 9:15 a.m., the Council will receive a report from joint Executive/Finance Committees and take action as appropriate.

From 9:15 a.m. - 9:30 a.m., the Council will receive a report on the Southeast Data, Assessment, and Review (SEDAR) stock assessment Steering Committee Meeting and take action as necessary.

From 9:30 a.m. - 12 noon, the Council will receive a presentation regarding the International Commission for the Conservation of Atlantic Tunas (ICCAT), review requests for Experimental Fishing Permits as necessary, and receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, agency and liaison reports, and discuss other business including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 14, 2006.

Dated: August 23, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–14217 Filed 8–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 080306C]

Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 493–1848; U.S. Fish and Wildlife Service File No. MA130062

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Darlene R. Ketten, Ph.D., Woods Hole Oceanographic Institution, Biology Department, MRF- Room 233, MS 50, Woods Hole, MA 02543 has applied in due form for a permit from NMFS and FWS to take parts from species of marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before September 27, 2006.

ADDRESSES: The application request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203; phone (800) 358–2104; fax (703) 358–2281.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 493–1848/MA130062.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kate Swails, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR parts 18 and 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 17 and 222–226).

Dr. Ketten is requesting a permit for the possession and worldwide import/export of marine mammal and endangered species parts from the orders of Cetacea (dolphins, porpoises and whales), Pinnipedia (seals, sea lions and walrus), Carnivora (sea otter, *Enhydra lutris*, and polar bear, *Ursus maritimus*) and Sirenia (dugongs and manatees). Whole carcasses, heads, or temporal bones (ears) are requested from stranded animals that die prior to beaching, are euthanized upon stranding, or which die in captivity. No animals would be taken or killed for the purpose of this research.

The research proposed by Dr. Ketten utilizes three-dimensional analyses of aquatic mammals ears to generate estimates of auditory sensitivity, seeking to determine how structural elements of these ears contribute to underwater hearing. Mathematical models and three-dimensional reconstructions of

head and ear anatomy are produced from whole carcasses, heads, or temporal bones from animals that strand and die or die in captivity. The tissues are scanned by CT (Computerized Tomography) and MRI (Magnetic Resonance Imaging) and the ears are decalcified, sectioned, digitized, and reconstructed. Measurements from these reconstructions are used to calculate frequency distribution maps for each species examined. These inner ear models have provided the first evidence of acute infrasonic hearing in some species, new insights into how marine mammals achieve extreme infra and also ultrasonic hearing, and estimates of species specific hearing curves. A permit is requested for a period of 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 22, 2006.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

Dated: August 22, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–7196 Filed 8–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Business Board (DBB) will meet in open session on Wednesday, September 6, 2006 at the Pentagon, Washington, DC from 9:30 a.m. until 10 a.m. The mission of the DBB is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board will deliberate on their findings and recommendations related to Military Health System Governance and to the Alignment and Configuration of Business Activities.

DATES: Wednesday, September 6, 2006, 9:30 a.m. to 10 a.m.

ADDRESSES: 1155 Defense Pentagon, 2C554, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to attend the meeting must contact the Defense Business Board no later than Wednesday, August 30th for further information about escort arrangements in the Pentagon. Additionally, those who wish to provide input to the Board should submit written comments by Wednesday, August 30th to allow time for distribution to the Board members prior to the meeting.

The DBB may be contacted at: Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, via e-mail at *defensebusinessboard2@osd.mil* or via phone at (703) 697–2168.

Due to an administrative oversight, this notice has not been published within the 15 day notification requirement.

Dated: August 22, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7187 Filed 8–23–06; 10:48 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary of Defense's Defense Advisory Board for Employer Support of the Guard and Reserve (DAB–ESGR)

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DAB–ESGR. This meeting will focus on the status of DoD actions and recommendations from previous DAB meetings and relevant discussions of DoD planning guidance for future mobilizations and targeted communications to employers. This meeting is open to the public.

DATES: 0830–1530, September 22, 2006.

Location: Assistant Secretary of Defense for Reserve Affairs Conference Room 2E219, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Interested attendees may contact LCDR Vic Lopez at 703 696–1386 x540, or e-mail at *victor.lopez@osd.mil.*

Dated: August 18, 2006.

L.M. Bynum,

DSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–7183 Filed 8–25–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[USAF–2006–0012]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a record system.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on September 27, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Ms. Novella Hill at (703) 588–7855.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 14, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 21, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F071 AF OSI D

SYSTEM NAME:

Investigative Support Records (June 11, 1997, 62 FR 31973).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Investigative Information Management System (I2MS).''

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762–7002.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Any individual involved in, or suspected of being involved in, crimes or acts of terrorism affecting U.S. interests (*e.g.,* property located in or outside of the United States), U.S. nationals, and/or U.S. personnel. Individuals who provide information that is relevant to the investigation, such as victims and witnesses, and individuals who report such crimes or acts. Individuals may include, but are not limited to, active duty, retired or former military personnel; current, retired and former Air Force civilian employees; applicants for enlistment or appointment; Air Force academy cadets, applicants and nominees; dependents of active duty, retired or former military personnel; current and former Armed Forces Exchange employees; union or association personnel; civilian contracting officers and their representatives; employees of the Peace Corps, the State Department, and the American Red Cross; Department of Defense employees and contractors; and foreign nationals residing in the U.S. and abroad.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Reports of investigation, collection reports, statements of individuals, affidavits, correspondence, and other documentation pertaining to criminal collection activities, investigative surveys, technical, forensic, polygraph, and other investigative support to criminal and counterintelligence investigations to include source control documentation and region indices.''

Add a second paragraph to read ''Data on individuals (victims, witnesses, complainants, offenders, and suspects) involved in incidents may include, but is not limited to, name; digital photograph; Social Security Number; date of birth; place of birth; home address and telephone number; duty/work address and telephone number; alias; race; ethnicity; sex; marital status; identifying marks (tattoos), scars, etc.); height; weight; eye and hair color; biometric data; date, location, nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; whether bias against any particular group was involved or if offense involved sexual harassment; actions taken by military commanders (*e.g.,* administrative and/or non-judicial measures, to include sanctions imposed); referral action; court-martial results and punishment imposed; confinement information, to include location of correctional facility, gain/cult affiliation if applicable; and release/parole/clemency eligibility dates.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. Chapter 47, Uniform Code of Military Justice, and 8013, Secretary of the Air Fore; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 et seq., Victims Rights and Restitution Act of 1990; and E.O. 9397; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS).''

PURPOSE(S):

Delete entry and replace with ''To conduct and exercise overall responsibility within the Department of Air Force for all matters pertaining to the investigation of alleged crimes and acts of terrorism committed against U.S. citizens, U.S. property or interest; used in judicial and adjudicative proceedings including litigation or in accordance with a court order; and reporting of statistical data to Department of Defense officials.

To assist (1) AFOSI and other Military commanders in directing and supporting criminal investigative, law enforcement, counterintelligence, and distinguished visitor protection program; (2) in managing the AFOSI criminal and counterintelligence investigative program at the various USAF and U.S. military installations worldwide; (3) USAF and other military commander sin identifying areas of possible criminality and in developing and managing the installation law enforcement, include crime prevention, program; (4) in managing the AFOSI source program; (5) in determining if, in fact, possible criminal activity requiring further specialized investigation is occurring in a specific area; (6) USAF and other authorized individuals to request AFOSI investigation; (7) USAF and other military commanders, as well as Department of Justice officials, to determine if judicial or administrative action is warranted; (8) in joint investigations by AFOSI and Federal, state, or local law enforcement agencies; (9) in joint investigations by AFOSI and foreign law enforcement agencies; (10) in developing and managing the AFOSI Distinguished Visitor Protection Program; (11) in developing and managing the AFOSI Investigative Survey Program for both appropriated and non-appropriated fun activities; (12) in recording technical investigative support provided to other investigative activities; (13) in reporting forensic and polygraph support to other investigative activities; (14) HQ USAF activities in the promotion, reassignment, and similar personnel actions for Air Force personnel only.

To serve as a repository of criminal and non-criminal incidents used to satisfy statutory and regulatory reporting requirements: to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; to provide statistical information required by DoD under the Victim's Rights and Restitution Act; to enhance AF's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents; to provide such data as other federal laws may require.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph and replace with ''To the United States Citizenship and Immigration Service for purposes of immigration and naturalization investigations.''

Delete third paragraph and replace with ''To Federal medical and forensic laboratory personnel to assist in making laboratory tests and medical examinations in support of the investigative, judicial, and administrative process.

To the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and other counterintelligence/intelligence agencies in matters pertaining to hostile intelligence activities and terrorism directed against the U.S., its installations, personnel, and allies.''

Delete fourth paragraph and replace with ''To the Department of Veterans Affairs for purposes of verifying and settling claims.''

Delete fifth paragraph and replace with ''To the Department of State and

U.S. embassies overseas for purposes of providing information affecting U.S. diplomatic relations with foreign nations.''

Delete sixth paragraph and replace with ''To the U.S. Secret Service for purposes of aiding and assisting in the provision of protective services to the President, Vice President, and other designated officials.''

Add a new routine to read ''To the Department of Justice for criminal reporting purposes as required by the Brady Handgun Violence Prevention Act.''

Add a new routine use to read ''To courts and state, local, and foreign law enforcement agencies for purpose of criminal or civil investigative or judicial proceedings.''

Add a new routine use to read ''To victims and witnesses for purposes of complying with the requirements of the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Maintained on computers and computer output products; maintained in file folders, video and audio tape.''

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by Name, Social Security Number, or Case File Number.''

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by custodian of the records system and by persons responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Buildings are equipped with alarms, security guards, and/or security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in ''fail-safe'' system software with password-protected access.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Record paper and electronic copies of criminal and counterintelligence investigative cases at HQ AFOSI are retained under the same criteria assigned to the substantive case supported (as determined by Public Law and/or DoD and Air Force records retention rules).

At AFOSI field units, documentation is transferred to HQ AFOSI/XILI and once receipt is confirmed it is destroyed at the field unit after 90 days for criminal or one year for counterintelligence cases, after command action is reported to HQ AFOSI, or when no longer needed, whichever is sooner.

Source control documentation at HQ AFOSI is destroyed after 25 years. At AFOSI field units, hard copy source documentation is destroyed one year after termination of source use.

Paper copies furnished USAF Commanders are destroyed when all actions are completed and reported to AFOSI or when no longer needed.

At HQ AFOSI, all copies of reciprocal investigations conducted on request of a local, state or federal investigative agency in the US, or host country investigative agencies overseas, are destroyed after one year. Copies retained by AFOSI field units are destroyed after 90 days.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director of Warfighting Integration, HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762–7002.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, PO Box 2218, Waldorf, MD 20604–2218, or via e-mail to *fileroom@ogn.af.mil.*''

RECORD ACCESS PROCEDURE:

Delete entry and replace with ''Individuals seeking access to information about themselves should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, PO Box 2218, Waldorf, MD 20604–2218, or via e-mail to *fileroom@ogn.af.mil.*''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individuals (suspects, witnesses, victims, informants, DoD personnel and other individuals); DoD record systems; Federal, state, local, and foreign law enforcement agencies; Federal, state, local and foreign governmental agencies and non-governmental organizations; and other sources that may provide pertinent information relevant to the investigative proceedings.''

* * * * *

F071 AF OSI D

SYSTEM NAME:

Investigative Information Management System (I2MS)

SYSTEM LOCATION:

Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762–7002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual involved in, or suspected of being involved in, crimes or acts of terrorism affecting U.S. interests (*e.g.,* property located in or outside of the United States), U.S. nationals, and/or U.S. personnel. Individuals who provide information that is relevant to the investigation, such as victims and witnesses, and individuals who report such crimes or acts. Individuals may include, but are not limited to, active duty, retired or former military personnel; current, retired and former Air Force civilian employees; applicants for enlistment or appointment; Air Force academy cadets, applicants and nominees; dependents of active duty, retired or former military personnel; current and former Armed Forces Exchange employees; union or association personnel; civilian contracting officers and their representatives; employees of the Peace Corps, the State Department, and the American Red Cross; Department of Defense employees and contractors; and foreign nationals residing in the U.S. and abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, collection reports, statements of individuals, affidavits, correspondence, and other documentation pertaining to criminal collection activities, investigative surveys, technical, forensic, polygraph, and other investigative support to criminal and counterintelligence investigations to include source control documentation and region indices.

Data on individuals (victims, witnesses, complainants, offenders, and suspects) involved in incidents may include, but is not limited to, name; digital photograph; Social Security Number; date of birth; place of birth; home address and telephone number; duty/work address and telephone number; alias; race; ethnicity; sex;

marital status; identifying marks (tattoos, scars, etc.); height; weight; eye and hair color; biometric data; date, location, nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; whether bias against any particular group was involved or if offense involved sexual harassment; actions taken by military commanders (*e.g.,* administrative and/or non-judicial measures, to include sanctions imposed); referral actions; court-martial results and punishments imposed; confinement information, to include location of correctional faculty, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 47, Uniform Code of Military Justice, and 8013, Secretary of the Air Force; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 *et seq.*, Victims Rights and Restitution Act of 1990; and E.O. 9397; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS).

PURPOSE(S):

To conduct and exercise overall responsibility within the Department of Air Force for all matters pertaining to the investigation of alleged crimes and acts of terrorism committed against U.S. citizens, U.S. property or interests; used in judicial and adjudicative proceedings including litigation or in accordance with a court order; and reporting of statistical data to Department of Defense officials.

To assist (1) AFOSI and other military commanders in directing and supporting criminal investigative, law enforcement, counterintelligence, and distinguished visitor protection programs; (2) in managing the AFOSI criminal and counterintelligence investigative program at the various USAF and U.S. military installations worldwide; (3) USAF and other military commanders in identifying areas of possible criminality and in developing and managing the installation law enforcement, to include crime prevention, programs; (4) in managing the AFOSI source program; (5) in determining if, in fact, possible criminal activity requiring further specialized investigation is occurring in a specific area; (6) USAF and other authorized individuals to request AFOSI investigations; (7) USAF and other military commanders, as well as Department of Justice officials, to determine if judicial or administrative action is warranted; (8) in joint investigations by AFOSI and Federal, state, or local law enforcement agencies; (9) in joint investigations by AFOSI and foreign law enforcement agencies; (10) in developing and managing the AFOSI Distinguished Visitor Protection Program; (11) in developing and managing the AFOSI Investigative Survey Program for both appropriated and non-appropriated fund activities; (12) in recording technical investigative support provided to other investigative activities; (13) in reporting forensic and polygraph support to other investigative activities; (14) HQ USAF activities in the promotion, reassignment, and similar personnel actions for Air Force personnel only.

To serve as a repository of criminal and non-criminal incidents used to satisfy statutory and regulatory reporting requirements: to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; to provide statistical information required by DoD under the Victim's Rights and Restitution Act; to enhance AF's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents; to provide such data as other federal laws may require.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the United States Citizenship and Immigration Service for purposes of immigration and naturalization investigations.

To Federal medical and forensic laboratory personnel to assist in making laboratory tests and medical examinations in support of the investigative, judicial, and administrative process.

To the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and other counterintelligence/intelligence agencies in matters pertaining to hostile intelligence activities and terrorism directed against the U.S., its installations, personnel, and allies.

To the Department of Veterans Affairs for purposes of verifying and settling claims.

To the Department of State and U.S. embassies overseas for purposes of providing information affecting U.S. diplomatic relations with foreign nations.

To the U.S. Secret Service for purposes of aiding and assisting in the provision of protective services to the President, Vice President, and other designated officials.

To the Department of Justice for criminal reporting purposes as required by the Brady Handgun Violence Prevention Act.

To courts and state, local, and foreign law enforcement agencies for purposes of criminal or civil investigative or judicial proceedings.''

To victims and witnesses for purposes of complying with the requirements of the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Maintained on computers and computer output products; maintained in file folders, video and audio tape.

RETRIEVABILITY:

Retrieved by Name, Social Security Number, or Case File Number.

SAFEGUARDS:

Records are accessed by custodian of the records system and by persons responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Buildings are equipped with alarms, security guards, and/or security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in ''fail-safe'' system software with password-protected access.

RETENTION AND DISPOSAL:

Record paper and electronic copies of criminal and counterintelligence investigative cases at HQ AFOSI are retained under the same criteria assigned to the substantive case supported (as determined by Public Law and/or DoD and Air Force records retention rules).

At AFOSI field units, documentation is transferred to HQ AFOSI/XILI and

once receipt is confirmed it is destroyed at the field unit after 90 days for criminal or one year for counterintelligence cases, after command action is reported to HQ AFOSI, or when no longer needed, whichever is sooner.

Source control documentation at HQ AFOSI is destroyed after 25 years. At AFOSI field units, hard copy source documentation is destroyed one year after termination of source use.

Paper copies furnished USAF Commanders are destroyed all when all actions are completed and reported to AFOSI or when no longer needed.

At HQ AFOSI, all copies of reciprocal investigations conducted on request of a local, state or federal investigative agency in the U.S., or host country investigative agencies overseas, are destroyed after one year. Copies retained by AFOSI field units are destroyed after 90 days.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Warfighting Integration, HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762–7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604–2218–, or via e-mail to *fileroom@ogn.af.mil.*

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604–2218–, or via e-mail to *fileroom@ogn.af.mil.*

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals (suspects, witnesses, victims, informants, DoD personnel and other individuals); DoD record systems; Federal, state, local, and foreign law enforcement agencies; Federal, state, local and foreign governmental agencies and non-governmental organizations; and other sources that may provide pertinent information relevant to the investigative proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2), as applicable.

An exemption rule for this record system has been promulgated in accordance with 5 U.S.C. 553(b)(1), (2) and (3) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 06–7186 Filed 8–25–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[USA–2006–0030]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 27, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6503. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 14, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 21, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service (May 31, 2002, 67 FR 38070).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Army and Air Force Exchange Service (AAFES) customers including but not limited to those who make purchases, use the services of the Customer Service Desk, purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

After AR 60–10, insert ''Army Regulation 60–20, Army and Air Force Exchange Service Operation Policies.''

PURPOSE(S):

Add at the end of the entry ''and, to help detect and prevent criminal activity, and identify potential abuse of exchange privileges.''

* * * * *

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany, APO 09251–4580; and Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service (AAFES) customers including but not limited to those who make purchases, use the services of the Customer Service Desk, purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, address, and Social Security Number, copies of layaway tickets, requests for refunds, special order forms/procurement request/logs, cash receipt/charge or credit vouchers, rebate coupons, register transaction journal/log, repair vouchers, warranty documents, shipping/delivery information, correspondence between AAFES and the customer and/or vendor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 25–1, Morale, Welfare, and Recreation Activities and Non-Appropriated Fund Instrumentalities; Army Regulation 60–10, Army and Air Force Exchange Service General Policies; Army Regulation 60–20, Army and Air Force Exchange Service Operation Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To record customer transactions/payment for layaway and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on canceled layaway or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement, shipping/delivery information, and initiate follow-up actions; to monitor individual customer refunds; to perform market basket analysis; to improve efficiency of marketing system(s); and, to help detect and prevent criminal activity, and identify potential abuse of exchange privileges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM;

STORAGE:

Paper in file folders and on electric storage media.

RETRIEVABILITY:

By customer's surname, Social Security Number, document control number, and/or due date.

SAFEGUARDS:

Records are maintained in secured areas, accessible only to authorized personnel having need for the information in the performance of their duties.

RETENTION AND DISPOSAL:

Cancelled or completed layaway tickets are held for 6 months after cancellation or delivery of merchandise; purchase orders are retained for 2 years; transaction records are retained for 2 years; refund vouchers are retained for 6 years; returned merchandise slips are retained for 6 years; cash receipt vouchers are retained for 3 years; repair/replacement order slips are held 2 years. All records are destroyed by shredding, all electronic records are destroyed by erasing/reformatting the media.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name and sufficient details of purchaser to enable locating pertinent records, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name and sufficient details of purchase to enable locating pertinent records, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and/or vendor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–7184 Filed 8–25–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[USA–2006–0029]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 27, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6503.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 52a(r) of the Privacy Act of 1974, as amended, was submitted on August 14, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 21, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AFFES 0207.02

SYSTEM NAME:

Customer Comments, Inquiries, and Direct Line Files (August 9, 1996, 61 FR 41572).

CHANGES:

* * * * *

NAME:

Delete name and replace with ''Customer Solicitations, comments, Inquiries, and Direct Line Records.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry ''customers' e-mail solicitations.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 60–10, Army and Air Force Exchange Service General Policies; and Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.''

PURPOSE(S):

Delete entry and replace with ''To aid the Exchange management in determining needs of customers and action required to settle customer complaints and to electronically notify potential customers, who voluntarily provide their e-mail address, information about special events, sales, and other information about shopping at the Exchange.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and on electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Add at the end of the entry ''and local managers at Exchanges world-wide.''

* * * * *

AAFES 0207.02

SYSTEM NAME:

Customer Solicitations, Comments, Inquiries, and Direct Line Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; and Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of the Army and Air Force Exchange Service who make inquiries, complaints, or comments on its operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer's name, address and telephone number, information pertaining to the subject of inquiry, complaint, or comment and response thereto; customer opinion survey data; and customers' e-mail solicitations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 60–10, Army and Air Force Exchange Service General Policies; and Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.

PURPOSE(S):

To aid the Exchange management in determining needs of customers and action required to settle customer complaints and to electronically notify potential customers, who voluntarily provide their e-mail address, information about special events, sales, and other information about shopping at the Exchange.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By customer's name.

SAFEGUARDS:

Records are accessible only by designated employees having official need therefore. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records are destroyed by shredding after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598, and local managers at Exchanges world-wide.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Public Affairs Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, current address and telephone number, case number that appeared on correspondence received from AAFES, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Public Affairs Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, current address and telephone number, case number that appeared on correspondence received from AAFES, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–7185 Filed 8–25–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement for the Proposed Port of Vancouver Columbia Gateway Project in the State of Washington

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is initiating the preparation of an Environmental Impact Statement under the National Environmental Policy Act (NEPA). The EIS is for a Department of the Army permit issued under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act to install the infrastructure necessary to support an approximately 500-acre development of water dependent and industrial facilities at the Port of Vancouver.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Stuart, Project Manager, Portland District, Corps of Engineers, CENWP–OD–G, 333 SW. First Avenue, P.O. Box 2946, Portland, Oregon 97208–2946, phone: (503) 808–4393.

SUPPLEMENTARY INFORMATION: The Port of Vancouver has submitted an application to the Corps for a Department of the Army permit to develop a multi-faceted port facility that would create economic development opportunities for water dependent and industrial facilities at the Port of Vancouver. These facilities are necessary to generate increased employment opportunities for Vancouver area residents and enhance the import and export opportunities within the Lower Columbia River region.

The proposed action would require the discharge of dredged or fill material into waters of the United States, including wetlands, under Section 404 of the Clean Water Act and affect navigable waters of the United States under Section 10 of the Rivers and Harbors Act. Before making permitting decisions, the Corps is required to evaluate potential effects on the human environment under the National Environmental Policy Act (NEPA).

The Corps will also need to demonstrate compliance with Endangered Species Act and the National Historic Preservation Act before a permit can be issued. The proposed action must also be reviewed by the City of Vancouver for Compliance with the Washington State Growth Management Act, Shoreline Management Act, State Environmental Policy Act (SEPA) and City of Vancouver Development Code. This EIS is intended to meet the requirements for SEPA compliance. Alternatives to be evaluated in the EIS include No Action and development of approximately 500 acres of Port-owned property adjacent to the Columbia River. Significant issues to be analyzed in the EIS include effects the proposed action may have on wetlands, endangered species, air quality, water quality and quantity, noise, transportation, and public facilities.

The railroad improvements to serve the existing facilities at the Port of Vancouver and the NW 26th Avenue extension will be analyzed under separate NEPA processes. Both projects are independent of the development of Columbia Gateway.

The Corps will conduct a public scoping meeting for this EIS on September 12, 2006, 4 to 7 p.m. at the Port of Vancouver, 3103 NE. Lower River Road, Vancouver, Washington. Affected Federal, state, and local agencies; Indian tribes; and other interested organizations and individuals are asked to provide input to the Corps on the scope of this EIS. To ensure consideration, input on the scope should be provided to the Corps by September 25, 2006. The Corps will provide notice to the public of additional opportunities for public input on the EIS during review periods for the draft and final EIS. The draft EIS is currently scheduled to be available for public review Summer 2007.

Dated: August 17, 2006.

Lawrence C. Evans,

Chief, Regulatory Branch, Portland District.

[FR Doc. E6–14216 Filed 8–25–06; 8:45 am]

BILLING CODE 3710–AR–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 September 27, 2006.

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: August 21, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Child Care Survey of Postsecondary Institutions.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 688.

Burden Hours: 688.

Abstract: Program and Policy Studies Services (PPSS) needs these data to determine (1) the extent to which Child Care Access Means Parents in School

(CCAMPIS) grantees are better able than similar postsecondary institutions to provide child care services to low-income students, and (2) if data are available to determine if these services improve these students' persistence and graduation rates. Data collected from child care directors at grantee and non-grantee institutions will be used to monitor and improve the CCAMPIS program.

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 3142. 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. E6–14246 Filed 8–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 13, 2006, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or E-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Proposed Activities for the U–233 Project at Oak Ridge National Laboratory, Building 3019.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on August 21, 2006.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E6–14218 Filed 8–25–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Kerr-Philpott Project, SEPA–46

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary, Department of Energy, confirmed and approved, on an interim basis, Rate Schedules VA–1–A, VA–2–A, VA–3–A, VA–4–A, CP&L–1–A, CP&L–2–A, CP&L–3–A, CP&L–4–A, AP–1–A, AP–2–A, AP–3–A, AP–4–A, NC–1–A, Replacement-2, and VANC–1. The rates were approved on an interim basis through September 30, 2011, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–4578, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued March 6, 2002, in Docket No. EF01–3041–000, confirmed and approved Wholesale Power Rate Schedules VA–1, VA–2, VA–3, VA–4, CP&L–1, CP&L–2, CP&L–3, CP&L–4, AP–1, AP–2, AP–3, AP–4, and NC–1 through September 30, 2006. This order replaces these rate schedules.

Dated: August 15, 2006.

Clay Sell,

Deputy Secretary.

In the Matter of: Southeastern Power Administration B Kerr-Philpott System Power Rates; Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Southeastern's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (Commission). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Background

Power from the Kerr-Philpott Projects is presently sold under Wholesale

Power Rate Schedules VA–1, VA–2, VA–3, VA–4, CP&L–1, CP&L–2, CP&L–3, CP&L–4, AP–1, AP–2, AP–3, AP–4, and NC–1. These rate schedules were approved by the FERC on March 6, 2002, for a period ending September 30, 2006 (98 FERC 62,156). An examination of SEPA's current system power repayment study, prepared in July 2006, for the Kerr-Philpott System shows that revenues are not adequate to meet repayment criteria. A revised repayment study with a revenue increase of $1,423,000 in fiscal year 2007 and all future years over the current repayment study shows that all costs are repaid within their service life. Therefore, Southeastern is proposing to revise the existing rates to generate this additional revenue. The rate adjustment is an increase of about twelve percent (12%).

Public Notice and Comment

Notice of a proposed rate adjustment for the Kerr-Philpott System, based on a repayment study prepared in February of 2006, was published in the **Federal Register** March 10, 2006 (71 FR 12354). A Public Information and Comment Forum was held in Raleigh, North Carolina, on April 26, 2006. Transcripts from this forum are included as exhibit A–4. Written comments were accepted until June 8, 2006. Written comments were received from two sources and are attached to this exhibit.

Comments have been condensed into three major categories. The three major categories are as follows:

1. Power Marketing Policy;
2. Inclusion of investments that are not currently used and useful;
3. Establishment of a true-up mechanism;
4. A question on Corps Operation & Maintenance (O&M) Expense; and
5. Questions directed at the Corps of Engineers (Corps).

Category 1: Power Marketing Policy

Comment 1: We don't question the need for a rate increase, but suggest that it should be phased in as the project is funded and as we see benefits from the increased capacity and hopefully more energy.

Response 1: The question pertains to marketing policy, rather than rates. Over the next five years, SEPA anticipates that at least one unit at the John H. Kerr Project will be out of service for rehabilitation. During that time, no additional capacity or energy will be available to allocate to preference customers. After the rehabilitation of the Kerr Project is complete, SEPA will evaluate the marketing arrangements and policies and may allocate the additional capacity.

Category 2: Inclusion of Investments that are Not Currently Used and Useful

Comment 2: It appears to us that SEPA intends to include amounts in the new rate schedules for plant and investment that have not gone into commercial operation at this time. The inclusion of these amounts appears to violate the general legal principles on cost recovery, as well as DOE Regulations that govern the preparation of repayment studies and development of rate schedules.

Response 2: The laws, regulations, methods, and standards for establishing rate schedules for Power Marketing Administrations (PMA) are different from the standards that apply to Investor Owned Utilities. *See Generally: Central Electric Power Coop., Inc.* v. *Southeastern Power Administration* (4th Cir. 2003). As the commenter has cited, ¶ 10(k.) of RA 6120.2 requires PMAs to include ''investment costs for all authorized power system facilities for which Congress has appropriated funds for construction and which will be in service within the cost evaluation period * * *'' ¶ 10(l.) provides ''Future replacement costs will be included * * *''

SEPA has traditionally included the cost of power investment that is estimated to be in service during the cost evaluation period (normally 5 years). SEPA is setting the rate at the beginning of the cost evaluation period; therefore it must be an estimate of when it will go into service.

The budget process of the Corps is to request a new start for a major rehabilitation. The Corps may ask for several years of additional appropriations to complete the rehabilitation. When the first monies are appropriated the cost are included in the repayment study if the in service date is estimated to be within the cost evaluation period.

It should be noted that ¶ 10(l.) does not include a requirement that the replacements included in the Repayment Study to have been appropriated funds by Congress. The paragraph is discussing costs to be included beyond the cost evaluation period. These costs have not been appropriated and are estimated assuming the need to be made in order to keep the projects in good operating order. It should also be noted that RA 6120.2 does not include a requirement that the investment be ''used and useful'' before it can be included in the repayment study.

¶ 10(k.) requires that investment costs that ''* * * will be in service within the cost evaluation period will be included.'' At this time, the customers point out that it is unclear that the ongoing rehabilitation of the John H. Kerr Project will be complete at the end of the cost evaluation period, which is the end of Fiscal Year 2011. Accordingly, SEPA has removed these projected investment costs from the Repayment Study used to develop the proposed rate schedules, and established a true-up mechanism that is discussed in SEPA's response to comments 9 and 10.

The Repayment Study includes projections of future replacement costs for which funds have not been appropriated by Congress, as required by ¶ 10(l.) of RA 6120.2.

Comment 3: The United States Supreme Court essentially noted that electric utilities should recover investments when actually made and when the plant or investment is used and useful. It appears that those same considerations apply to Power Marketing Administrations as well.

Response 3: See Response 2, above.

Comment 4: On page 4 of RA 6120.2, subsection b(3), states ''Fixed assets should be carried at the cost of acquisition or construction''. There is no suggestion here that the fixed assets should be carried at the cost of a predicted acquisition or construction.

Response 4: See Response 2, above.

Comment 5: [¶ 10(k) of RA 6120.2] explains ''The allocated power investment costs of all authorized power system facilities for which Congress has appropriated funds for construction and which will be in service within the cost evaluation period will be included.'' So not only does Congress need to provide the funds, but the construction needs to be completed before the Department of Energy Regulations allow for the recovery of these amounts in the rates.

Response 5: See Response 2, above.

Comment 6: [¶ 10(l.) of RA 6120.2 states] ''Future replacement costs will be included in repayment studies by adding the estimated capital cost of replacement to the unpaid Federal investment in the year each replacement is estimated to go into service.'' The rate regulation tells the PMAs that they can include amounts in the rates that have been appropriated and then put into plant that has or will go into service during the time frame of the repayment schedule.

Response 6: See Response 2, above.

Comment 7: The SeFPC believes that SEPA must look to common electric utility practice to apply this term of art in the context of the proposed increase. Indeed, when considering the inclusion of investment that is not yet commercially operable, Federal Courts

have determined that rates should include investment that is ''used and useful.'' *See Oglethorpe Power Corporation* v. *FERC,* 84 F.3d 1447, 1451 (D.C. Cir. 1996) *citing Town of Norwood* v. *FERC*, 80 F.3d 526, 531 (D.C. Cir. 1996).

Response 7: See Response 2, above.

Comment 8: If the Corps and SEPA are wrong about the anticipated funding and expected completion of the rehabilitation work, there is no apparent downside for each of these agencies. SEPA will continue to collect the funds for investment that is not commercially operable, and the Corps will simply fail to meet the rehabilitation schedule. There appears to be no financial accountability for the failure to perform.

Response 8: See Response 2, above.

3. Establishment of a True-Up Mechanism

Comment 9: The North Carolina EMC's propose that an annual assessment of plant place in service be made, and only then, impose a rate increase that reflect the cost of this placed in-service project. The customers should not be in a position to pay in advance for service that may or may not be completed.

Response 9: SEPA has agreed to include a true-up mechanism in the proposed rates. The true-up mechanism will work as follows: the Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Comment 10: To provide a more accurate reflection of the investment entering commercial operation and ensure that the rates reflect this reality, the Customers encourage SEPA to consider a rate structure that recognizes and accounts for rehabilitation work that goes into commercial operation for the preceding fiscal year.

Response 10. See Response 9, above.

4. Question About Corps of Engineers O&M

Comment 11: What are the specific components of Corps O&M that have increased to make up the $2.7 million annual increase to be recovered through rates from the hydropower function at the Kerr Project.

Response: SEPA provides a breakdown of Corps O&M annually. The projections that are incorporated into the repayment study used to develop the proposed rate schedules were provided to the O&M Committee of the SeFPC on June 8, 2005. SEPA and the Corps provided updates of O&M activities May 16, 2006. The specific components of Corps O&M that make up the $2.7 million annual increase were included in this breakdown. SEPA will continue to provide these reports to the SeFPC and any other party that requests them.

5. Questions Directed at the Corps of Engineers

Comment 12: The SeFPC asked several questions that SEPA believes are appropriately addressed by the Corps of Engineers. The questions are listed below.

The Corps response follows each question.

SeFPC 1. Has the Corps requested funding for this project that has not been provided in the year requested?

Corps 1: No. All funding requested in the President's Budget has been provided in the year of the request.

SeFPC 2. Does the Corps intend to take more than one unit out of operation at a time to perform rehabilitation?

Corps 2: No. The contract allows for a 50-day overlap between unit outages. This overlap is to provide better efficiency of the contract work force. This will reduce the overall contract time between assembly and reassembly of the main hydropower units (Units 2–7). Likewise there is a weight restriction and physical size limitation to one main rotor removal (215 tons) in the powerhouse on the generator floor erection bay.

SeFPC 3. Are there any infrastructure repairs that must occur before the rehabilitation of the generators can take place? i.e. overhead bridge crane?

Corps 3: The only outstanding work is the refurbishment of the existing draft tube gates. A new set of draft tube gates has been delivered to the project and now being used on Unit 1. This refurbishment should not delay any future contract work. The bridge crane was refurbished and upgraded already prior to the start of the major GE Hydro contract.

SeFPC 4. Has the Corps ordered all of the equipment needed to make the needed replacements? If not, when will this take place?

Corps 4: All Government furnished equipment required to support the rehabilitation contractor has been ordered.

SeFPC 5. What contingencies have been put in place to address any delays from suppliers of equipment or problems with equipment quality, installation, or performance?

Corps 5: The last of the Government furnished equipment is to be delivered to the project site within 30 days, well in advance of the needs of the rehabilitation contractor. The rehabilitation contractor is required by contract to provide a contractor quality control system to manage the procurement, installation and testing of the remaining equipment. The performance of the contractor's quality control system and the contract schedule are continuously evaluated by the Government.

SeFPC 6. How many Corps Full Time Employees (''FTEs'') were anticipated to be allocated to the hydropower function at the Kerr project in 2000?

Corps 6: There have been several reorganizations in Operations since FY 2000. None of the positions identified in Operations or Maintenance of the powerhouses were established or abolished based on the major rehabilitation of the powerhouse. The permanent FTE assigned to John H. Kerr in 2000 was approx. 21. The projected FTE this year and future years is 22 FTE for the Kerr project. The Hydropower District Function (Wilmington-1 FTE) was absorbed into the regular O&M staff at the powerhouse to make a total of 22 permanent FTE. There will be a projected increase in Philpott FTE by 1 for FY 07 and will remain constant into the future for a staff of 4. One additional J.H. Kerr FTE may be transferred to Philpott (net gain 0) in the next several years based on attrition or upcoming retirements at John H. Kerr. For the Kerr-Philpott system this will remain a total of 26 FTE. These totals are consistent with other hydropower stations of our size within SAD. In the case of the remote operated Philpott Powerhouse the staff is somewhat smaller than other remote powerhouse sites in SAD. The John H. Kerr staff also has the responsibility for the O&M of another station; the Island Creek Pumping Station to support the 22 FTE. The District approved Objective Organization, reviewed quarterly, that accounts for all USACE Wilmington District FTE for FY 06 through FY 10 allocates a combined total staff of 26 permanent FTE for the Hydropower Branch for both powerhouses and the pumping station. There are no plans to increase or decrease this staffing in the next 4 years.

SeFPC 7. How many Corps FTEs are anticipated to be allocated to the hydropower function at the Kerr project in 2011?

Corps 7: 22 FTE.

SeFPC 8. If there is an increase in Corps FTE allocated to the hydropower function between FY 2007 and FY 2011, please explain why the Corps expects FTEs allocated to hydropower to rise as the project is rehabilitated?

Corps 8: There is no projected increase or decrease in FTE anticipated due to the rehabilitation of the powerhouse. Replacing the old generators with new still will require normal O&M and biennial inspections on all 7 units. The hydropower staff is allocated certain labor charge numbers to assist with the GE Hydro contract for review of P&S, submittals, meetings, plant security, and Lockout & Tag out of the equipment. Mostly this represents the managers and senior craft staff for about 5–10% of their time.

SeFPC 9. Are any of these Corps FTEs allocated to hydropower working on a full time or part-time basis on rehabilitation work?

Corps 9: No. Administration of the major rehabilitation contract is the responsibility of the Wilmington District Construction Branch. The Resident Engineer's office of the Wilmington District Construction Branch did increase their staff for the administration of the major rehabilitation contract with 3.5 FTE. Those employees will be reassigned upon completion of the rehabilitation project.

Discussion

System Repayment

An examination of SEPA's revised system power repayment study, prepared in July 2006, for the Kerr-Philpott System shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of SEPA has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies and other supporting materials, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635, and in the Power Marketing Liaison Office, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2001, attached Wholesale Power Rate Schedules VA–1–A, VA–2–A, VA–3–A, VA–4–A, CP&L–1–A, CP&L–2–A, CP&L–3–A, CP&L–4–A, AP–1–A, AP–2–A, AP–3–A, AP–4–A, NC–1–A, Replacement–2, and VANC–1. The Rate Schedules shall remain in effect on an interim basis through September 30, 2011, unless such period is extended or until the FERC confirms and approves them or substitutes Rate Schedules on a final basis.

Dated: August 15, 2006.

Clay Sell,

Deputy Secretary.

Wholesale Power Rate Schedule VA–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company) , the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and any ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$2.43 Per kilowatt of total contract demand per month as of February 2006, is presented for illustrative purposes.

Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may

charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–2–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company and PJM. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and any ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$2.43 Per kilowatt of total contract demand per month as of February 2006, is presented for illustrative purposes.

Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the

border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

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The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–2–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company and PJM. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

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Character of Service

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Monthly Rate

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Transmission

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Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–4–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina served through the transmission facilities of Virginia Electric and Power Company (hereinafter called the Company) and PJM Interconnection LLC (hereinafter called PJM). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.0475 Per kilowatt of total contract demand per month as of February 2006, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The rate is subject to periodic adjustment and will be computed in accordance with the terms of the Government-Company contract.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government on behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–2–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under

this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.0475 Per kilowatt of total contract demand per month as of February 2006, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The rate is subject to periodic adjustment and will be computed in accordance with the terms of the Government-Company contract.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–3–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power

from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–4–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Carolina Power & Light Company (hereinafter called the Company). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

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Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

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The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be transmitted and scheduled pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$2.43 Per kilowatt of total contract demand per month as of February 2006, is presented for illustrative purposes.

Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–2–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be transmitted pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$2.43 Per kilowatt of total contract demand per month as of February 2006, is presented for illustrative purposes.

Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by American Electric Power Service Corporation under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–3–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be scheduled pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings

before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–4–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia served through the facilities of American Electric Power Service Corporation (hereinafter called the Company) and PJM Interconnection LLC (hereinafter called PJM). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule NC–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to a contract between the Government and Virginia Electric and Power Company (hereinafter called the Virginia Power) and PJM Interconnection LLC (hereinafter called PJM), scheduled pursuant to a contract between the Government and Carolina Power & Light Company (hereinafter called CP&L), and billed pursuant to contracts between the Government and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Virginia Power's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.35 Per kilowatt of total contract demand per month.

Energy Charge:

9.38 Mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed repayment study. The adjustment will be for each increase of $1,000,000 to plant in service an increase of $0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Virginia Power and CP&L. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of Virginia Power's or CP&L's rate.

Transmission

$2.43 Per kilowatt of total contract demand per month as of February 2006, is presented for illustrative purposes.

Ancillary Services

3.63 Mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.69 Per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving Virginia Electric and Power Company's or Carolina Power & Light Company's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The

applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Replacement-2

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and Virginia to whom power is provided pursuant to contracts between the Government and the customer from the John H. Kerr and Philpott Projects (or Kerr-Philpott System).

Applicability

This rate schedule shall be applicable to the sale of wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Charge

The customer will pay its ratable share of Southeastern's monthly cost for replacement energy. The ratable share will be the cost allocation factor for the customer listed in the table below times Southeastern's monthly cost for replacement energy purchased for the Kerr-Philpott System, rounded to the nearest $0.01.

Contract No. 89–00–1501–	Customer	Capacity allocation	Average energy	Cost allocation factor (percent)
1150	Albemarle EMC	2,593	7,060,781	1.587091
1155	B-A-R-C EC	3,740	10,219,728	2.297145
853	Brunswick EMC	3,515	10,161,347	2.284022
854	Carteret-Craven EMC	2,679	7,744,595	1.740796
855	Central EMC	1,239	3,581,767	0.805094
1144	Central Virginia EC	7,956	21,875,642	4.917110
1203	City of Bedford	1,200	906,232	0.203699
1204	City of Danville	5,600	4,229,084	0.950595
895	City of Elizabeth City	2,073	1,577,731	0.354635
1166	City of Franklin	1,003	754,349	0.169559
878	City of Kinston	1,466	1,115,751	0.250794
880	City of Laurinburg	415	315,850	0.070995
881	City of Lumberton	895	681,172	0.153111
1205	City of Martinsville	1,600	1,208,310	0.271599
882	City of New Bern	1,204	916,347	0.205972
1206	City of Radford	1,300	981,752	0.220674
885	City of Rocky Mount	2,538	1,931,636	0.434185
1208	City of Salem	2,200	377,597	0.084875
892	City of Washington	2,703	2,057,214	0.462411
889	City of Wilson	2,950	2,245,202	0.504667
1156	Community EC	4,230	11,574,897	2.601754
1145	Craig-Botetourt EC	1,692	4,646,794	1.044486
1151	Edgecombe-Martin County EMC	4,155	11,454,119	2.574606
875	Fayetteville Public Works Commission	5,431	4,133,456	0.929100
856	Four County EMC	4,198	12,135,800	2.727831
891	Greenville Utilities Commission	7,534	5,734,019	1.288867
857	Halifax EMC	585	1,691,149	0.380129
1152	Halifax EMC	2,021	5,565,062	1.250890
869	Harkers Island EMC	56	42,002	0.009441
1167	Harrisonburg Electric Commission	2,691	2,050,335	0.460865
858	Jones-Onslow EMC	5,184	14,986,180	3.368527
859	Lumbee River EMC	3,729	10,779,991	2.423079
1157	Mecklenburg EMC	11,344	31,293,885	7.034101
1158	Northern Neck EC	3,944	10,815,621	2.431087
1159	Northern Virginia EC	3,268	9,015,145	2.026384
860	Pee Dee EMC	2,968	8,580,051	1.928586
861	Piedmont EMC	1,086	3,146,180	0.707184
862	Pitt & Greene EMC	1,580	4,567,548	1.026673
1160	Prince George EC	2,530	6,889,239	1.548533
863	Randolph EMC	3,608	10,430,197	2.344453
1161	Rappahannock EC	22,427	61,464,702	13.815763
1153	Roanoke EMC	5,528	15,140,444	3.403202
1162	Shenandoah Valley EMC	9,938	27,370,081	6.152125
864	South River EMC	6,119	17,689,129	3.976084
1146	Southside EC	14,575	40,004,415	8.992015
865	Tideland EMC	680	1,965,779	0.441859
1154	Tideland EMC	2,418	6,657,840	1.496520
870	Town of Apex	145	110,358	0.024806
871	Town of Ayden	208	158,306	0.035583

Contract No. 89–00–1501–	Customer	Capacity allocation	Average energy	Cost allocation factor (percent)
893	Town of Belhaven	182	138,518	0.031135
872	Town of Benson	120	91,330	0.020529
1163	Town of Blackstone	389	292,564	0.065761
873	Town of Clayton	161	122,535	0.027543
1164	Town of Culpepper	391	297,911	0.066963
894	Town of Edenton	775	589,841	0.132582
1165	Town of Elkton	171	128,608	0.028908
1169	Town of Enfield	259	194,792	0.043784
874	Town of Farmville	237	180,378	0.040545
876	Town of Fremont	60	45,665	0.010264
896	Town of Hamilton	40	30,443	0.006843
897	Town of Hertford	203	154,500	0.034728
898	Town of Hobgood	46	35,010	0.007869
877	Town of Hookerton	30	22,833	0.005132
879	Town of La Grange	93	70,781	0.015910
868	Town of Louisburg	857	2,561,391	0.575738
883	Town of Pikeville	40	30,443	0.006843
884	Town of Red Springs	117	89,047	0.020016
1207	Town of Richlands	500	1,661,426	0.373448
899	Town of Robersonville	232	176,572	0.039689
900	Town of Scotland Neck	304	231,370	0.052006
886	Town of Selma	183	139,279	0.031307
887	Town of Smithfield	378	287,691	0.064666
901	Town of Tarboro	2,145	1,632,529	0.366953
888	Town of Wake Forest	149	113,402	0.025490
1168	Town of Wakefield	106	79,721	0.017919
1170	Town of Windsor	331	248,943	0.055956
866	Tri-County EMC	3,096	8,950,081	2.011759
867	Wake EMC	2,164	6,255,806	1.406152
Total		196,500	444,888,221	100.000000

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month

The billing month for power sold under this schedule shall lend at 1200 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VANC–1

Availability

This rate schedule shall be available to public bodies and cooperatives or their agents (any one of whom is hereinafter called the Customer) in North Carolina and Virginia to whom transmission is provided from the PJM Interconnection LLC (hereinafter called PJM) or Carolina Power & Light Company (hereinafter called CP&L). The Customer must have a contractual arrangement with the Government to provide this service and currently pay the tandem transmission rate under another Kerr-Philpott rate schedule.

Applicability

This rate schedule shall be applicable to transmission services provided and sold under appropriate contracts between the Government and the Customer.

Character of Service

The services supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Charge

The monthly charge will be the customer's ratable share of the transmission and ancillary services incurred by the Government in behalf of the customer.

Billing Month

The billing month for power sold under this schedule shall lend at 1200 midnight on the last day of each calendar month.

[FR Doc. 06–7192 Filed 8–25–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8213–6]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Response Costs for the Peter Cooper Landfill Superfund Site, Village of Gowanda, Cattaraugus County, NY and the Peter Cooper (Markhams) Superfund Site, Town of Dayton, Cattaraugus County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of response costs concerning the Peter Cooper Landfill Superfund Site located in the Village of Gowanda, Cattaraugus County, New York (''Gowanda Site'') and the Peter Cooper (Markhams) Superfund Site located in the Town of

Dayton, Cattaraugus County, New York (''Markhams Site''). The proposed agreement would require the settling party, Tanyard Partners, Inc., to pay $400,000.00 in reimbursement of EPA's response costs at the Sites ($240,000.00 for the Gowanda Site and $160,000.00 for the Markhams Site). The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for its payments. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed amendment is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before September 27, 2006.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Peter Cooper Landfill Superfund Site and the Peter Cooper (Markhams) Superfund Site located in the Village of Gowanda and the Town of Dayton, respectively, in Cattaraugus County, New York, Index No. CERCLA–02–2006–2018. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: George A. Shanahan, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3171; e-mail *shanahan.george@epa.gov.*

Dated: August 18, 2006.

William McCabe,

Acting Director, Emergency and Remedial , Response Division, EPA Region 2.

[FR Doc. 06–7214 Filed 8–25–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8211–4]

Proposed CERCLA Administrative Cost Recovery Settlement; Rawleigh Building Site, Freeport, IL

AGENCY: U.S. Environmental Protection Agency (''Agency'').

ACTION: Extension of notice; request for public comment on proposed administrative cost recovery settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Rawleigh Building site in Freeport, Illinois with the following settling parties: Tusc. Corp. No. 1, Inc., Tusc. Corp. No. 4, Inc., Tusc. International, GP, The Tuscarora Corporation.

The settlement requires the settling parties to pay $35,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before September 27, 2006.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Records Center, Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Steven P. Kaiser, Associate Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604 whose telephone number is (312) 353–3804. Comments should reference the Rawleigh Building Site, U.S. EPA Docket No. V–W–06–C–844, and should be addressed to Steven P. Kaiser, Associate Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven P. Kaiser, 77 West Jackson Boulevard, Chicago, Illinois 60604 whose telephone number is (312) 353–3804.

Background: Additional background information and/or the Agency's response to any comments received will be available for public inspection at the following locations:

Freeport Public Library, 100 E. Douglas Street, Freeport, IL 61032.

U.S. EPA Record Center, Room 714 U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Site ID: Spill ID Number B5 G4.

Dated: July 20, 2006.

Richard C. Karl,

Director, Superfund Division.

[FR Doc. 06–7191 Filed 8–25–06; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

[Notice 2006–12]

Filing Dates for the Ohio Special Election in the 18th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Ohio has scheduled a special primary election on September 14, 2006, to fill the vacancy on the November 7, 2006, general election ballot that was created by the withdrawal of Representative Bob Ney.

Committees participating in the Ohio Special Primary Election are required to file pre-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Ohio Special Primary shall file a 12-day Pre-Primary Report on September 2, 2006. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2006 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Ohio Special Primary Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Ohio Special

Primary Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified Federal candidate and are distributed within 30 days prior to a special primary election or 60 days prior to a special general election. 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than $10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 104.20.

The 30-day electioneering communications period in connection with the Ohio Special Primary runs from August 15, 2006 through September 14, 2006.

CALENDAR OF REPORTING DATES FOR OHIO SPECIAL ELECTION

[For Committees Involved In The Special Primary (09/14/06)]

Report	Close of books [1]	Reg./cert. & overnight mailing date	Filing date
Pre-Primary	08/25/06	08/30/06	[2] 09/02/06
October Quarterly	09/30/06	10/15/06	[2] 10/15/06

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Notice that this deadline falls on a holiday or a weekend. Filing dates are not extended when they fall on nonworking days.

Dated: August 21, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6–14183 Filed 8–25–06; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[Notice 2006—13]

Filing Dates for the Texas Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Texas has scheduled special elections on November 7, 2006, based upon an opinion and order by the U.S. District Court for the Eastern District of Texas, Marshall Division, in *League of United Latin American Citizens, et. al.* v. *Rick Perry, Governor of Texas, et. al.*, which redrew the boundaries, invalidated the results of the primary and runoff elections, and ordered new elections in five of the thirty-two U.S. Congressional Districts of Texas. The districts affected are: 15, 21, 23, 25 and 28.

There are two possible elections, but only one may be necessary. The majority winner of the special election in each district is declared elected. Should no candidate achieve a majority vote, the Secretary of State will then order and set the date for a Special Runoff Election that will include only the top two vote-getters. All runoff elections will be held on the same date.

Committees participating in the Texas special elections are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the Texas Special General Election shall file a 12-day Pre-General Report on October 26, 2006. If there is a majority winner, committees must also file a 30-day Post-General Report on December 7, 2006. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2006 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Texas Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Texas Special General Elections should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified Federal candidate and are distributed within 60 days prior to a special general election. See 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than $10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 104.20.

The 60-day electioneering communications period in connection with the Texas Special General runs from September 8, 2006, through November 7, 2006.

Possible Special Runoff Election

In the event that no candidate receives a majority of the votes in a Special General Election, a Special Runoff Election will be held. The Commission will publish a future notice giving the filing dates for that election if it becomes necessary.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTIONS

Report	Close of books[1]	Reg./cert. & overnight mailing date	Filing date
If *Only* the Special General is Held (11/07/06), Committees Involved Must File			
Pre-General	10/18/06	10/23/06	10/26/06
Post-General	11/27/06	12/07/06	12/07/06
Year-End	12/31/06	01/31/07	01/31/07
If Two Elections are Held, Committees Involved *Only* in the Special General (11/07/06) MUST FILE:			
Pre-General	10/18/06	10/23/06	10/26/06
Year-End	12/31/06	01/31/07	01/31/07

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

Dated: August 21, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6–14182 Filed 8–25–06; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BOK Financial Corporation, Tulsa, Oklahoma, to acquire 100 percent of the voting shares of The State Bank of Colony, Colony, Kansas, by merging Bank of Kansas City, N.A., Overland Park, Kansas, an interim national bank, with The State Bank of Colony.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. The BANKshares, Inc., Rancho Santa Fe, California; to become a bank holding company by acquiring 100 percent of THE BANKshares, Inc., and thereby indirectly acquire The Bank Brevard, both of Melbourne, Florida.

2. Castle Creek Capital Partners III, L.P., Castle Creek Capital III LLC, Eggemeyer Capital LLC, Ruh Capital LLC, Legions IV Advisory Corp, all of Rancho Santa Fe, California, to acquire 91 percent of THE BANKshares, Inc., and thereby indirectly acquire The Bank of Brevard, both of Melbourne, Florida.

Board of Governors of the Federal Reserve System, August 22, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–14192 Filed 8–25–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 2006.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. NHB Holdings, Inc., Jacksonville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Volvo Commercial Credit Corp. of Utah, Salt Lake City,

Utah, which will be renamed Globility Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, August 23, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–14206 Filed 8–25–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 30-Day Notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, New collection.

Title of Information Collection: Research Intergrity Office Study (RIO).

Form/OMB No.: OS–0990–New.

Use: This study has been designed to gather information for ORI to use in the development of conferences, workshops, and other training materials for RIOs. It is needed to identify the areas of responsibility and specify the activities that RIOs have responsibility to perform in the process of handling allegations of scientific misconduct at their institutions, but for which their training, experience, and knowledge may be inadequate.

Frequency: Reporting, on occasion one time.

Affected Public: Business or other for-profit, not-for-profit institutions, and Federal government.

Annual Number of Respondents: 1420.

Total Annual Responses: 2556.

Average Burden per Response: 45 minutes.

Total Annual Hours: 647.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/ocio/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–New), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: August 16, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–14199 Filed 8–25–06; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 60-Day Notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection.

Title of Information Collection: Oklahoma Marriage Initiative Process Evaluation.

Form/OMB No.: OS–0990–New.

Use: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the U.S. Department of Health and Human Services is requesting clearance for data collection instruments to be used in conducting a process evaluation of the Oklahoma Marriage Initiative (OMI); which will be used to examine how Oklahoma developed, revised, and refined its approaches and strategies to serve this population this will inform the next stage of marriage education services for this population. Including the focus on services for prisoners, the overall purpose of the OMI process evaluation is to document and analyze the context from which the initiative developed; its overall goals and objectives; and its evolution, organizational structure, partnerships, and service delivery system.

Frequency: Reporting, single time.

Affected Public: Regulatory or compliance, Application of benefits.

Annual Number of Respondents: 260.

Total Annual Responses: 260.

Average Burden Hours per Response: 1½ hours.

Total Annual Hours: 390.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60-days and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Sherette Funn-Coleman (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: August 16, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–14200 Filed 8–25–06; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the eighth meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: September 7, 2006, from 9 a.m. to 11 a.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/bio_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.envetcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: August 21, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–7188 Filed 8–25–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–0670]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Efficacy of Household Water Filtration/Treatment Devices in Households with Private Wells—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Approximately 42.4 million people in the United States are served by private wells. Unlike community water systems, private wells are not regulated by the U.S Environmental Protection Agency's (EPA) Safe Drinking Water Act (SDWA). Under the SDWA, EPA sets maximum contaminant levels (MCLs) for contaminants in drinking water. A 1997 U.S. General Accounting Office (GAO) report on drinking water concluded that users of private wells may face higher exposure levels to groundwater contaminants than users of community water systems. Increasingly, the public is concerned about drinking water quality, and the public's use of water treatment devices rose from 27% in 1995 to 41% in 2001 (*Water Quality Association, 2001 National Consumer Water Quality Survey*). Studies evaluating the efficacy of water treatment devices on removal of pathogens and other contaminants have assessed the efficacy of different treatment technologies.

The purpose of the proposed study is to evaluate how water treatment device efficacy is affected by user behaviors such as maintenance and selection of appropriate technologies. Working with public health authorities in Colorado, Maine, Missouri, Nebraska, North Carolina, and Wisconsin, NCEH will recruit 600 households to participate in a study to determine whether people using water treatment devices are protected from exposure to contaminants found in their well water. We plan to recruit households on private well water that use water filtration/treatment devices to treat tap water for drinking and cooking. Study participants will be selected from geographical areas of each state where groundwater is known or suspected to contain contaminants of public health concern. We will administer a questionnaire at each household to obtain information on selection of water treatment type, adherence to suggested maintenance, and reasons for use of treatment device. We will also obtain samples of treated water and untreated well water at each household to analyze for contaminants of public health concern. There is no cost to respondents other than their time. The total estimated annual burden hours are 300.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (hour)
Participant Solicitation Telephone Questionnaire	1200	1	5/60
Household Questionnaire	600	1	20/60

Dated: August 21, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–14231 Filed 8–25–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged non-federal home energy resources for low-income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to the Department of Health and Human Services for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary and is described at 45 CFR 96.87.

The LIHEAP leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, wailers, and in-kind); the benefits provided to low-income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and the fair market value of these resources/benefits. HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees' leveraged non-federal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposes to request a three-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660

Estimated Total Annual Burden Hours: 2,660.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocolleciton@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: August 22, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–7189 Filed 8–25–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: Low Income Home Energy Assistance Program (LIHEAP) Household Report.

OMB No.: 0970–0060

Description: This statistical report is an annual activity required by statute (42 U.S.C. 8629) and Federal regulations (45 CFR 96.92) for the Low Income Home Energy Assistance Program (LIHEAP). Submission of the completed report is one requirement for LIHEAP grantees applying for Federal LIHEAP block grant funds. States, the District of Columbia, and the Commonwealth of Puerto Rico are required to report statistics for the previous Federal fiscal year on the number and income levels of LIHEAP applicants and assisted households, as well as the number of LIHEAP-assisted households with at least one member who is elderly, disabled, or a young child.

The statistical report requires States, the District of Columbia, and the Commonwealth of Puerto Rico to report on assisted households having at least one elderly person who is homebound; an unduplicated count of assisted households having at least one member who is elderly, disabled, or a young child; and an unduplicated count of assisted households receiving one or more types of LIHEAP assistance.

Insular areas receiving less than $200,000 annually in LIHEAP funds and Indian Tribal Grantees are required to submit data only on the number of households receiving heating, cooling, energy crisis, or weatherization benefits. The information is being collected for the Department's annual LIHEAP report to Congress. The data also provides information about the need for LIHEAP funds. Finally, the data are used in the calculation of LIHEAP performance measures under the Government Performance and Results Act of 1993. The additional data elements will improve the accuracy of measuring LIHEAP targeting performance and LIHEAP cost efficiency.

Respondents: State Governments, Tribal Governments, Insular Areas, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Assisted Household Report-Long Form	52	1	35	1,820
Assisted Household Report-Short Form	140	1	1	140
Applicant Household Report	52	1	13	676

Estimated Total Annual Burden Hours: 2,636.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 22, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–7190 Filed 8–25–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Atherosclerosis Risk in Communities Study (ARIC)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), 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: The Atherosclerosis Risk in Communities Study (ARIC).

Type of Information Collection Request: Revision of a currently approved collection (OMB No. 0925–0281).

Need and Use of Information Collection: This project involves annual follow-up by telephone of participants in the ARIC study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women.

Frequency of Response: The participants will be contacted annually.

Affected Public: Individuals or households; businesses or other for profit; small businesses or organizations.

Type of Respondents: Individuals or households; doctors and staff of hospitals and nursing homes.

The annual reporting burden is as follows:

Estimated Number of Respondents: 12,845.

Estimated Number of Responses per Respondent: 1.0.

Average Burden Hours Per Response: 0.242.

Estimated Total Annual Burden Hours Requested: 3,108.

The annualized cost to respondents is estimated at $60,525, assuming respondents time at the rate of $16.5 per hour and physician time at the rate of $75 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN (2007–2010)

Type of response	No. of respondents	Frequency of response	Average hours per response	Annual hour burden
Participant Follow-up	11,500	1.0	0.2500	2,875
Physician (or coroner)[1]	945	1.0	0.1667	158
Participant's next-of-kin[1]	450	1.0	0.1667	75
Total	12,845	1.0	0.2420	3,108

[1] Annual burden is placed on doctors, hospitals, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

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 proper performance of the function 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.

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 Dr. Hanyu Ni, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number 301–435–0448 or e-mail your request, including your address to: *NiHanyu@nhlbi.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 21, 2006.

Meg Scofield,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E6–14185 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The REDS–II Donor Iron Study: Predicting Hemoglobin Deferral and Development of Iron Depletion in Blood Donors

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The REDS–II Donor Iron Study: Predicting Hemoglobin Deferral and Development of Iron Depletion in Blood Donors.

Type of Information Collection Request: New.

Need and Use of Information Collection: Although the overall health significance of iron depletion in blood donors is uncertain, iron depletion leading to iron deficient erythropoiesis and lowered hemoglobin levels results in donor deferral and, occasionally, in mild iron deficiency anemia. Hemoglobin deferrals represent more than half of all donor deferral, deferring 16% of women. Several cross sectional studies of blood donors, using older measures of iron status in blood donors have indicated that female sex, frequent donation and not taking iron supplements are predictors of iron depletion. However, none of these studies have included racial/ethnic, anthropomorphic, or behavioral factors and none have evaluated the impact of newly discovered iron protein polymorphisms. The REDS–II Donor Iron Study is a longitudinal study of iron status in two cohorts of blood donors: A first-time/reactivated donor cohort in which baseline iron and hemoglobin status can be assessed without the influence of previous donations, and a frequent donor cohort, where the cumulative effect of additional frequent blood donations can be assessed. Each cohort's donors will donate blood and provide evaluation samples during the study period. We also propose to assess the baseline status of a group of first-time donors who are deferred for low hemoglobin on their first visit.

The primary goal of the study is to evaluate the effects of blood donation intensity on iron and hemoglobin status and assess how these are modified as a function of baseline iron/hemoglobin measures, demographic factors, and reproductive and behavioral factors. Hemoglobin levels, a panel of iron protein, red cell and reticulocyte indices will be measured at baseline and at a final follow-up visit 15–24 months after the baseline visit. A DNA sample will be obtained once at the baseline visit to assess three key iron protein polymorphisms. Donors will also complete a self-administered survey assessing past blood donation, smoking history, use of vitamin/mineral supplements, iron supplements, aspirin, frequency of heme rich food intake, and, for females, menstrual status and pregnancy history at these two time points. This study aims to identify the optimal laboratory measures that would predict the development of iron depletion, hemoglobin deferral, and/or iron deficient hemoglobin deferral in active whole blood and double red cell donors at subsequent blood donations. The data collected will help evaluate hemoglobin distributions in the blood donor population (eligible and deferred donors) and compare them with NHANES data. Other secondary objectives include elucidating key genetic influences on hemoglobin levels and iron status in a donor population as a function of donation history; and establishing a serum and DNA archive to evaluate the potential utility of future iron studies and genetic polymorphisms.

This study will develop better predictive models for iron depletion and hemoglobin deferral (with or without iron deficiency) in blood donors; allow for the development of improved donor screening strategies and open the possibility for customized donation frequency guidelines for individuals or classes of donors; provide important baseline information for the design of targeted iron supplementation strategies in blood donors, and improved counseling messages to blood donors regarding diet or supplements; and by elucidating the effect of genetic iron protein polymorphisms on the development of iron depletion, enhance the understanding of the role of these proteins in states of iron stress, using frequent blood donation as a model.

Frequency of Response: Twice.

Affected Public: Individuals.

Type of Respondents: Adult blood donors.

The annual reporting burden is as follows:

Estimated Number of Respondents:

Baseline Visit: 3,750.

Follow-up Visit: 1720.

Estimated Number of Responses per Respondent: 1.

Average Burden of Hours per Response:

Baseline Visit: 0.12.

Follow-up Visit: 0.1.

Estimated Total Annual Burden Hours Requested:

Baseline Visit: 450.

Follow-up Visit: 172.

The annualized cost to respondents is estimated at:

Baseline Visit: $8,100.

Follow-up Visit: $3,096 (based on $18 per hour).

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Blood donors at Baseline Visit	3,750	1	0.12	450
Blood donors at Follow-up Visit	1720	1	0.1	172
Total				622

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information 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 Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Room 10142, 6701 Rockledge Drive, MSC 7950, Bethesda, MD 20892–7950, or call 301–435–0075, or e-mail your request to *nemog@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 21, 2006.

Meg Scofield,

NHLBI Project Clearance Liaison Officer, National Institutes of Health.

[FR Doc. E6–14191 Filed 8–25–06; 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.

Diagnostic and Therapeutic Strategies for Metastatic Hepatocellular Carcinoma by Targeting Osteopontin

Description of Technology: Cancer is one of the leading causes of death in United States and it is estimated that there will be more than half a million deaths caused by cancer in 2006. For the last decade breast and prostate cancer survival rate has significantly decreased thanks to contribution of screening, early detection and novel therapeutics. This success needs to be translated to other cancers as well, where there is a need of novel diagnostic and therapeutic strategies for successful disease management.

Osteopontin (OPN) is a well known serum prognostic marker for breast cancer. This technology identifies a 10kD residue of OPN as a potential prognostic marker and therapeutic target for metastatic hepatocellular carcinoma (HCC). Mechanistically, OPN has been shown to be a novel substrate for MMP–9 and the 10kD fragment is demonstrated to be a mediator of cell invasion and metastasis. Short synthetic peptides against OPN have been shown to block OPN mediated cell invasion, providing a novel therapeutic approach targeting OPN. Finally, polyclonal antibodies against the 10kD fragment of OPN have been developed that can be used for detection of OPN in physiological fluids of HCC patients. This technology provides a novel therapeutic and diagnostic strategy for the management of HCC patients using OPN.

Development Status: The technology is in the pre-clinical stage, animal studies are under way.

Inventors: Vivian A. Takafuji (NCI) *et al.*

Relevant Publications:

1. A manuscript relating to this invention has been submitted for publication and will be available once accepted.

2. J Kim, SS Ki, SD Lee, CJ Han, YC Kim, SH Park, SY Cho, YJ Hong, HY Park, M Lee, HH Jung, KH Lee, SH Jeong. Elevated plasma osteopontin levels in patients with hepatocellular carcinoma. Am J Gastroenterol. 2006 Jul 18; Epub ahead of print, doi: 10.1111/j.1572–0241.2006.00679.

3. QH Ye, LX Qin, M Forgues, P He, JW Kim, AC Peng, R Simon, Y Li, AI Robles, Y Chen, ZC Ma, ZQ Wu, SL Ye, YK Liu, ZY Tang, XW Wang. Predicting hepatitis B virus-positive metastatic hepatocellular carcinomas using gene expression profiling and supervised machine learning. Nat Med. 2003 Apr; 9(4):416–423.

Patent Status: U.S. Provisional Application No. 60/805,298 filed 20 Jun 2006 (HHS Reference No. E–201–2006/0–US–01).

Licensing Status: This technology is available for licensing under an exclusive or non-exclusive patent license.

Licensing Contact: Michelle Booden, Ph.D.; 301/451–7337; *boodenm@mail.nih.gov*.

Collaborative Research Opportunity: The NCI Laboratory of Human Carcinogenesis is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize diagnostic and therapeutic strategies for metastatic hepatocellular carcinoma. Please contact Betty Tong at 301–594–4263 or *tongb@mail.nih.gov* for more information.

Hybrid T-Cell Receptors for the Development of Improved Vaccines

Description of Technology: Cancer is one of the leading causes of death in United States and it is estimated that there will be more than half a million deaths caused by cancer in 2006. A major drawback of the current chemotherapy-based therapeutics is the cytotoxic side-effects associated with them. Thus there is a dire need to develop new therapeutic strategies with fewer side-effects. Immuno-therapy has taken a lead among the new cancer therapeutic approaches. Adoptive immunotherapy is one of the most promising new therapeutic approaches that enhance the innate immunity of an individual to fight against a certain disease.

T cell receptors (TCR) are the proteins responsible for the T cell's ability to recognize infected or transformed cells. TCR consists of two domains, one variable domain that recognizes the antigen and one constant region that helps the TCR anchor to the membrane and transmit the recognition signal by interacting with other proteins.

The present invention involves the construction of hybrid anti-cancer TCR that is half mouse and half human. Functional analysis reveals that human TCR with a mouse constant region is significantly better than pure human TCR. This hybrid protein when put into human T cells makes these cells much better in recognizing cancer associated proteins. The hybrid protein can be used to improve the function of a T cell providing diagnostic and therapeutic applications in cancer and infectious diseases.

Development Status: The technology is in the pre-clinical stage, animal studies are complete, and a clinical protocol for a Phase I clinical trial for stage IV refractory melanoma is currently under review by the NIH IRB.

Inventors: Richard A. Morgan, Cyrille J. Cohen, Steven A. Rosenberg (NCI).

Patent Status: U.S. Provisional Application No. 60/796,853 filed 03 May 2006 (HHS Reference No. E–086–2006/0–US–01).

Relevant Publications:

1. CJ Cohen, Y Zhao, Z Zheng, SA Rosenberg, RA Morgan. Enhanced antitumor activity of murine-human hybrid T-cell receptor (TCR) in human lymphocytes is associated with improved pairing and TCR/CD3 stability. Cancer Res., in press.

2. MS Hughes, YY Yu, ME Dudley, Z Zheng, PF Robbins, Y Li, J Wunderlich, RG Hawley, M Moayeri, SA Rosenberg, RA Morgan. Transfer of a TCR gene derived from a patient with a marked antitumor response conveys highly active T-cell effector functions. Hum Gene Ther. 2005 Apr;16(4):457–472.

Licensing Status: This technology is available for licensing under an exclusive or non-exclusive patent license.

Licensing Contact: Michelle Booden, Ph.D.; 301/451–7337; *boodenm@mail.nih.gov*

Collaborative Research Opportunity: The NCI Surgery Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize hybrid T-cell receptors for the development of improved vaccines. Please contact Betty Tong at 301–496–0477; *tongb@mail.nih.gov* for more information.

Adoptive Immunotherapy With T Lymphocytes Engineered for Enhanced Survival

Description of Technology: Available for licensing is a composition, comprising genetically engineered lymphocytes, transduced to express elevated levels of cytokine proteins. This technology is useful for improving cellular adoptive immunotherapies to treat a range of infectious diseases and cancers.

Adoptive immunotherapy has repeatedly been shown to be useful in the treatment of patients with metastatic melanoma. However, clinical efficacy of this treatment is limited by the short-lived survival of the transferred, autologous, antigen-specific T cells. It would be desirable to genetically modify effector cells to provide not only enhanced effector cell survival, but also desired antigen specificity, and improved function, and safety. The current technology provides a method address this desire, by genetically modifying lymphocytes using retroviral vectors.

Specifically, isolated autologous T lymphocytes can be transformed with polynucleotides encoding endogenous cytokines, for example IL–7 or IL–15. IL–15-transduced lymphocyte cultures demonstrate prolonged in vitro persistence. In addition, T cells can be transduced to express not only cytokines but also T cell receptors to confer specificity for certain antigens. Recent data showed that human T lymphocytes engineered to express a murine anti-human p53 T cell receptor can recognize tumor cell lines, as well as fresh human tumors, and are able to kill p53-expressing human tumor cells.

Also provided in the invention are methods for treating patients with transformed lymphocytes as part of adoptive immunotherapy. Applications of this technology beyond cancer include the potential use of cytokine expressing cells in treating infectious and autoimmune diseases and vaccination.

Inventors: Steven A. Rosenberg *et al.* (NCI).

Publications:

1. L Gattinoni, SE Finkelstein, CA Klebanoff, PA Antony, DC Palmer, PJ Spiess, LN Hwang, Z Yu, C Wrzesinski, DM Heimann, CD Surh, SA Rosenberg, NP Restifo. Removal of homeostatic cytokine sinks by lymphodepletion enhances the efficacy of adoptively transferred tumor-specific CD8+ T cells. J Exp Med. 2005 Oct 3;202(7):907–912.

2. LX Wang, R Li, G Yang, M Lim, A O'Hara, Y Chu, BA Fox, NP Restifo, WJ Urba, HM Hu. Interleukin-7-dependent expansion and persistence of melanoma-specific T cells in lymphodepleted mice lead to tumor regression and editing. Cancer Res. 2005 Nov 15;65(22):10569–10577.

3. L Gattinoni, DJ Powell Jr, SA Rosenberg, NP Restifo. Adoptive immunotherapy for cancer: building on success. Nat Rev Immunol. 2006 May;6(5):383–393.

4. CJ Cohen, *et al.* Recognition of fresh human tumor by human peripheral blood lymphocytes transduced with a bicistronic retroviral vector encoding a murine anti-p53 TCR. J Immunol. 2005 Nov 1;175(9):5799–5808.

5. C Hsu, *et al.* Primary human T lymphocytes engineered with a codon-optimized IL–15 gene resist cytokine withdrawal-induced apoptosis and persist long-term in the absence of exogenous cytokine. J Immunol. 2005 Dec 1;175(11):7226–7234.

6. SA Rosenberg and ME Dudley. Cancer regression in patients with metastatic melanoma after the transfer of autologous antitumor lymphocytes. Proc Natl Acad Sci USA 2004 Oct 5;101 Suppl 2:14639–14645.

7. CA Klebanoff, *et al.* IL–15 enhances the in vivo antitumor activity of tumor-reactive CD8+ T cells. Proc Natl Acad Sci USA 2004 Feb 17;101(7):1969–1974.

8. K Liu and SA Rosenberg. Interleukin-2-independent proliferation of human melanoma-reactive T lymphocytes transduced with an exogenous IL–2 gene is stimulation dependent. J Immunother. 2003 May-Jun;26(3):190–201.

9. K Liu and SA Rosenberg. Transduction of an IL–2 gene into human melanoma-reactive lymphocytes results in their continued growth in the absence of exogenous IL–2 and maintenance of specific antitumor activity. J Immunol. 2001 Dec1;167(11):6356–6365.

Patent Status: U.S. Provisional Application No. 60/617,340 filed 08 Oct 2004 (HHS Reference No. E–340–2004/0-US–01); PCT Application No. PCT/US05/3640 filed 07 Oct 2005 (HHS Reference No. E–340–2004/2-PCT–01)

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Michelle A. Booden, Ph.D.; 301/451–7337; *boodenm@mail.nih.gov*

Collaborative Research Opportunity: The NCI Surgery Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the clinical applications of T cell receptor technology. Please contact Steven A. Rosenberg, M.D., Ph.D. at 301–496–4164 for more information.

Dated: August 21, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–14184 Filed 8–25–06; 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 Special Emphasis Panel, CA07–002, 008, 009, Application of Emerging Technologies for Cancer Research (STTR R41/R42), (SBIR R43/44), (R21/R33, R21, R33).

Date: October 18–19, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 8057, Bethesda, MD 20892–8329. 301–496–7421. *kerwinm@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: August 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7167 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–07, Review R21.

Date: September 28, 2006.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Raj K. Krishnaraju, PhD, MS, Scientific Review Administrator, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm 4AN 32J, Bethesda, MD 20892. 301–594–4864. *kkrishna@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–06, Review R03s, Ks.

Date: October 19, 2006.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Raj K. Krishnaraju, PhD, MS, Scientific Review Administrator, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm 4AN 32J, Bethesda, MD 20892. 301–594–4864. *kkrishna@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–17, Review R01.

Date: October 19, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr., 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892. (301) 594–4827. *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–08, Review of R21s.

Date: November 10, 2006.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892. (301) 594–3169. *yujing_liu@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–14, Review of R21.

Date: November 10, 2006.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892. (301) 594–3169. *yujing_liu@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–09, Review R21s.

Date: November 21, 2006.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892. (301) 594–3169. *yujing_liu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7163 Filed 8–25–06; 8:45am]

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 Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies for Clinical Trials.

Date: September 19, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institues of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: D. G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 914, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7682. *pateldg@niddk.nih.gov*.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Look Ahead Studies.

Date: September 26, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: D. G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 914, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7682. *pateldg@niddk.nih.gov*.

(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 Institues of Health, HHS)

Dated: August 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7164 Filed 8–25–06; 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, P50 Review.

Date: August 30, 2006.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Center, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–4056.

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: August 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7165 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interventions for Youth-Anxiety, Mood Disorders.

Date: September 22, 2006.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606. 301–443–7861. *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interventions for Youth-ADHD, Autism.

Date: September 27, 2006.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606. 301–443–7861. *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel

Centers for Intervention Development and Applied Research (CIDAR)

Date: October 9–10, 2006.

Time: October 9, 2006, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7166 Filed 8–25–06; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, FoxP3 Complex.

Date: September 21, 2006.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Sujata Vijh, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301–594–0985. *vijhs@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 21, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7174 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 24, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Judith A. Arroyo, PhD., Scientific Review Administrator, National Institute of Alcohol, Abuse and Alcoholism, 5635 Fishers Lane, Room 3041, Bethesda, MD 20892–9804, 301–443–0800, *jarroyo@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.373, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 21, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7176 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, R03/R21/K99.

Date: October 20, 2006.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zoe E. Huang, MD, Health Science Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7698. 301–594–4937. *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, Scholary Works (G13).

Date: October 25, 2006.

Time: 12 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Health Science Administrator, Extramural Programs, National Library of Medicine, Rockledge 1 Building, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968. 301–594–4937. *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, IAIMS.

Date: October 26, 2006.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968. 301–496–4253. *petrosia@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, G08/R01/F37.

Date: November 2, 2006.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Health Science, Administrator, Extramural Programs, National Library of Medicine, Rockledge 1 Building, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968. 301–594–4937. *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 21, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7171 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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: Biomedical Library and Informatics Review Committee.

Date: November 8–9, 2006.

Time: November 8, 2006, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: November 9, 2006, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Arthur A Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968. 301–496–4253. *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 21, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7173 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical and Integrative Gastrointestinal Pathobiology Study Section, September 17, 2006, 6 p.m. to September 19, 2006, 4 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817 which was published in the **Federal Register** on August 10, 2006, 71 FR 45844.

The meeting will be held September 17, 2006, 7 p.m. to September 18, 2006, 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: August 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7168 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Gastrointestinal Cell and Molecular Biology Study Section, September 18, 2006, 7:30 a.m. to September 18, 2006, 6 p.m., Bethesda Park Clarion Hotel, 8400 Wisconsin Ave., Bethesda, MD 20814, which was published in the **Federal Register** on August 10, 2006, 71 FR 45844. The meeting will be held September 17, 2006, 7 p.m. to September 18, 2006, 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: August 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7169 Filed 8–25–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Medical Imaging BRP.

Date: September 15, 2006.

Time: 8 a.m. to 4 p.m.

Agency: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892. 301–435–1744. *lixiang@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93,837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 17, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7170 Filed 8–25–06; 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; Diabetic Neuropathy.

Date: August 29, 2006.

Time: 5:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@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; Confocal Microscopy Shared Instrumentation Panel.

Date: September 18–19, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Laura M. Roman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2138, MSC 7720, Bethesda, MD 20892, 301–435–0715, *romanl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bacterial Pathogenesis.

Date: September 20, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project Review: Cryo-Electon Microscopy.

Date: September 25, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–83.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 21, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7175 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: System and Methods for Detecting and Characterizing Macromolecular Interactions in Solution

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in PCT (application number pending) filed July 28, 2006 from U.S. provisional application 60/703,814 (E–167–2005/0–US–01), entitled ''System and Methods for Detecting and Characterizing Macromolecular Interactions in Solution'' (Inventors: Drs. Allen Minton and Arun Attri) to Wyatt Technology Corporation (hereafter Wyatt), having a place of business in Goleta, California. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before October 27, 2006 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Chekesha Clingman, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; e-mail: *clingmac@mail.nih.gov;* telephone: (301) 435–5018; facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The present invention relates to systems and methods for sensitive detection and characterization of macromolecular interactions in homogenous or heterogeneous solutions of macromolecules, such as proteins, DNA, RNA, biopolymers, organic and inorganic polymers, macromolecular pharmaceutical compounds and others. The methods employed by this system do not require the need for labeling or chemical modification of any test substance, and it is more rapid than any conventional methods. The system includes a dispenser to dispense a solution containing the macromolecule, and one or more detectors to measure a light scattering and concentration associated with the macromolecule in solution. For instance, the first detector can be a light scattering detector (such as a static light-scattering detector). The second detector (such as a UV–Vis detector) can be added in to measure light absorbance and hence concentration. The detectors can be arranged in parallel, to receive identical flow of solution from the dispenser, so that at any given time point, both detectors collect data on flow of identical concentrations.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development of a system and method for detecting and characterizing macromolecular interactions in solution.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments

and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 21, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–14190 Filed 8–25–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Dependence—42 CFR part 8 (OMB No. 0930–0206)—Revision

This regulation establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid Treatment Programs (OTPs) be certified. ''Certification'' is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation and of the forms used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA–162); the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA–163); and the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA–168), which may be used on a voluntary basis by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. Form SMA–162 is used as the initial application to request certification of an OTP, to request renewal of certification and to change existing information regarding the program's location, sponsor and medical director. This form collects information such as address, program name, contact information, sponsor name and address and medical director name and address. Attachments are required to complete this form regarding the OTPs accrediting status, organizational structure, and operating procedures. Form SMA–163 is used as an application to become a SAMHSA approved accrediting body. This form collects accrediting body name, address and contact information. Attachments are required to complete this form regarding the accrediting body's operating procedures and standards and their staff's education and experience. Form SMA–168 is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions. This form collects patient admission date, dosage amount, patient status, attendance schedule per week, dates of exception and justification.

The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/response	Total hours
8.3(b)(1–11)	Initial approval (SMA–163)	1	1	6.0	6
8.3(c)	Renewal of approval (SMA–163)	2	1	1.0	2
8.3(e)	Relinquishment notification	1	1	0.5	0.5
8.3(f)(2)	Non-renewal notification to accredited OTPs.	1	90	0.1	9
8.4(b)(1)(ii)	Notification to SAMHSA for seriously noncompliant OTPs.	2	2	1.0	4
8.4(b)(1)(iii)	Notification to OTP for serious noncompliance.	2	10	1.0	20
8.4(d)(1)	General documents and information to SAMHSA upon request.	6	5	0.5	15
8.4(d)(2)	Accreditation survey to SAMHSA upon request.	6	75	0.02	9
8.4(d)(3)	List of surveys, surveyors to SAMHSA upon request.	6	6	0.2	7.2
8.4(d)(4)	Report of less than full accreditation to SAMHSA.	6	5	0.5	15
8.4(d)(5)	Summaries of Inspections	6	50	0.5	150
8.4(e)	Notifications of Complaints	6	6	0.5	18
8.6(a)(2) and (b)(3)	Revocation notification to Accredited OTPs.	1	185	0.3	55.5
8.6(b)	Submission of 90-day corrective plan to SAMHSA.	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTPs of Probationary Status.	1	185	0.3	55.0

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES—Continued

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/response	Total hours
Total		6			376.2

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	Number of espondents	Responses/ respondent	Hours/response	Total Hours
8.11(b)	Renewal of approval (SMA–162)	370	1	0.30	111.00
8.11(b)	Relocation of Program (SMA–162).	35	1	1.17	40.95
8.11(e)(1)	Application for provisional certification.	40	1	1	40.00
8.11(e)(2)	Application for extension of provisional certification.	30	1	0.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	0.1	6.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance.	1	1	1	1.00
8.11(h)	Request to SAMHSA for Exception from 8.11 and 8.12 (including SMA–168).	1150	30	0.07	2415.00
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	0.25	2.5
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	0.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	0.25	.50
8.25(a)	Informal Review Request	2	1	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement.	2	1	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review.	2	1	1.00	2.00
8.28(c)	Appellant Review File and Written Statement.	2	1	5.00	10.00
Total		1,150			2655.05

Written comments and recommendations concerning the proposed information collection should be sent by September 27, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 18, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–14242 Filed 8–25–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Targeted Capacity Expansion Grants for Jail Diversion Program Evaluation—Additional Trauma Measures—(OMB NO. 0930–0277)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) has implemented the Targeted Capacity Expansion Grants for Jail Diversion Programs. The Program currently collects client outcome measures from program participants

who agree to participate in the evaluation. Data collection consists of interviews conducted at baseline,6- and 12-month intervals.

The current proposal requests:

1. Adding a new instrument, the PTSD Checklist (PCL), as a measure of trauma-specific symptoms to the baseline, 6- and 12-month interviews.

2. Extending the use of DC Trauma Screen, currently administered only at baseline, to be included in the 6- and 12 month interviews. The DC Trauma Screen examines the prevalence of experience of trauma within general types.

The PCL and the DC Trauma Screen each take 5 minutes to complete. Including these measures would add 5 minutes to the length of the Baseline interview and ten minutes to the length of the 6- and 12-Month interviews.

New grantees were awarded on April 30, 2006 under the TCE Grants for Jail Diversion program and will commence data collection efforts in FY 2007. The following tables summarize the burden for the data collection.

FY 2007 ANNUAL REPORTING BURDEN FOR THE ADDITIONAL MEASURES

Data collection activity	Number of respondents	Responses per respondent	Average hours per response	Annual hour burden
Client Interviews:				
Baseline Interview	222	1	.08	18
6-month Interview	180	1	.16	29
12-month Interview	138	1	.16	22
Total	540	3		69

FY 2008 ANNUAL REPORTING BURDEN FOR THE ADDITIONAL MEASURES

Data collection activity	Number of respondents	Responses per respondent	Average hours per response	Annual hour burden
Client Interviews:				
Baseline Interview	222	1	.08	18
6-month Interview	180	1	.16	29
12-month Interview	138	1	.16	22
Total	540	3		69

FY 2009 ANNUAL REPORTING BURDEN FOR THE ADDITIONAL MEASURES (CALCULATED UP TO THE GRANT END DATE OF APRIL 30, 2009)DATA COLLECTION ACTIVITY

Number of respondents	Responses per respondent	Average hours per response	Annual hour burden	
Client Interviews:				
Baseline Interview	0	1	.08	0
6-month Interview	10	1	.16	2
12-month Interview	8	1	.16	1
Total	18	3		3

Send comments to Summer King, SAMHSA Reports Clearance Officer, OAS, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857. Written comments should be received by October 27, 2006.

Dated: August 18, 2006.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. E6–14243 Filed 8–25–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Application for Asylum and Withholding of Removal; Form I–589; OMB Control No. 1615–0067.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 21, 2006, at 71 FR 20711. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by E-mail please make sure to add OMB Control Number 1615–0067 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–589. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection will be used to determine whether an alien applying for asylum and/or withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 63,138 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 757,656 annual burden hours.

If you need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: August 23, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–14207 Filed 8–25–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–FA–03]

Announcement of Funding Awards for the Community Development Technical Assistance Programs Fiscal Year 2005

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Community Development Technical Assistance programs. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mark A. Horwath, Director, Office of Technical Assistance and Management, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7218, Washington, DC 20410–7000; telephone (202) 708–3176 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Fiscal Year 2005 Community Development Technical Assistance program was designed to increase the effectiveness of HUD's HOME Investment Partnerships Program (HOME), CHDO (HOME) program, Youthbuild program, Community Development Block Grant (CDBG) program, McKinney-Vento Homeless Assistance programs (Homeless), and Housing Opportunities for Persons with AIDS (HOPWA) program through the selection of technical assistance (TA) providers for these six programs.

The competition was announced in the SuperNOFA published March 21, 2005 (70 FR 14012). The NOFA allowed for approximately $30,120,000 for CD–TA grants. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

For the Fiscal Year 2005 competition, a total of $28,930,335 was awarded to 72 technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: August 3, 2006.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

FISCAL YEAR 2005 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS

Recipient	State	Amount
Council of State Community Development Associations	DC	$200,000.00
Abt Associates, Inc.	MA	100,000.00

FISCAL YEAR 2005 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS—Continued

Recipient	State	Amount
Training and Development Associates, Inc.	NC	100,000.00
ICF Consulting, L.L.C.	VA	539,000.00
Total CDBG		939,000.00
State of Alaska Housing Finance Corporation	AK	30,000.00
Rural Community Assistance Corporation	CA	335,000.00
Housing Assistance Council	DC	1,172,000.00
Homeless & Housing Coalition of Kentucky	KY	150,000.00
Community Economic Development Assistance Corporation (CEDAC)	MA	220,000.00
Institute for Community Economics, Inc.	MA	260,000.00
Enterprise Foundation	MD	355,000.00
Coastal Enterprises, Inc.	ME	30,000.00
State of Michigan Department of Consumer & Industry Services	MI	125,000.00
Minnesota Housing Partnership	MN	140,000.00
Regional Housing and Community Development Alliance	MO	29,700.00
Training and Development Associates, Inc.	NC	1,570,300.00
Local Initiatives Support Corporation	NY	805,000.00
Neighborhood Preservation Coalition of New York State, Inc.	NY	222,000.00
New York State Rural Housing Coalition, Inc.	NY	60,000.00
Structured Employment Economic Development Corporation (SEEDCO)	NY	600,000.00
Ohio Capital Corporation for Housing	OH	58,000.00
Ohio CDC Association	OH	58,000.00
Neighborhood Partnership Fund	OR	100,000.00
Puerto Rico Community Foundation	PR	75,000.00
Douglas-Cherokee Economic Authority, Inc.	TN	150,000.00
Rural Collaborative, Inc.	UT	85,000.00
Community Frameworks (aka Northwest Regional Facilitators)	WA	80,000.00
Urban Economic Development Association of Wisconsin, Inc. (UEDA)	WI	86,120.00
Wisconsin Partnership for Housing Development, Inc.	WI	113,880.00
Total CHDO		6,910,000.00
State of Alaska Housing Finance Corporation	AK	40,000.00
Rural Community Assistance Corporation	CA	200,001.00
Colorado Rural Housing Development Consortium (CRHDC)	CO	19,999.00
Council of State Community Development Associations	DC	192,245.00
Dennison Associates, Inc.	DC	994,750.00
Coastal Enterprises, Inc.	ME	30,000.00
State of Michigan Department of Consumer & Industry Services	MI	100,000.00
Minnesota Housing Partnership	MN	75,000.00
Training and Development Associates, Inc.	NC	965,000.00
New Mexico Mortgage Finance Authority	NM	80,000.00
Capital Access, Inc.	PA	60,250.00
Douglas-Cherokee Economic Authority, Inc.	TN	62,500.00
Rural Collaborative, Inc.	UT	60,000.00
ICF Consulting, L.L.C.	VA	4,031,784.00
Vermont Housing and Conservation Board	VT	30,000.00
Urban Economic Development Association of Wisconsin, Inc. (UEDA)	WI	35,000.00
Wisconsin Partnership for Housing Development, Inc.	WI	30,000.00
Total HOME		7,006,529.00
State of Alaska Housing Finance Corporation	AK	30,000.00
HomeBase/The Center for Common Concerns	CA	200,000.00
Dennison Associates, Inc.	DC	406,800.00
Affordable Housing Alliance	HI	39,606.00
Illinois Community Action Association	IL	70,000.00
Abt Associates, Inc.	MA	4,000,000.00
Technical Assistance Collaborative, Inc.	MA	337,732.00
University of Massachusetts at Boston	MA	72,268.00
Enterprise Foundation	MD	100,000.00
Biddle Management, LLC	MI	38,000.00
Minnesota Housing Partnership	MN	52,000.00
Training and Development Associates, Inc.	NC	786,200.00
Corporation for Supportive Housing	NJ	1,172,000.00
New Mexico Coalition to End Homelessness	NM	24,999.00
Supportive Housing Network of New York	NY	165,000.00
Partnership Center, Ltd.	OH	125,000.00
Diana T. Meyers and Associates, Inc.	PA	20,000.00
Douglas-Cherokee Economic Authority, Inc.	TN	40,000.00
Community Solutions	TX	25,001.00

FISCAL YEAR 2005 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS—Continued

Recipient	State	Amount
ICF Consulting, L.L.C.	VA	1,371,000.00
Common Ground	WA	24,000.00
Total Homeless		9,099,606.00
AIDS Housing Corporation	MA	400,000.00
Training and Development Associates, Inc.	NC	400,000.00
ICF Consulting, L.L.C.	VA	900,000.00
AIDS Housing of Washington	WA	200,000.00
Total HOPWA	WA	1,900,000.00
Heartlands International, Inc.	DC	500,000.00
YouthBuild USA, Inc.	MA	2,575,200.00
Total Youthbuild		3,075,200.00
Total		28,930,335.00

[FR Doc. E6–14186 Filed 8–25–06; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4900–FA–12]

Announcement of Funding Awards for the Community Development Technical Assistance Programs Fiscal Year 2004

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Community Development Technical Assistance programs. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mark A. Horwath, Director, Office of Technical Assistance and Management, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7218, Washington, DC 20410–7000; telephone (202) 708–3176 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, call Community Connections at (800) 998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Fiscal Year 2004 Community Development Technical Assistance program was designed to increase the effectiveness of HUD's HOME Investment Partnerships Program (HOME), CHDO (HOME) program, Youthbuild program, Community Development Block Grant (CDBG) program, McKinney-Vento Homeless Assistance programs (Homeless), and Housing Opportunities for Persons with AIDS (HOPWA) program through the selection of technical assistance (TA) providers for these six programs.

The competition was announced in the SuperNOFA published May 14, 2004 (69 FR 27023). The NOFA allowed for approximately $36,800,000 for CD–TA grants. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

For the Fiscal Year 2004 competition, a total of $36,282,809 was awarded to 82 technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: August 3, 2006.

Nelson R. Bregon,

General Deputy Assistant Secretary for Community Planning and Development.

APPENDIX A—FISCAL YEAR 2004 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS

Recipient	State	Amount
National Community Development Association	DC	$166,400.00
Abt Associates, Inc	MA	166,400.00
National Council for Community Development	NY	166,400.00
Structured Employment Economic Development Corporation	NY	241,950.00
ICF, Incorporated	VA	500,000.00
Total CHDO		1,241,150.00
State of Alaska Housing Finance Corporation	AK	35,000.00
Rural Community Assistance Corporation	CA	357,500.00
Housing Assistance Council	DC	360,181.00
NCB Development Corporation	DC	60,000.00
Chicago Rehabilitation Network	IL	135,000.00
Statewide Housing Action Coalition	IL	190,000.00

APPENDIX A—FISCAL YEAR 2004 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS—Continued

Recipient	State	Amount
Indiana Association for Community Economic Development	IN	230,000.00
Homeless and Housing Coalition of KY, Inc	KY	75,000.00
Community Economic Development Assistance Corporation	MA	75,000.00
Institute for Community Economics	MA	450,000.00
Enterprise Foundation	MD	302,499.00
Coastal Enterprises, Inc	ME	75,000.00
State of Michigan Department of Consumer and Industry Services	MI	150,000.00
Minnesota Housing Partnership	MN	125,000.00
Regional Housing and Community Development Alliance	MO	85,000.00
Affordable Housing Group	NC	90,000.00
Training and Development Associates, Inc	NC	1,341,250.00
Housing and Community Development Network of NJ	NJ	125,000.00
Corporation for Supportive Housing	NY	200,000.00
Local Initiatives Support Corporation	NY	305,000.00
New York State Rural Housing Coalition, Inc	NY	100,000.00
Structured Employment Economic Development Corporation	NY	548,000.00
Ohio Capital Corporation for Housing	OH	290,000.00
Neighborhood Partnership Fund	OR	60,000.00
Puerto Rico Community Foundation	PR	200,000.00
Douglas-Cherokee Economic Authority, Inc	TN	225,000.00
Rural Collaborative, Inc	UT	35,000.00
Common Ground	WA	35,000.00
Community Frameworks (aka Northwest Regional Facilitators)	WA	40,000.00
Urban Economic Development Association of WI	WI	100,000.00
Wisconsin Partnership for Housing Development	WI	150,000.00
Total CHDO		6,549,430.00
State of Alaska Housing Finance Corporation	AK	40,000.00
Rural Community Assistance Corporation	CA	260,001.00
Dennison Associates	DC	1,961,500.00
National Affordable Housing Training Institute (c/o NAHRO, Inc)	DC	1,500,000.00
Commonwealth of MA Department of Housing and Community Development	MA	140,000.00
Enterprise Foundation	MD	199,999.00
Coastal Enterprises, Inc	ME	20,000.00
State of Michigan Department of Consumer and Industry Services	MI	125,000.00
Minnesota Housing Partnership	MN	125,000.00
Regional Housing and Community Development Alliance	MO	85,000.00
Training and Development Associates, Inc	NC	846,250.00
New Mexico State Mortgage Finance Authority	NM	100,000.00
Ohio Capital Corporation for Housing	OH	55,000.00
Capital Access	PA	110,000.00
Rural Collaborative, Inc	UT	35,000.00
ICF, Incorporated	VA	3,578,209.00
Total HOME		9,180,959.00
State of Alaska Housing Finance Corporation	AK	30,000.00
Homebase/ The Center for Common Concerns	CA	102,500.00
Dennison Associates	DC	851,929.00
Dennison Associates	DC	630,000.00
Iowa Coalition for Housing and Homeless	IA	20,000.00
Illinois Community Action Association	IL	100,000.00
Abt Associates, Inc	MA	3,542,927.00
Massachusetts Housing and Shelter Alliance	MA	50,000.00
Technical Assistance Collaborative, Inc	MA	577,500.00
University of MA at Boston	MA	60,000.00
Enterprise Foundation	MD	100,000.00
Coastal Enterprises, Inc	ME	50,000.00
City-Connect Detroit	MI	50,000.00
Minnesota Housing Partnership	MN	125,000.00
Training and Development Associates, Inc	NC	375,000.00
New Mexico Coalition to End Homelessness	NM	20,000.00
HELP Social Service Foundation	NY	50,000.00
Supportive Housing Network of NY	NY	180,000.00
Partnership Center, Ltd	OH	45,000.00
Douglas-Cherokee Economic Authority, Inc	TN	60,000.00
Community Solutions	TX	75,000.00
Texas Homeless Assistance Network	TX	95,000.00
ICF, Incorporated	VA	3,794,089.00
AIDS Housing of Washington	WA	26,000.00

APPENDIX A—FISCAL YEAR 2004 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS—Continued

Recipient	State	Amount
Urban Economic Development Association of WI	WI	50,000.00
Total Homeless		11,059,945.00
Bailey House	NY	300,000.00
Center for Urban Community Services, Inc	NY	800,000.00
AIDS Housing of Washington	WA	940,000.00
Total HOPWA		2,040,000.00
Homebuilders Institute	DC	1,500,000.00
Youthbuild USA	MA	4,711,325.00
Total Youthbuild		6,211,325.00
Total		36,282,809.00

[FR Doc. E6–14187 Filed 8–25–06; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs; Solicitation of Comments

AGENCY: Office of Insular Affairs, U.S. Department of the Interior.

SUMMARY: The U.S. Department of the Interior's Office of Insular Affairs will make available for comment its draft report produced pursuant to sec. 251 of the Energy Policy Act of 2005 (Pub. L. 109–58), concerning power utilities and energy usage in the U.S.-affiliated insular areas. These areas include the territories of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and American Samoa, as well as the freely associated states of the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. The report was produced in consultation with the consultation with the U.S. Department of Energy. The draft report will be available on the Web site of the Department of the Interior's Office of Insular Affairs; the comments will be used to produce the final draft of the report by the end of FY 2006.

DATES: Please submit all comments in writing on or before September 27, 2006. There will be no second opportunity to submit comments.

ADDRESSES: The draft report is available on the Office of Insular Affairs Web site, *http://www.doi.gov/oia/.* Submit electronic comments to *joseph_gecan@ios.doi.gov;* see Supplemental Information or instructions on formatting. Address written comments to the attention of the Energy Policy Act Team, U.S. Department of the Interior, Office of Insular Affairs, 1849 C St. NW., Mailstop 4311–A, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joseph Gean, (202) 208–4736.

SUPPLEMENTARY INFORMATION: Any electronic comments should be submitted in Word, WordPerfect, or PDF document formats only.

Dated: August 21, 2006.

R. Thomas Weimer,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 06–7193 Filed 8–25–06; 8:45 am]
BILLING CODE 4310–93–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: We must receive written data or comments on these applications at the address given below, by September 27, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. This notice is provided under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to victoria_davis@fws.gov. Please include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your

comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

TE129505–0

Applicant: Gary Richard, O'Neill, Jr., Warren, Arkansas

The applicant requests authorization to take (capture, identify, release) the red-cockaded woodpecker (*Picoides borealis*) while conducting population surveys and management activities. The proposed activities would occur in Bradley, Calhoun, Drew, and Cleveland Counties, Arkansas.

TE132772–0

Applicant: USDA Forest Service, National Forests in Alabama, Montgomery, Alabama

The applicant requests authorization to take (capture, identify, measure, release) the following species: Southern acornshell (*Epioblasma othcaloogensis*), Cumberlandian combshell (*Epioblasma brevidens*), upland combshell (*Epioblasma metastriata*), triangular kidneyshell (*Ptychobranchus greeni*), Coosa moccasinshell (*Medionidus parvulus*), southern pigtoe (*Pleurobema georgianum*), blue shiner (*Cyprinella caerulea*), flattened musk turtle (*Sternotherus depressus*), Cahaba shiner (*Notropis cahabae*), goldline darter (*Percina aurolineata*), orange-nacre mucket (*Lampsilis perovalis*), Alabama moccasinshell (*Medionidus acutissimus*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), ovate clubshell (*Pleurobema perovatum*), Lacy elimia (*Elimia crenatella*), round rocksnail (*Leptoxis ampla*), painted rocksnail (*Leptoxis taeniata*), flat pebblesnail (*Lepyrium showalteri*), cylindrical lioplax (*Lioplax cyclostomaformis*), and tulotoma snail (*Tulotoma magnifica*) while conducting presence/absence surveys. The proposed activities would occur in the National Forests located in Alabama.

Dated: August 8, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E6–14241 Filed 8–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Residence in Sarasota County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Paul Athanas (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant anticipates taking about 0.275 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat, incidental to lot preparation for the construction of a single-family residence and supporting infrastructure in Sarasota County, Florida (Project). The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before September 27, 2006.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (*Attn:* Endangered Species Permits), or the Services's Vero Beach Field Office, Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida, 32960–3559. Please reference permit number TE126176–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office or the Vero Beach field office.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Elizabeth Stafford, Fish and Wildlife Biologist, South Florida Ecological Services Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 772/562–3909, ext. 304.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE126176–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

According to surveys accomplished in 1992–1993, 2000, and 2004, the Applicant's lot is within the territory of a family of scrub-jays. The scrub-jays using the Project area and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in southern Sarasota County. Construction of the Project's infrastructure and facilities will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction will reduce the availability of foraging, sheltering, and possible nesting habitat for one family of scrub-jays.

The Applicant proposes to mitigate the take of scrub-jays through contribution of $25,875 to the Sarasota County Scrub-jay Mitigation Plan Fund administered by Sarasota County. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and management.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on Federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If it is determined that those requirements are met, the ITPs will be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. This notice is provided pursuant to section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: August 9, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–14244 Filed 8–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application and Availability of an Environmental Assessment for an Incidental Take Permit for Urban Development Within the City of Palm Bay, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The City of Palm Bay (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant prepared a Habitat Conservation Plan (HCP) identifying anticipated impacts to two federally-listed threatened species, the Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) and the eastern indigo snake (*Drymarchon corais couperi*). The Applicant also requests incidental take authorization for the gopher tortoise (*Gopherus polyphemus*) in the event this species becomes federally-listed as either threatened or endangered during the 30-year term of the requested ITP. Take of these species is anticipated as a result of residential, commercial, industrial, and municipal construction projects and associated infrastructure within the city limits of the City of Palm Bay. The Applicant's HCP describes the mitigation and minimization measures proposed to address the effects of urban development on the scrub-jay, eastern indigo snake, and gopher tortoise. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP application, HCP, and environmental assessment should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before October 27, 2006.

ADDRESSES: Persons wishing to review the application, HCP, and environmental assessment may obtain a copy by writing the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Jacksonville Field Office, Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912. Please reference permit number TE118199–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Service's regional office or the Jacksonville field office.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit written comments by any one of several methods. Please reference permit number TE118199–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation that has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The eastern indigo snake is distributed in dry pinelands of the

extreme southeastern United States. In peninsular Florida, eastern indigo snakes occur in a variety of upland habitats but are most commonly associated with vegetative communities that occur in well-drained soils. The number and status of eastern indigo snakes in peninsular Florida is not known because reliable survey techniques for this species are not available. Recent population modeling efforts suggest that eastern indigo snake populations are vulnerable to habitat fragmentation related to urban development and greater road densities.

Gopher tortoises are widely distributed throughout the southeastern United States where they are typically found in association with xeric vegetative communities. Gopher tortoises require well-drained soils with relatively deep water tables in which to excavate their burrows. Habitat loss, degradation, and fragmentation due to urban, agricultural, and silvicultural development have resulted in a decline in the numbers and distribution of gopher tortoises throughout Florida.

According to the Applicant's HCP, up to 20 families of scrub-jays, about 40 eastern indigo snakes living within 12,904 acres of potential habitat and about 1,233 gopher tortoises residing in 10,966 acres of potential habitat might be taken as a result of urban development. The Applicant intends to minimize impacts to listed species by: (1) Prohibiting land clearing during the scrub-jay nesting season if active nests are on or near properties to be cleared, (2) requiring that scrub vegetation be retained for landscaping or ornamental purposes within new development, and (3) developing Web-based public education information for the covered species. Mitigation measures proposed by the Applicant include the collection of environmental fees as a component of the local building permit issuance process. The Applicant anticipates that environmental fees collected over the duration of the requested permit period will be approximately $10.7 million dollars. The Applicant proposes to donate environmental fees to the Scrub-jay Conservation Fund that is administered by The Nature Conservancy (TNC). Pursuant to an agreement between the Service and TNC, donated environmental fees will be used for the acquisition, management, and restoration of scrub-jay habitat. The Service will review proposed acquisition, management and restoration of habitat funded by the City's environmental fees to ensure that the eastern indigo snake and gopher tortoise benefit as well.

The Service has made a preliminary determination that issuance of the requested ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of National Environmental Policy Act (NEPA). This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will evaluate the HCP and comments submitted thereon to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If the Service determines that those requirements are met, an ITP will be issued for the incidental take of the Florida scrub-jay, eastern indigo snake, and provisionally for the gopher tortoise. The Service will also evaluate whether issuance of this section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: August 9, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–14245 Filed 8–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet September 14–15, 2006, in Three Rivers, California. On September 14, the Board will tour Sequoia and Kings Canyon National Parks and will be briefed regarding environmental, education and partnership programs. The Board will convene its business meeting on September 15 at 8:30 a.m., PST, at the Wuksachi Lodge, 64740 Wuksachi Way, Three Rivers, California, telephone 559–565–4070. The Board will be addressed by National Park Service Director Fran Mainella and will receive the reports of its Partnerships Committee, Committee on Federal Historic Rehabilitation Tax Credit, Committee on Philanthropy, Committee on Health and Recreation, National Parks Science Committee, and Education Committee. The business meeting will be adjourned at 4:30 p.m.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered.

The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also may permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Ms. Shirley Sears Smith, Office of Policy, National Park Service; 1849 C Street, NW., Room 7250; Washington, DC 20240; telephone 202–208–7456.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: August 15, 2006.

Bernard Fagan,

Deputy Chief, Office of Policy.

[FR Doc. E6–14204 Filed 8–25–06; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed Collection, Comments Requested; Three Fingerprint Cards: Arrest and Institution; Applicant; Personal Identification

ACTION: 60-day Notice of Information Collection Under Review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division has submitted the following information collection request to the Office of

Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Penny L. Valentine, Management/Program Analyst, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Identification and Investigative Services Section, Support Services Unit, Module E–1, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306, or facsimile to (304) 625–5392.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the propose collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Approval of existing collection in use without an OMB control number.

(2) *The title of the form/collection: Three Fingerprint Cards:* Arrest and Institution; Applicant; Personal Identification.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms FD–249 (Arrest and Institution), FD–258 (Applicant), and FD–353 (Personal Identification); Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, County, State, Federal and tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 80,100 agencies as respondents at 10 minutes per fingerprint card completed.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 486,724 annual burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Bryant, Department Clearance Officer, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 23, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–14279 Filed 8–25–06; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 7, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 7, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of August 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/7/06 and 8/11/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59851	B.A. Ballou and Co., Inc. (Comp)	East Providence, RI	08/07/06	07/28/06
59852	Sekisui TA Industries (Wkrs)	Cranston, RI	08/07/06	08/03/06
59853	Janna U Gone Associates, Inc. (State)	Easthampton, MA	08/07/06	08/04/06
59854	Esselte Corporation (Wkrs)	Union, MO	08/07/06	08/04/06

APPENDIX—Continued

[TAA petitions instituted between 8/7/06 and 8/11/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59855	Reliance Trading Company of America (Comp)	Bennettsville, SC	08/07/06	08/07/06
59856	Kimball Electronics (Wkrs)	Jasper, IN	08/08/06	08/02/06
59857	Culpepper Plastics Corporation (Comp)	Clinton, AR	08/08/06	08/02/06
59858	Cardsmart (Comp)	Pawtucket, RI	08/08/06	08/07/06
59859	IBM (State)	Lexington, KY	08/08/06	08/03/06
59860	Project Service, Inc. (Wkrs)	Parks Falls, WI	08/08/06	08/04/06
59861	Bayer Healthcare (Wkrs)	West Haven, CT	08/08/06	08/07/06
59862	Creative Window Fashions, Inc. (Comp)	Fall River, MA	08/08/06	08/08/06
59863	Delphi Automotive (IUE)	Moraine, OH	08/08/06	08/08/06
59864	YKK (U.S.A.), Inc. (Comp)	Lyndhurst, NJ	08/08/06	08/07/06
59865	L.A. Dreyfus Company (Comp)	Edison, NJ	08/09/06	08/08/06
59866	Troy Design, Inc. (State)	Troy, MI	08/09/06	08/04/06
59867	Johnson Controls, Inc. (State)	Mt. Clemens, MI	08/09/06	08/08/06
59868	Global Accessories, Inc. (Comp)	Fremont, OH	08/09/06	08/08/06
59869	Coors Brewing Company (Wkrs)	Memphis, TN	08/09/06	08/08/06
59870	Cerro Flow Products, Inc. (USW)	Sauget, IL	08/09/06	08/08/06
59871	Agilent Technologies (Wkrs)	Andover, MA	08/09/06	07/24/06
59872	Tri-Matic Screw Products, Inc. (Comp)	Howell, MI	08/09/06	08/08/06
59873	JC Tec Industries, Inc. (Comp)	Annville, KY	08/09/06	08/07/06
59874	AHLStrom Air Media, LLC (Wkrs)	New Windsor, NY	08/09/06	08/01/06
59875	Gerard Daniel Worldwide (Comp)	Hanover, PA	08/09/06	08/09/06
59876	Glide Lumber, LLC (Comp)	Glide, OR	08/09/06	07/25/06
59877	BIC Corporation (Comp)	Milford, CT	08/09/06	08/09/06
59878	Bank of America (Wkrs)	Scranton, PA	08/09/06	07/24/06
59879	Fashion Ave Knits, Inc. (Wkrs)	New York, NY	08/09/06	08/09/06
59880	Meredith's Home Fashions (Comp)	Westwood, MA	08/10/06	08/02/06
59881	Russell Corporation (Comp)	Alexander City, AL	08/10/06	08/09/06
59882	Safetran Traffic Systems, Inc. (Comp)	Colorado Springs, CO	08/10/06	08/09/06
59883	MacDonald's Industrial Products (Comp)	Spencerville, OH	08/10/06	08/08/06
59884	Rexnord Corp. (Union)	Milwaukee, WI	08/10/06	07/20/06
59885	Skyland Tool and Mold, Inc. (Comp)	Arden, NC	08/10/06	08/09/06
59886	Apex Apparel Co. (State)	Kearny, NJ	08/10/06	08/10/06
59887	Llink Technologies, LLC (Comp)	Romeo, MI	08/10/06	08/10/06
59888	Oakwood Plastics (Comp)	Taylor, MI	08/10/06	08/10/06
59889	Kirin Cutting Service, Inc. (Wkrs)	San Francisco, CA	08/11/06	08/10/06
59890	Markar Architectural Products (Wkrs)	Lancaster, NY	08/11/06	08/10/06
59891	NER Data Products Inc. (Comp)	Denver, CO	08/11/06	08/11/06
59892	Golden Star Manufacturing (Wkrs)	Atchinson, KS	08/11/06	08/11/06
59893	Corinth Products Co., Inc. (Comp)	Corinth, ME	08/11/06	08/10/06
59894	Hewitt Tool Co. (State)	Royal Oak, MI	08/11/06	08/02/06
59895	Brake Parts, Inc. (Comp)	Litchfield, IL	08/11/06	08/11/06
59896	Advantage Technologies, Inc. (Comp)	Plymouth, MI	08/11/06	08/11/06

[FR Doc. E6–14221 Filed 8–25–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of August 7 through August 11, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A)—all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B)—both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,680; Fiskars Royal Floor Mats, Fiskars Brands, Inc., Calhoun, GA: July 6, 2005

TA–W–59,716; Pinnacle Frames and Accents, Inc., Piggott, AR: April 1, 2006

TA–W–59,747; Khoury, Inc., Kingsford, MI: July 5, 2005

TA–W–59,829; AEG Photoconductor Corp., Hamilton, OH: July 31, 2005

TA–W–59,018; Anthony Wilcock Enterprises, Inc., Touch-Flo Manufacturing Co., Burbank, CA: March 13, 2008

TA–W–59,755; Belden, Americas Division, Fort Mill, SC: July 19, 2005

TA–W–59,896; Advantage Technologies, Inc., Plymouth, MI: August 14, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,298; Honeywell International, Inc., Aerospace Division, On-Site Leased Workers of Manpower, Phoenix, AZ: April 27, 2005

TA–W–59,723; C and D Technologies, Huguenot, NY: August 10, 2006

TA–W–59,728; Zoom Technologies, Inc., Also Know as Zoom Telephonics, Inc., Boston, MA: July 12, 2005

TA–W–59,775; LENA Phillips-Advance Transformer, Lighting Electronics Div., Boscobel, WI: August 13, 2006

TA–W–59,781; Morse Automotive, A Division of Morse Automotive Corp., Cartersville, GA: March 31, 2006

TA–W–59,826; Burlington Worldwide, International Textile Group, Manpower, Kelly, Hurt, VA: July 28, 2005

TA–W–59,656; Nautilus, Inc., On-Site Leased Workers of Express Personnel Services, Tyler, TX: June 29, 2005

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,626; Tower Automotive, Inc., On-Site Leased Workers of Peoplelink, Milan, TN: June 12, 2005

TA–W–59,735; SODICO, Shrewsbury, PA: July 12, 2005

TA–W–59,748; Highlands Diversified Services, Inc., On-Site Leased Workers of CBS Temporary Service, London, KY: July 18, 2005

TA–W–59,764; Astro Dye Works, Calhoun, GA: July 20, 2005

TA–W–59,784; Johnson Controls, Inc., Manpower, West Carrollton, OH: July 13, 2005

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–59,671; Bernard Chaus, Cynthia Steffe Division, New York, OH.
TA–W–59,721; Mercury Marine, A Division of Brunswick Corp., Fond du Lac, SC.
TA–W–59,738; Para Chem Southern, Inc., Coating Division, Simpsonville, GA.
TA–W–59,751; Continental Industries LLC, Benzonia, VA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,710; Oxbow Machine Products, On-Site Leased Workers of TKO Staffing, 3–D Personnel and Batton Technical, Livonia, NY.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,630; Johnson Controls Inc., Oklahoma City, GA.
TA–W–59,645; Metal Ware Corporation (The), Two Rivers, MI.
TA–W–59,681; Saputo Cheese USA, Inc., Peru, AZ.
TA–W–59,709; Stimson Lumber Company, St. Helens, TX.
TA–W–59,760; Huntington Foam Corp., Mt. Pleasant, MI.
TA–W–59,766; HBD/Thermoid, Inc., Workers Producing Hoses Oneida Plant, HBD Industries, Oneida, TN.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country).

TA–W–59,571; Fairchild Semiconductor International, Information Technology Div., South Portland, CA.
TA–W–59,636; Larose, Inc., New York, AR.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–59,713; State Farm Insurance, Shared Services Department, Parsippany, NJ.
TA–W–59,736; RSM Company, Inc., Charlotte, WI.
TA–W–59,770; Surgical Support Services, Div. of Surgical Synergies, Eureka, PA.
TA–W–59,790; Premier Turbines, Division of Dallas Airmotive, Neosho, KY.
TA–W–59,797; Canteen Vending, On-Site Workers at Broyhill Pacemaker Furniture Co., Lenior, GA.
TA–W–59,820; Airfoil Technologies International-Ohio, Mentor, OH.
TA–W–59,822; AmerisourceBergen Corporation, Orange, ME.
TA–W–59,846; Coville, Inc., Winston-Salem, OK.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the month of August 7 through August 11, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 16, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–14222 Filed 8–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Eastern Associated Coal, LLC

[Docket No. M–2006–016–C]

Eastern Associated Coal, LLC, 1044 Miracle Run Road, Fairview, West Virginia 26570 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Federal No. 2 Mine (MSHA I.D. No. 46–01456) located in Monongalia County, West Virginia. The petitioner requests a modification of the existing standard to permit the use of non-permissible battery-powered hand-held computers in or inby the last open crosscut, including in the return airways. The petitioner proposes to use the hand-held computers to allow supervisors and selected miners to collect and record data pertinent to safety observations during work processes. The petitioner has listed specific procedures in this petition that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. AMFIRE Mining Company, LLC

[Docket No. M–2006–017–C]

AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Gillhouser Run Mine (MSHA I.D. No. 36–09033) located in Cambria County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of compliance with the firefighting equipment required at temporary electrical installations. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Eastern Associated Coal, LLC

[Docket No. M–2006–018–C]

Eastern Associated Coal, LLC, Three Gateway Center, 401 Liberty Avenue, Suite 1340, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1700 (Oil and gas wells) to its Federal No. 2 Mine (MSHA I.D. No. 46–01456) located in Monongalia County, West Virginia. The petitioner requests a modification of the existing standard to permit oil and gas wells to be plugged and abandoned in order to mine through them or to reduce

the size of the barrier around them. The petitioner proposes to use the following procedures when plugging oil and gas wells: (1) Clean out and prepare oil and gas wells prior to plugging; (2) Plug oil and gas wells to the surface by setting a cement plug in the wellbore by pumping expanding cement slurry down the tubing to displace the gel and fill the borehole to the surface, and embed steel or other magnetic particles in the top of the cement to serve as a magnetic monument; (3) Plug oil and gas wells using the vent pipe method; and (4) Plug oil and gas wells for use as degasification boreholes by setting a cement plug and a degasification casing. The petitioner states that whenever the safety barrier diameter is reduced to a distance less than what the District Manager would approve pursuant to Section 75.1700, or proceeds with the intent to cut through a plugged well, additional cut-through procedures would apply. These procedures would include submitting a mining plan to the District Manager or designee for approval for each well to be intersected or where the barrier required by Section 75.1700 will be reduced. The details of these procedures can be requested from MSHA's Office of Standards, Regulations, and Variances, Room 2350, 1100 Wilson Boulevard, Arlington, Virginia 22209 via mail, or by phone, contact Barbara Barron at 202–693–9447. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments by any of the following methods: via E-mail: *zzMSHA-Comments@dol.gov*. Include ''petitions for modification'' in the subject line of the email; Fax: (202) 693–9441. Include ''petitions for modification in the subject line of the fax; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. If hand-delivered in person or by courier, please stop by the 21st floor first to check in with the receptionist before continuing on to the 23rd floor. All comments must be postmarked or received in that office on or before September 27, 2006. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 21st day of August 2006.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. E6–14258 Filed 8–25–06; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–438 and 50–439]

Tennessee Valley Authority; Bellefonte Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a letter terminating Construction Permit No. CPPR–122 for Bellefonte Nuclear Plant (BLN), Unit 1, and CPPR–123 for BLN, Unit 2, issued to the Tennessee Valley Authority (TVA, permittee). The facility is located about 6 miles East-Northeast of Scottsboro, Alabama, on the west shore of the Guntersville Reservoir at Tennessee River Mile 392, in Jackson County, Alabama. This action is in accordance with the permittee's request in a letter dated April 6, 2006, as supplemented by letter dated June 29, 2006.

Environmental Assessment

Identification of the Proposed Action

The proposed action is issuance of a letter that would terminate Construction Permit No. CPPR–122 for BLN Unit 1 and CPPR–123 for BLN Unit 2. Canceling construction of the existing facility and withdrawal of the construction permits is necessary in order to close out the existing BLN project. These actions also facilitate the consideration of other possible uses of the BLN site.

Because there are other ongoing activities on the BLN site (i.e., training centers for the Transmission Service Organization and the Tennessee Valley Public Power Association), and because the switchyard at BLN is utilized as a substation for system operations in the region, TVA would not withdraw existing environmental permits or remove equipment associated with these other activities.

TVA would keep and maintain BLN in regulatory compliance. Compliance activities would include National Pollutant Discharge Elimination System permits, division monitoring reports, demolition permits, and air permits that are applicable to the entire site. These measures would continue as long as TVA has ownership of the BLN site. Maintaining and complying with these existing permits and regulations would ensure the stability of the site, until such time that TVA may decide, if or how the site would be alternatively utilized.

Because so much of the site will be maintained, the general activities associated with the redress of the site are relatively minor in nature. Most of the minor environmental impacts resulting from redress would be associated with removal of equipment or structures not identified as necessary for other site activities. Materials and structures removed would be above grade or in areas that have experienced substantial previous ground disturbance for the original construction of the plant. TVA currently plans to maintain such major components as the intake and discharge facilities, cooling towers, wastewater system, and transmission switch yards. The existing containment, turbine, and auxiliary buildings would not be demolished. The other structures not identified as necessary would be sold, taken apart, and removed from the site, abandoned in place, or demolished. Most of these structures are metal and wood warehouses located along the western portion of the site. Any unwanted construction material or waste associated with disposition of equipment and structures would be properly disposed of in appropriately permitted solid waste or other disposal facilities in accordance with pertinent Federal, state, and local laws, regulations and ordinances, as well as TVA processes and procedures.

Equipment identified as unnecessary would have the power disconnected and would either be reused by other TVA facilities, sold for reuse, or abandoned in place. Such items may include, but are not limited to: valves, strainers, battery boards and chargers, transfer switches, vent fans, motors, cabinet panels, breakers, power systems, shop equipment such as lathes, air compressors, and dryers; as well as other miscellaneous equipment. Additional materials may include, but are not limited to items such as: piping, tubing, conduit, cable, instrumentation, and general construction materials. TVA would continue to conduct periodic site inspections to ensure that none of the equipment or materials are causing environmental, health, or safety problems.

Redress would involve the removal of diesel generator fuel and lube, or control fluids from the main turbine lube oil tanks, feedwater pump lube oil tanks, reactor coolant pump motors, control fluid tanks, and diesel generator lube oil

sumps. Fuel and lubricant would be removed, and storage containers would be closed in accordance with all applicable Federal, state, or local laws and regulations.

By letter dated June 29, 2006, the permitee stated that neither of the units can be considered a utilization facility as defined in 10 CFR 50.2. At the time that construction of the units was deferred, TVA considered Unit 1 to be 88 percent complete and Unit 2 to be 58 percent complete. At this time, neither reactor has the necessary structures, systems, or components in place to sustain a controlled nuclear reaction. Over the past several years, key components such as the control rod drive mechanisms for both Unit 1 and 2 have been removed from the site, which precludes the ability of the units to operate as nuclear reactors. The current condition of the plants does not allow operation; therefore, neither plant can be considered a utilization facility.

All special nuclear material was removed from the site, as verified in NRC Inspection Reports 50–438/92–05 and 50–439/92–05 dated August 21, 1992. The only radioactive material to be disposed of is from the removal of smoke detectors and exit signs from various buildings to be sold, demolished, or abandoned in place. Upon removal, these materials shall be sent to an NRC-approved recycler. Safeguards information has been shredded or removed. Fenced areas are currently under industrial-type security. The withdrawal of the construction permits will not release air pollutants, generate water pollutants, generate wastewater streams, or cause soil erosion. The BNL site is in an environmentally stable condition that poses no significant hazard to persons on site.

The Need for the Proposed Action

TVA has terminated construction of both BLN Units 1 and 2. This action by the NRC would terminate the construction permits.

Environmental Impacts of the Proposed Action

This administrative action would terminate the construction permits to reflect the fact that there are no longer utilization facilities under construction at the BLN site, and that the site has been adequately stabilized. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Bellefonte Nuclear Plant, Units 1 and 2, dated May 24, 1974.

Agencies and Persons Consulted

In accordance with its stated policy, on July 7, 2006, the staff consulted with the Alabama State official, Mr. Kirk Whatley of the Office of Radiation Control, Alabama Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the permitee's letter dated April 6, 2006, as supplemented by letter dated June 29, 2006, and TVA's Final Environmental Assessment dated January 30, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of August, 2006.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–14202 Filed 8–25–06; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 14, 2006 Public Hearing; Sunshine Act Meeting 8/28/06

TIME AND DATE: 2 p.m., Thursday, September 14, 2006.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Friday, September 8, 2006. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Friday, September 8, 2006. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be obtained from Connie M. Downs at (202)

336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: August 24, 2006.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 06–7215 Filed 8–24–06; 1:14pm]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Personnel Demonstration Project; Alternative Personnel Management System for the U.S. Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Notice of Expansion of the Department of Commerce Personnel Management Demonstration Project.

SUMMARY: Title VI of the Civil Service Reform Act, now codified in 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in policies and procedures result in improved Federal human resources management. OPM approved a demonstration project covering several operating units of the U.S. Department of Commerce (DOC). OPM has authority to implement new legislation affecting demonstration projects (5 U.S.C. 4703 and 5 CFR 470.101(b) and 470.103). Modifications to the demonstration project plan also require OPM approval (5 CFR 470.315).

As provided for in title II of Public Law 109–108, Department of Commerce and Related Agencies Appropriations Act of 2006, signed November 22, 2005, this notice expands the coverage of the DOC Demonstration Project to include up to 3,500 additional employees in the National Oceanic and Atmospheric Administration (NOAA) increasing the total number of employees in NOAA to 6,925, as well as additional NOAA organizations and locations. This expansion results in the total number of employees covered by the DOC Demonstration Project to 8,500 individuals. This notice also serves to make changes to the plan to accommodate the expansion. These changes include the addition of specific occupational series, Departmental Personnel Management Board composition, and pre-project cost formulas for the NOAA organizations new to the demonstration project as part of the expansion.

DATES: This notice expanding the DOC Demonstration Project is effective August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Department of Commerce: Joan Jorgenson, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 5004, Washington, DC 20230, (202) 482–4233. Office of Personnel Management: Jill Rajaee, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–0836.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Personnel Management (OPM) approved the DOC Demonstration Project and published the final plan in the **Federal Register** Volume 62, Number 247, Part II, on Wednesday, December 24, 1997. The project was implemented on March 29, 1998, and modified in the **Federal Register** on Thursday, September 30, 1999, Volume 64, Number 189 [Notices] [Pages 52810–52812] and on Tuesday, August 12, 2003, Volume 68, Number 155 [Notices] [Pages 47948–47949]. OPM approved a request to extend the DOC Demonstration Project for 5 years as stated in an administrative letter from OPM, dated February 14, 2003. The project was approved for expansion in the **Federal Register** Volume 68, Number 180 [Notices] [Pages 54505–54507], on Wednesday, September 17, 2003, to include an addition 1,505 employees. The demonstration project was again modified on Tuesday, July 5, 2005, Volume 70, Number 127 [Notices] [Pages 38732–38733]. The demonstration project was again modified on Monday, May 1, 2006, Volume 71, Number 83, [Notices] [Pages 25615–25616] to revise existing authorities for retention, recruitment and relocation allowances.

The key features of the project involve increased delegation of authority and accountability to line managers, simplified classification and broad banding, pay for performance, hiring and pay-setting flexibility, and modified reduction-in-force procedures.

2. Overview

This notice serves to list all NOAA organizations and their locations that will be included in the DOC Demonstration Project. This notice also lists additional occupational series that will be included in the DOC Demonstration Project. Additional changes to the plan are made to accommodate the expansion. These changes include composition of the Departmental Personnel Management Board, pre-project cost formulas for new organizations entering the demonstration project during this expansion phase, and edits to the pay administration provisions to reflect the use of law enforcement officer special base rates under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) for certain law enforcement officers that will be added to the project through this expansion. This notice also incorporates minor changes to the pay administration provisions for consistency with the amendments made to the General Schedule pay-setting rules by the Federal Workforce Flexibility Act of 2004 (Pub. L. 108–411) and OPM's implementing regulations. The Department of Commerce will follow the project plan as published in the **Federal Register** dated December 24, 1997, and subsequent modifications as listed in the Background Section of this notice.

Office of Personnel Management.

Linda M. Springer,

Director.

Table of Contents

I. Executive Summary
II. Basis of Project Plan Expansion
III. Changes to the Project Plan

I. Executive Summary

The Department of Commerce (DOC) Demonstration Project utilizes many features similar to those implemented by the National Institute of Standards and Technology (NIST) Demonstration Project in 1988. The DOC Demonstration Project supports several key objectives: to simplify the classification system for greater flexibility in classifying work and paying employees; to establish a performance management and rewards system for improving individual and organizational performance; and to improve recruiting and examining to attract highly qualified candidates and hire them more quickly. The DOC Demonstration Project is designed to test whether the interventions of the NIST project, which is now a permanent alternative system, could be successful in other DOC environments. The current participating organizations include six offices of the Chief Financial Officer/Assistant Secretary of Administration in the Office of the Secretary, Technology Administration, the Bureau of Economic Analysis, the Institute for Telecommunication Sciences, and five units of the National Oceanic and Atmospheric Administration: Office of Oceanic and Atmospheric Research, National Marine Fisheries Service, the National Environmental Satellite, Data,

and Information Service, the National Weather Service and the NOAA Office of Program Planning and Integration.

II. Basis of Project Plan Expansion

A. Purpose

The DOC Demonstration Project is designed to provide managers at the lowest organizational level, the authority, control and flexibility needed to recruit, retain, develop, recognize and motivate its workforce, while ensuring adequate accountability and oversight. Expansion of the DOC Demonstration Project will allow the Department to broaden the scope of this test to additional organizations with different missions. This should improve the Department assessment of the effectiveness of its interventions in its efforts to compete more effectively for high quality personnel while strengthening the manager's role in human resources management. All provisions of the DOC Demonstration Project plan, as published in the **Federal Register**, dated December 24, 1997, and subsequent published modifications, will apply.

B. Participating Employees

Employee notification of this expansion proposal is being accomplished by providing a full set of briefings to employees and managers and providing electronic access to all DOC Demonstration Project policies, procedures, evaluations and published **Federal Register** notices on the project plan and subsequent modifications. We will also provide employees with a copy of this proposed **Federal Register** notice upon approval. Subsequent supervisor training and informational briefings for all employees will be accomplished prior to the implementation of the expansion.

C. Labor Participation

Labor organizations are being separately notified about the project's expansion pertaining to their bargaining unit membership. DOC is proceeding to fulfill its obligation in accordance with 5 U.S.C. 4703(f).

III. Changes to the Project Plan

A. Section VII. Project Management

The Departmental Personnel Management Board (DPMB) will expand to include additional board DPMB members representing the new major operating units included in the project. It is the intent of the DOC to ensure the composition of the board DPMB reflects the diversity of employee groups to ensure the objectives of the demonstration project are achieved in an equitable and consistent manner.

B. Section V B. Base Cost Assessment

The current plan identifies Fiscal Years (FY) 1994, 1995, and 1996 as the basis of analysis of pre-project costs to determine whether project costs are being maintained at acceptable levels. For those organizations that have never participated in the demonstration project, costs will be computed as annual averages over the past three pre-project fiscal years immediately preceding implementation. For those NOAA organizations that are already part of the demonstration project, costs will continue to be computed using FY 1994—1996.

C. Section II D. Participating Organizations

The following organizations will be added to the project plan, Section II D Participating Organizations:

Within the National Oceanic and Atmospheric Administration, up to 3,500 new GS/GM employees from the following offices and locations will be added to the DOC Demonstration Project as part of the expansion:

Office of the Under Secretary, non-bargaining unit employees, all locations
Office of Program Analysis and Evaluation, all locations
Office of Human Resources, all locations
Office of Chief Financial Officer, all locations
Office of Chief Administrative Officer, non-bargaining unit employees, all locations
Office of Sustainable Development, all locations
National Ocean Service, non-bargaining unit employees, all locations
NOAA Marine and Aviation Office, all locations
Within the Office of Oceanic and Atmospheric Research:
  Climate Program Office, Silver Spring, MD

Within the National Marine Fisheries Service:
  Office of Seafood Inspection, non-bargaining unit employees, all locations
  Office of Law Enforcement, all locations
Additional employees in the following organizations:
  Southeast Fisheries Science Center, all locations
  Northwest Fisheries Science Center, all locations
  Alaska Fisheries Science Center, all locations

D. Section II F. Labor Participation

The following bargaining units are added to Table 4—Bargaining Unit Coverage.

NMAO	Norfolk, VA	IBEW Local 80
CFO	Boulder, CO	AFGE Local 2186
NMFS–SEFSC.	Miami, FL ...	AFGE Local 2875
	Panama City, FL.	NAGE R—106
NMFS–NWFSC.	All Locations	IFPTE Local 8A
NMFS–AKFSC.	Seattle, WA	IFPTE Local 8A

E. Section II E. Participating Employees

The following series are added to Table 2:

Scientific and Engineering (ZP) Career Path

0415, Toxicology Series
0199, Social Science Student Trainee Series

Administrative (ZA) Career Path

0028, Environmental Protection Specialist Series
0199, Social Science Student Trainee Series
0399, Administrative Trainee Series
0511, Auditing Series
1601, General Facilities and Equipment Series
1071, Audiovisual Production Series
1710, Education and Vocational Training Series
1801, General Inspection, Investigation and Compliance Series
1811, Criminal Investigating Series
1812, Game Law Enforcement Series
2003, Supply Program Management Series

Support (ZS) Career Path

1603, Equipment, Facilities and Services Assistant Series
1001, General Arts and Information Series
0119, Economics Assistant Series

F. This section provides changes to the project plan to accommodate law enforcement officer special base rates and the recent changes to the General Schedule pay administration rules. The following page numbers refer to the pages of the project plan, published December 24, 1997, in the **Federal Register**.

(1) Page 67448: Section III.A.3. In third sentence, insert ''under 5 U.S.C. 5305'' after first ''special rate''. After third sentence, insert ''For a law enforcement officer (LEO) covered by special base rates under section 403 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Public Law 101–509, November 5, 1990, as amended), when the minimum or maximum grade in the LEO's band is any one of grades GS–3 through GS–10 (e.g., ZA Bands I and II), the band's minimum and maximum rate of pay will be set for that LEO using applicable

LEO special base rates, as adjusted by the applicable locality payment.''

(2) Page 67452: Section III.D.5.—In the first sentence, insert ''LEO special base rate,'' after ''GS rate,''.

(3) Page 67452. Section III.D.6. In the second sentence, insert ''GS base'' after ''maximum'' and ''or LEO special base rates'' before ''of each band''. In the third sentence, insert ''under 5 U.S.C. 5305'' after ''special rates''.

(4) Page 67452: Section III.D.7. Replace ''special salary rate'' with ''special rate'' throughout paragraph 7. In the first sentence, insert ''under 5 U.S.C. 5305'' before ''will be used''. In the second sentence, replace ''5 CFR 530.303'' with ''5 CFR 530.304''.

(5) Page 67453: Section III.D.13. In the second sentence, insert ''GS base rate, LEO special base rate,'' before ''locality rate'' in the parenthetical.

(6) Page 67453: Section III.D. 14. In the second sentence, insert ''GS base rate, LEO special base rate,'' before ''locality rate'' in the parenthetical.

(7) Page 67455: Section IV.A.1. In the first sentence, insert ''or LEO special base schedule'' after ''GS base schedule'' in the parenthetical.

(8) Page 67455: Section IV.B.2. In the first sentence, insert ''or LEO special base schedule'' after ''GS base schedule'' in the parenthetical.

(9) Page 67455: Section IV.B.3. In the third sentence, insert ''or LEO special base rate'' after ''GS base rate''. Delete the last parenthetical.

(10) Page 67455—67456: Section IV.B.5. Delete all text in paragraph 5. after the first sentence.

(11) Page 67456; Section IV.B.6. In the second sentence, replace ''GS rate'' with ''GS rates'' and delete ''of basic pay (or converted special rate, if applicable)''.

(12) Page 67456. Section IV.C. Replace last sentence with ''(See 5 CFR 531.407(b) for additional information on equivalent increase determinations.)''

[FR Doc. 06–7210 Filed 8–24–06; 11:07 am]

BILLING CODE 6325–43–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54338; File No. SR–CBOE–2006–49]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto To Allow Listing of Up to Seven Short-Term Options Series per Class

August 21, 2006.

On June 27, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 modify its short-term option series pilot program (''Pilot Program'')[3] to change the number of short-term series that may be listed in an options class from five to seven. The Exchange filed Amendment No. 1 with the Commission on July 11, 2006.[4] The amended proposal was published for comment in the **Federal Register** on July 19, 2006.[5] No comments were received. This order approves the proposed rule change, as amended.

The Pilot Program currently provides that the Exchange may open up to five short-term series for each expiration date in an approved class. CBOE has proposed to increase the maximum to seven. The Exchange has stated it would list approximately the same number of series with strike prices above and below the price of the underlying security or value of the index at about the time the series is opened. CBOE also proposed that, if the Exchange has opened less than seven series in a particular options class for a given expiration date, it could open additional series in that class if the Exchange deems it necessary to maintain an orderly market or meet customer demand, or when the current value of the underlying index moves substantially from the exercise price or prices of the series already opened.

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposal is consistent with the requirements of section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is a reasonable expansion of a Pilot Program that offers the market potentially useful products while not appearing to raise any concerns about quote capacity.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–CBOE–2006–49), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14193 Filed 8–25–06; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63) (approving short-term option series on a pilot basis through July 12, 2006). The Pilot Program has since been extended through July 12, 2007. *See* Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (SR–CBOE–2006–48).

[4] In Amendment No. 1, a partial amendment, the Exchange corrected a typographical error in the proposed rule text.

[5] *See* Securities Exchange Act Release No. 54133 (July 12, 2006), 71 FR 41062.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] The Exchange, should it wish to propose an extension, expansion, or permanent approval of the Pilot Program, must submit a report on the Pilot Program to the Commission. *See* Securities Exchange Act Release No. 51172 (February 9, 2005), 70 FR 7979 (February 16, 2005). The Commission notes that the Exchange submitted a report on June 13, 2006, in connection with its filing to extend the Pilot Program through July 12, 2007. *See* Securities Exchange Act Release No. 53684 (June 14, 2006), 71 FR 35718 (June 21, 2006).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54336; File No. SR–CBOE–2006–69]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program That Increases the Standard Position and Exercise Limits for Certain Options Traded on the Exchange

August 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 prepared by the CBOE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend an existing pilot program that increases the standard position and exercise limits for certain options traded on the Exchange (''Pilot Program''). The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the CBOE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program, as previously approved by the Commission, provides for an increase to the standard position and exercise limits for equity option contracts and for options on QQQQs for a six-month period.[5] Specifically, the Pilot Program increased the applicable position and exercise limits for equity options and options on the QQQQ in accordance with the following levels:

Current equity option contract limit[6]	Pilot program equity option contract limit*
13,500 contracts	25,000 contracts.
22,500 contracts	50,000 contracts.
31,500 contracts	75,000 contracts.
60,000 contracts	200,000 contracts.
75,000 contracts	250,000 contracts.

*Except when the Pilot Program is in effect.

Current QQQQ option contract limit	Pilot program QQQQ option contract limit
300,000 contracts	900,000 contracts.

The purpose of the proposed rule change is to extend the Pilot Program for an additional six-month period, through March 1, 2007. The Exchange believes that extending the Pilot Program for six months is warranted due to the positive feedback from members and for the reasons cited in the original rule filing that proposed the adoption of the Pilot Program.[6] Also, the Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot Program for the aforementioned additional period.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5)[7] of the Act that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the 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–2006–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Pilot Program was approved by the Commission on February 23, 2005. *See* Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (order approving SR–CBOE–2003–30, as amended) (''Pilot Program Order''). The Pilot Program has been extended twice and is due to expire on September 1, 2006. *See* Securities Exchange Act Release Nos. 52262 (August 15, 2005), 70 FR 48995 (August 22, 2005) (notice of filing and immediate effectiveness of SR–CBOE–2005–61); and 53348 (February 22, 2006), 71 FR 10574 (March 1, 2006) (notice of filing and immediate effectiveness of SR–CBOE–2006–11).

[6] *See* Pilot Program Order, *supra* note 5.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File No. SR–CBOE–2006–69. 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 will also be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2006–69 and should be submitted on or before September 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14195 Filed 8–25–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54335; File No. SR–ISE–2006–47]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Period To Increase Position Limits and Exercise Limits for Equity Options and Options on the Nasdaq-100 Tracking Stock

August 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2006, the International Securities Exchange, Inc. (''ISE'' 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 prepared by the ISE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to extend the time period for the ISE Rule 412 and ISE Rule 414 position and exercise limits pilot program for equity option contracts and options on the Nasdaq-100 Index Tracking Stock (''QQQQ'') (''Pilot Program''). The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 Pilot Program provides for an increase to the standard position and exercise limits for equity option contracts and for options on QQQQs.[5] The Pilot Program, after being extended on two prior occasions, is set to expire on September 1, 2006.[6] Specifically, the Pilot Program increased the applicable position and exercise limits for equity options and options on the QQQQ to the following levels:

Current equity option contract limit[7]	Pilot program equity option contract limit
13,500 contracts	25,000 contracts.
22,500 contracts	50,000 contracts.
31,500 contracts	75,000 contracts.
60,000 contracts	200,000 contracts.
75,000 contracts	250,000 contracts.

Current QQQQ option contract limit	Pilot program QQQQ option contract limit
300,000 contracts	900,000 contracts.

The purpose of the proposed rule change is to extend the Pilot Program for an additional six-month period, until March 1, 2007. The Exchange believes that extending the Pilot Program for six months is warranted due to the positive feedback from members and for the reasons cited in the original rule filing that proposed the adoption of the Pilot Program.[8] Additionally, the Exchange represents that it has not experienced any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot Program until March 1, 2007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objective of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[13] 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] *See* Securities Exchange Act Release No. 51295 (March 2, 2005), 70 FR 11292 (March 8, 2005) (notice of filing and immediate effectiveness of SR–ISE–2005–14) (''Pilot Program Notice'').

[6] *See* Securities Exchange Act Release Nos. 53345 (February 22, 2006), 71 FR 10579 (March 1, 2006) (notice of filing and immediate effectiveness of SR–ISE–2006–10); and 52265 (August 15, 2005), 70 FR 48996 (August 22, 2005) (notice of filing and immediate effectiveness of SR–ISE–2005–39).

[7] Except when the Pilot Program is in effect.

[8] *See* Pilot Program Notice, *supra* note 5.

[9] 15 U.S.C. 78f(b).

[10] 10 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[15]

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 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–ISE–2006–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2006–47. 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 will also be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2006–47 and should be submitted on or before September 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14208 Filed 8–25–06; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] For the purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54333; File No. SR–NASDAQ–2006–021]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Modify Certain of Nasdaq's Corporate Governance Standards, Including the Definition of Independent Director

August 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2006, The NASDAQ Stock Market LLC (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] On August 7, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend Rules 4200(a)(15), IM–4200 and 4350. Nasdaq will implement the proposed rule upon approval by the Commission.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].[5]

* * * * *

4200. Definitions.

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(14) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A similar filing, SR–NASD–2005–105, was filed by The Nasdaq Stock Market, Inc. to modify NASD rules on August 31, 2005. SR–NASD–2005–105 was withdrawn on July 28, 2006. Nasdaq began operating as a national securities exchange for Nasdaq-listed securities on August 1, 2006. *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (the ''Exchange Approval Order'').

[4] In Amendment No. 1, Nasdaq made corrections to the text of the proposed rule change. The changes set forth in Amendment No. 1 have been incorporated into this Notice.

[5] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://www.complinet.com/nasdaq*. These rules became effective on August 1, 2006, when Nasdaq commenced operations as a national securities exchange for Nasdaq-listed securities.

(15) ''Independent director'' means a person other than an *executive* officer or employee of the company [or its subsidiaries] or any other individual having a relationship which, in the opinion of the [company's] *issuer's* board of directors, would interfere with the exercise of independent judgement in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) A director who is, or at any time during the past three years was, employed by the company [or by any parent or subsidiary of the company];

(B) A director who accepted or who has a Family Member who accepted any [payments] *compensation* from the company [or any parent or subsidiary of the company] in excess of $60,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) Compensation for board or board committee service;

[(ii) payments arising solely from investments in the company's securities;]

(ii[i]) compensation paid to a Family Member who is [a non-executive] *an* employee (*other than an executive officer*) of the company [or a parent or subsidiary of the company]; *or*

(i*ii*[v]) benefits under a tax-qualified retirement plan, or non-discretionary compensation[;].

[(v) loans from a financial institution provided that the loans (1) were made in the ordinary course of business, (2) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with the general public, (3) did not involve more than a normal degree of risk or other unfavorable factors, and (4) were not otherwise subject to the specific disclosure requirements of SEC Regulation S–K, Item 404;]

[(vi) payments from a financial institution in connection with the deposit of funds or the financial institution acting in an agency capacity, provided such payments were (1) made in the ordinary course of business; (2) made on substantially the same terms as those prevailing at the time for comparable transactions with the general public; and (3) not otherwise subject to the disclosure requirements of SEC Regulation S–K, Item 404; or]

[(vii) loans permitted under Section 13(k) of the Act.]

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 4350(d).

(C) A director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the company [or by any parent or subsidiary of the company] as an executive officer;

(D) No change.

(E) A director of the [listed company] *issuer* who is, or has a Family Member who is, employed as an executive officer of another entity where at any time during the past three years any of the executive officers of the [listed company] *issuer* serve on the compensation committee of such other entity; or

(F)–(G) No change.

(16)–(39) No change.

(b)–(c) No change.

IM–4200. Definition of Independence—Rule 4200(a)(15)

It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 4200. Rule 4200 also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Because Nasdaq does not believe that ownership of company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 4350.

The Rule's reference to *the ''company'' includes any parent or subsidiary of the company.* [a] *The term* ''parent or subsidiary'' is intended to cover entities the issuer controls and consolidates with the issuer's financial statements as filed with the Commission (but not if the issuer reflects such entity solely as an investment in its financial statements). The reference to executive officer means those officers covered in SEC Rule 16a–1(f) under the Act. In the context of the definition of Family Member under Rule 4200(a)(14), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as ''in-law'' relationships.

The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the company is not independent until three years after such employment terminates.

For purposes of paragraph (A) of the Rule, employment by a director as an executive officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim executive officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the issuer's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the company's financial statements while serving as an interim executive officer, Rule 4350(d)(2)(A)(iii) would preclude service on the audit committee for three years.

Paragraph (B) of the Rule is generally intended to capture situations where [a payment] *compensation* is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director [or political contributions to the campaign of a director or a Family Member of the director] would be [considered] *analyzed* under paragraph (B) of the Rule. *In addition, political contributions to the campaign of a director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by an issuer that is a financial institution or payment of claims on a policy by an issuer that is an insurance company), payments arising solely from investments in the company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the*

circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public. [Subparagraph (v) clarifies that a loan from a financial institution that was exempt from specific disclosure pursuant to Instruction 3 to SEC Regulation S–K, Item 404(c) will not preclude a finding of director independence. Subparagraph (vi) clarifies that certain payments from financial institutions will not preclude a finding of director independence. In particular, subparagraph (vi) is intended to capture standard, non-preferential payments made by financial institutions in the ordinary course of business such as interest payments made by a bank on deposits, certificates of deposits, or savings bonds. Furthermore, subparagraph (vi) is intended to capture technical ''payments'' made by a financial institution to its customers when the financial institution acts as an agent for its customers. For example, when a brokerage firm receives dividends for securities held by a customer, it will make a ''payment'' of the dividend amount to that customer. Likewise, when a brokerage firm executes a customer's order to sell the customer's securities, it will make a ''payment'' of the proceeds to the customer. Subparagraph (vi) clarifies that agency payments, such as those described above, shall not preclude a finding of director independence.]

Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling shareholder or executive officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact Nasdaq if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than SEC Rule 10A–3(e)(8) under the Act.

Under paragraph (D), a director who is, or who has a Family Member who is, an executive officer of a charitable organization may not be considered independent if the company makes payments to the charity in excess of the greater of 5% of the charity's revenues or $200,000. However, Nasdaq encourages companies to consider other situations where a director or their Family Member and the company each have a relationship with the same charity when assessing director independence.

For purposes of determining whether a lawyer is eligible to serve on an audit committee, SEC Rule 10A–3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 4200(a)(15)(D), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or $200,000; however, if the firm is a sole proprietorship, Rule 4200(a)(15)(B), which looks to whether the payment exceeds $60,000, applies.

Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an ''interested person'' of the company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Capital Market Issuers Except for Limited Partnerships

(a)–(c) No change.
(d) Audit Committee
(1)–(4) No change.
(5) Exception.
At any time when an issuer has a class of common equity securities (or similar securities) that is listed on another national securities exchange or national securities association subject to the requirements of SEC Rule 10A–3 under the Act, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) shall not be subject to the requirements of this paragraph (d).
(e)–(n) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to provide additional clarity and transparency to certain Nasdaq corporate governance standards.

(i) Rule 4200(a)(15)(B)—Compensation Over $60,000

Nasdaq proposes to modify the definition of independent director in Rule 4200(a)(15)(B) to provide that a finding of independence is precluded if a director accepts any compensation from the company or its affiliates in excess of $60,000 during any consecutive twelve month period within the three years prior to the independence determination. Under the existing rule, a director's independence is evaluated based on payments accepted from the company or its affiliates.

Nasdaq first proposed a detailed definition of independent director in 1999, following the recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees.[6] That definition provided that a director would not be considered independent if he or she accepted compensation from the corporation or its affiliates in excess of $60,000 during the prior fiscal year, other than compensation for board service or certain other benefits.[7]

In 2002, following certain corporate scandals, Nasdaq reviewed its corporate governance standards and proposed the rule that exists today. The existing rule, which was approved in November 2003, precludes a finding of independence if a director, or any family member of the director, accepts any payments from the company or any parent or subsidiary of the company in excess of $60,000 during any period of twelve consecutive months within the three years preceding

[6] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 1999).

[7] Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999).

the determination of independence.[8] The change in focus from compensation to payments in the rule was intended to address a concern that the rule might not capture certain payments that had been identified as tainting a director's independence. One such payment involved political contributions by a director to the campaign of another director's spouse.

Since the rule was approved, however, Nasdaq staff has been confronted by several examples of ''payments'' that do not fall within the original intent of the rule and which Nasdaq believes unlikely to taint a director's independence. For example, in the case of a company that is a bank, payments may include amounts such as interest on a director savings account, proceeds from the redemption of a savings bond, or even the return of the director's deposit. The Commission approved rule changes last year that specifically excluded these types of bank payments. In addition, in the case of a company that is an insurance company, payments could include the payment of claims on a director's policy.

Rather than continuing to codify examples of ''payments'' that should be excluded from the rules as they arise, Nasdaq believes that the more effective approach is to modify the rule to focus on compensation rather than payments. To provide further guidance, Rule IM–4200 would provide specific examples of direct and indirect compensation that would preclude a director's independence under the rule, such as contributions made to the political campaign of a director or family member. Based on its experience, Nasdaq believes that a revised rule based on compensation rather than payments would better capture the types of compensation that bear on a director's independence, while still addressing the issues that gave rise to concerns about the original rule.

The comparable rule of the New York Stock Exchange, Inc. (''NYSE'') precludes independence if the director or family member has received direct compensation above a minimum threshold.[9] Accordingly, the proposed rule change will conform this part of the Nasdaq's definition to the NYSE rules, creating more uniformity across market centers with respect to the standards for evaluating a director's independence.

(ii) *Rule IM–4200—Service as a Compensated Interim Officer.*

Nasdaq also proposes to modify the interpretive material to Rule 4200(a)(15) to provide that past service as a compensated interim officer should not preclude a director from being considered independent. Nasdaq has received inquiries from issuers who have named an independent director as an interim officer until a successor can be found. These companies have asked for clarity as to whether, under the current rules, serving as an interim officer would preclude a director from being considered independent as a result of such service.

Nasdaq has interpreted the existing rules such that a director serving as an interim officer would not be deemed to be a former employee of the company. However, concerns have been raised that compensation paid to these individuals would disqualify many directors from rendering such services. Nasdaq believes that it is appropriate to provide additional transparency to companies in this situation and, in doing so, to offer broader relief to these companies.

Companies that seek the services of an independent director as a temporary officer typically are responding to an urgent internal problem. Furthermore, companies in this position are likely to provide compensation to such persons in an amount greater than $60,000. Once a permanent replacement is found, and the individual seeks to return to ''normal'' service as a board member, Nasdaq believes it is unfair to penalize the company by preventing such person from serving as an independent director for another three years. Nasdaq is proposing a clarification to the rule that would address the difficulties faced at such times by issuers, especially smaller companies, that need to fill key executive slots, and are forced by timing exigencies to turn for help to experienced independent directors on their board. Nevertheless, if, while acting as an interim officer, the director participated in the preparation of the company's financial statements, the director would be precluded from serving on the Audit Committee for three years under Rule 4350(d)(2)(A)(iii).

Accordingly, Nasdaq proposes to amend IM–4200 to clarify that after the effective date of this rule, an issuer's Board may determine that a director who served as an officer of the company on an interim basis for up to a year is not precluded from being considered independent solely as a result of that service (including service that occurs before the approval of this proposed change).[10] In order to limit potential abuse of this exception, however, service in this capacity must be limited to not more than one year. Of course, depending upon the magnitude of the compensation and the length of service as an interim officer, a board could still determine on its own—without regard to a ''bright line'' test—that an individual should not be considered independent. In this respect, the proposed interpretive material reminds companies of the board's obligation to consider such service in making an independence determination.

NYSE rules also provide that compensated service as an interim officer does not disqualify a director from being considered independent following such service.[11] Accordingly, the proposed rule change would result in more uniformity across market centers with respect to how interim service by directors is treated for independence purposes.

(iii) *Other changes.*

Nasdaq also proposes to make other clarifying changes to the corporate governance rules. Specifically, Nasdaq proposes to clarify that the term ''non-executive employee'' used in Rule 4200(a)(15)(B)(iii) means an employee other than an executive officer, a term defined in the rules by reference to SEC Rule 16a–1(f) under the Act. Further, Nasdaq proposes to clarify that references to ''the company'' in Rule 4200(a)(15) include any parent or subsidiary of the listed company. Finally, Nasdaq proposes to clarify that an exception to the audit committee requirements contained in Rule 10A–3(c)(2) under the Act for certain issuers that have a listed parent also is applicable to Nasdaq's audit committee requirements.

(iv) *Transition.*

Nasdaq will implement the proposed rule change immediately upon approval by the Commission. In order to facilitate the transition to the new rules, any director that would be considered independent under the existing rules prior to the rule change, but that would no longer be deemed independent under the new rules, would be permitted to continue to serve on the issuer's Board of Directors as an independent director

[8] Exceptions exist in the current rule for payments arising solely from investments in the company's securities, certain loans and other payments from a financial institution, and loans permitted under Section 13(k) of the Act.

[9] Section 303A.02(b)(ii) of the NYSE Listed Company Manual.

[10] A director would not be considered independent while serving as an interim officer. Further, a director could be considered independent following such service only if a determiantion of independence is not precluded under any other provision of Rule 4200(a)(15).

[11] Commentary to Section 303A.02(b)(i) and (ii) of the NYSE Listed Company Manual.

until no later than 90 days after the approval of this rule filing.[12]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act [13] in general and with Section 6(b)(5) of the Act,[14] in particular. Section 6(b)(5) requires that Nasdaq's rules 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 to protect investors and the public interest. The proposed rule change will benefit investors, issuers' counsel, and member firms by providing additional clarity and transparency to Nasdaq's corporate governance standards and promoting greater uniformity with existing corporate governance standards of the NYSE. The additional clarity, transparency, and greater uniformity will also reduce administrative costs associated with compliance with Nasdaq's corporate governance standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq 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.

[12] The transition period does not affect an issuer's obligation to comply with the requirements related to audit committee composition.

[13] 15 U.S.C. 78f.

[14] 15 U.S≤C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–021. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2006–021 and should be submitted on or before September 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54339; File No. SR–NASD–2004–026]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1–5 To Amend NASD Rule 2320(a) Governing Best Execution

August 21, 2006.

I. Introduction

On February 12, 2004, the National Association of Securities Dealers, Inc. (''NASD'') 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 amend NASD Rule 2320(a) (''Best Execution Rule''). On May 11, 2004, NASD amended the proposed rule change.[3] On February 14, 2005, NASD amended the proposed rule change a second time.[4] The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on February 25, 2005.[5] The Commission received three comment letters on the proposal.[6] On June 22, 2005, NASD filed a response to comments, and simultaneously amended the proposal.[7] The Commission received one comment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

[4] *See* Amendment No. 2.

[5] *See* Securities Exchange Act Release No. 51229 (February 18, 2005), 70 FR 9416. The proposed rule change was published a second time on October 26, 2005. *See* footnote 10 *infra.*

[6] *See* letters from Amal Aly, Vice President(''VP'') and Associate General Counsel (''AGC''), and Ann Vlcek, VP and AGC, Securities Industry Association (''SIA'') dated March 18, 2005 (''SIA Letter''); Paul A. Merolla, Executive Vice President and General Counsel, Instinet Group, Inc. (''Instinet'') dated March 22, 2005 (''Instinet Letter''); Micah S. Green, President and Michele C. David, VP and AGC, The Bond Market Association (''BMA'') dated April 5, 2005 (''BMA Letter''), to Jonathan G. Katz, Secretary, Commission. The Commission received one additional comment letter after NASD filed its response to comments, and another letter after the proposed rule change was republished on October 26, 2005. *See* footnotes 8, 10 and 11, *infra.*

[7] *See* Amendment No. 3.

letter regarding NASD's response.[8] On September 22, 2005, NASD filed an amendment to modify the purpose section of the proposal, clarifying the scope of a member's duty to provide best execution.[9] The proposed rule change, as modified by Amendment Nos. 3 and 4, was published for comment in the **Federal Register** on October 26, 2005.[10] The Commission received one additional comment letter on the proposed rule change after it was published for the second time.[11] On May 17, 2006, NASD filed Amendment No. 5.[12] This order approves the proposed rule change, as modified by Amendment Nos. 1–5.[13]

II. Summary of Comments

The Commission received a total of five comment letters from three commenters on the proposed rule change.[14] The SIA notes that NASD made several positive changes to the proposed rule in Amendment No. 2.[15] However, the SIA, the BMA and Instinet all take issue with NASD requiring a member to provide best execution to the customer of another broker-dealer. The commenters assert that the recipient broker-dealer does not have a relationship with the customer and thus should not be subject to the rule, or if subject to the rule, the SIA suggests that, if the recipient broker-dealer complies with the terms and conditions of the order, as communicated by the originating broker-dealer, the recipient broker-dealer should have fulfilled its best execution obligation under the rule.[16]

The BMA, while objecting to this requirement, also believes that the Best Execution Rule should not apply to the bond market.[17] According to the BMA, the rule would cause problems in the bond market because of the way the market operates.[18] In addition, the BMA believes that the wording of the rule demonstrates that it was not intended to apply to the bond market.[19] After the Commission's receipt of Amendment No. 3, the BMA submitted a second comment letter that reiterates its concerns with the proposal, and states its belief that Amendment No. 3 does not adequately address the BMA's concerns.[20]

Instinet raises two additional points. First, Instinet argues that use of the term ''market center'' creates a competitive disadvantage because the rule would not apply to market centers operated by NASD and other self-regulatory organizations (''SROs'').[21] Instinet asks that NASD either exclude member-operated electronic communications networks (''ECNs'') or alternative trading systems (''ATSs'') that interact with orders on a fully automated basis from the rule, or apply the same obligations to the Nasdaq Market Center and the BRUT facility. Second, Instinet asks that implementation of the proposed rule change be delayed pending Commission action on Regulation NMS, including interpretive guidance with respect to the obligations of market centers under the trade through proposal.[22]

III. NASD Response to Comments

In response to the comments, NASD filed Amendment Nos. 3 and 4 to the proposed rule change.[23] In Amendment No. 3, NASD states that the failure to apply the Best Execution Rule to recipient broker-dealers is contrary to the interests of the investing public as well as the general intent of the Best Execution Rule itself. As amended, the rule requires a member to use reasonable diligence to ascertain the best market for the particular security and to buy or sell in that market so that the price to the customer is as favorable as possible under the prevailing market conditions. The rule contains five factors that NASD will consider in determining if the broker-dealer used reasonable diligence to ascertain the best market for the security. Whether the broker-dealer used reasonable diligence is factored into the determination of whether the broker-dealer has met its best execution obligation.

NASD amended the proposed rule change to replace the term ''market center'' with the term ''market,'' which is a broader term. According to NASD, this change was made to address the BMA's concern that the term ''market center'' is not relevant in the bond market, as well as Instinet's concern with respect to the proposed rule creating a competitive disadvantage. As amended, the Best Execution Rule will apply to all trading venues.

In response to the BMA's assertion that the proposed rule should not apply to the bond market, NASD stated the rule has ''never been limited to equity securities.'' NASD cites to Rule 0116, which enumerates the NASD rules that apply to government and other exempt securities.[24] The BMA argues that the bond market is not subject to the same requirements as the equities markets, *e.g.* a firm quote requirement, pre-trade quote transparency, a uniform, regulated inter-dealer market and an inter-dealer linkage.[25] NASD acknowledges the differences in market structure and regulations between the equities markets and the bond markets and notes that, at the time NASD adopted the Best Execution Rule, the equities markets operated in a framework similar to the current framework for bond trading. Furthermore, NASD stated that the term ''quotation'' refers to either dollar (or other currency) pricing or yield pricing, for purposes of debt, and that accessibility of quotations is a factor in determining if the member used reasonable diligence. If quotations are readily available for a particular debt security, NASD will factor this into its assessment of whether the member complied with its obligations under the rule. In response to BMA Letter 2, NASD clarified the scope of the proposed rule change by stating that a member's duty to provide best execution to customer orders received from other broker-dealers arises when an order is routed to the member for the

[8] *See* letter from Marjorie Gross, Senior Vice President and Regulatory Counsel, BMA, to Jonathan G. Katz, Secretary, Commission, dated September 7, 2005 (''BMA Letter 2'').

[9] *See* Amendment No. 4.

[10] *See* Securities Exchange Act Release No. 52637 (October 19, 2005), 70 FR 61861.

[11] *See* letter from Michele C. David, VP and AGC, BMA, to Jonathan G. Katz, Secretary, Commission, dated November 16, 2005 (''BMA Letter 3'').

[12] Amendment No. 5 is a technical amendment. With Amendment No. 5, NASD took the substance of Amendment Nos. 3 and 4 and placed that information in IM–2320.

[13] In August 2005, the Commission approved two related proposed rule changes: SR–NASD–2004–045, which prohibits members from trading ahead of customer market orders in certain circumstances, and SR–NASD–2004–089, which provides additional limit order protection by requiring members to provide price improvement under certain circumstances. *See* Securities Exchange Act Release Nos. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005), and 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005).

[14] *See* footnotes 6, 8 and 11, *supra*.

[15] *See* SIA Letter at 2.

[16] *Id.*

[17] *See* BMA Letter at 2, 5.

[18] *Id.* at 1.

[19] *Id.* at 2.

[20] *See* BMA Letter 2. The Commission notes that the BMA reasserts the concerns it raises in BMA Letters 1 and 2 in BMA Letter 3, and further states that the proposed rule change is deficient because it does not specifically address how certain provisions of the proposal pertain to the bond market. BMA Letter 3 at 1–2.

[21] *See* Instinet Letter at 2 and 3.

[22] *Id.* at 3.

[23] *See* footnotes 7 and 9, *supra*.

[24] *See* Securities Exchange Act Release No. 44631 (July 31, 2001), 66 FR 41283 (August 7, 2001)(SR–NASD–2000–38)(order approving NASD Rule 0116)(''Exempted Securities Order''). *See also*, Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996)(order approving NASD's proposal implementing the expanded sales practice authority granted to NASD pursuant to the Government Securities Act Amendments of 1993 and listing the NASD rules that would apply to exempted securities. Among the rules was the Best Execution Rule.

[25] *See* BMA Letter at 4.

purpose of order handling and execution.[26]

Amendment No. 5 is purely a technical amendment, as its substance was published for notice and comment in Amendment Nos. 3 and 4. With Amendment No. 5, NASD took the substance of Amendment Nos. 3 and 4 and placed that information in IM–2320.

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and NASD's response to the comments, and believes that NASD has responded appropriately to the concerns raised by the commenters. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and, in particular, with Section 15A(b)(6) of the Act, which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[27] Regarding the commenters' assertion that a recipient broker-dealer's compliance with the terms and conditions of the order, as communicated by the originating broker-dealer, solely, should constitute satisfaction of the duty of best execution with regard to routed orders, the Commission believes that such compliance should be considered a significant factor in determining if the recipient broker-dealer has met its duty of best execution, but should not be the sole factor to consider. In Amendment Nos. 3 and 4, NASD addressed the concerns raised by commenters. In response to issues raised by the BMA, NASD changed the terminology of the proposed rule change, replacing ''market center'' with ''market'' and stating that it will interpret the term broadly. Additionally, the Commission notes that the Best Execution Rule currently applies to the bond markets.[28] NASD indicated in its amendment how it intends to apply the factors in the rule that provide evidence of reasonable diligence in the context of the bond market, and how it will interpret price in connection with debt. In Amendment No. 4, NASD made a clear distinction between a member's duties when acting as provider of liquidity versus acting as an order handler for another broker-dealer. The Commission believes that the revisions clarify how the rule applies in the context of the debt market. Furthermore, the Commission notes that, at the time NASD adopted its Best Execution Rule, the equity markets were subject to a regulatory regime similar to the one under which the bond markets operate today.[29] The Commission expects that the NASD will take into account the structure and operation of the debt markets when applying the rule to debt market participants.

With regard to the commenters' claim that the proposal would create an unfair competitive disparity between otherwise similarly situated market centers that execute orders on an electronic agency basis, the Commission notes that electronic communications networks (''ECNs'') are subject to a different regulatory regime than SROs. ECNs are broker-dealers by definition, and must be members of an SRO; consequently ECNs are subject to SRO rules. Moreover, the Commission believes the proposed rule change, as amended, will not unfairly affect ECN operations.

With respect to the commenters' concern that implementation of this proposal should be delayed until after the Commission has adopted guidance under the trade through proposal of Regulation NMS, the Commission notes that the Commission adopted Regulation NMS subsequent to the commenters filing their comment letters.

Finally, the Commission views markup obligations and the duty of best execution as separate and distinct requirements. NASD Rule 2320(f) states that best execution obligations ''do not relate to the reasonableness of commission rates, markups or markdowns which are governed by Rule 2440 and IM–2440.''

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NASD–2004–026), as modified by Amendment Nos. 1–5, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14196 Filed 8–25–06; 8:45 am]

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[26] *See* footnote 9, *supra.*

[27] 15 U.S.C. 78*o*-3(b)(6). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] *See* footnote 24, *supra,* and Exempted Securities Order.

[29] As NASD notes, in 1968 when the Best Execution Rule was adopted, the market for equity securities was much different than it is today. For example, there was no consolidated tape and thus no readily available trade or quotation information. Market makers in over-the-counter securities conducted transactions via telephone, after checking prices either in the pink sheets or by information they obtained using the telephone. In addition, there was no requirement to report transactions to NASD within 90 seconds.

[30] 30 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54334; File No. SR–NASD–2006–097]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Increases Position and Exercise Limits for Certain Equity Options

August 18, 2006

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Rule 2860 to extend a pilot program increasing certain options position and exercise limits. The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at NASD's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD proposes to amend NASD Rule 2860 to extend a pilot program until March 1, 2007 (unless extended) increasing position and exercise limits for both standardized and conventional options (''Pilot Program'').[5] Unless extended, the Pilot Program will expire on September 1, 2006.[6] NASD believes that the Pilot Program should be extended so that it may continue without interruption for the same reasons that are discussed in the Pilot Program Notice.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is being made so that the Pilot Program, which achieves these goals as discussed in the Pilot Program Notice, may continue without interruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, NASD has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the 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–NASD–2006–097 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASD–2006–097. 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 will also be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASD–2006–097 and should be submitted on or before September 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14197 Filed 8–25–06; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 51520 (April 11, 2005), 70 FR 19977 (April 15, 2005) (notice of filing and immediate effectiveness of SR–NASD–2005–040) (''Pilot Program Notice'').

[6] *See* Securities Exchange Act Release No. 53346 (February 22, 2006), 71 FR 10580 (March 1, 2006) (notice of filing and immediate effectiveness of SR–NASD–2006–025).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54337; File No. SR–NYSE–2006–49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Relating to Amending Rule 123D (Openings and Halts in Trading) To Shorten the Minimum Required Time Periods Between Tape Indications and Openings and Between Halts or ''Equipment Changeovers'' and Reopenings

August 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 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, II, and III below, which Items have been prepared by the NYSE. On August 14, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rules 123D and 15 to shorten the minimum time periods between tape indications and openings or reopenings of a security and after an ''Equipment Changeover.''[4] The text of the proposed rule change, as amended, is available on the NYSE's Web site at *http://www.nyse.com,* the principal office of the NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange specialists are responsible for ensuring that their specialty securities open for trading as close to the opening bell as possible, and reopen for trading after a trading halt as soon as possible, consistent with the relevant circumstances. In addition to being timely, however, openings and reopenings after a trading halt should also be fair and orderly, reflecting a professional assessment of market conditions at the time and appropriate consideration of the balance of supply and demand as reflected by orders represented in the market.

Ordinarily, the specialist provides this information to the market before the opening bell in the form of price indications that are published on the consolidated tape. However, under certain circumstances, including a delayed opening of a security and the reopening of trading in a security after a trading halt, the specialist may be required to publish a price indication to the market that reflects the specialist's assessment of market conditions at the time of the delayed opening or reopening to provide market participants with the opportunity to react and participate as they deem appropriate.

Over the years, in developing procedures for openings and reopenings of trading, the Exchange has focused on providing a balance between timeliness and appropriateness of price, *i.e.*, achieving a price that reflects market conditions at the time, and giving investors a reasonable opportunity to react and participate. The Exchange's current rules require minimum time periods as long as ten minutes between a specialist's dissemination of a price indication and the delayed opening or reopening of trading.[5]

Recognizing that the speed of communication has increased exponentially in the last decade and that market conditions may change substantially between the indication and the opening or resumption of trading under the time frames included in the current rule, the Exchange believes it is desirable to shorten the time between indications and the opening or reopening of trading in a security. The Exchange believes shortening the time periods would provide the market with the flexibility to react quickly if circumstances are such that it would be appropriate to open or reopen trading in a short period of time. Accordingly, the Exchange is proposing to revise the minimum time required for delayed openings of trading and reopenings of trading after a trading halt.

In connection with a delayed opening of trading in a security, Exchange Rule 123D (Openings and Halts in Trading) currently requires a minimum of ten minutes to elapse between the first price indication and the opening of the stock, and where there is more than one indication, a minimum of five minutes to elapse after the last indication, provided in all cases that at least ten minutes have elapsed since the first indication. The Exchange proposes that these minimum time periods be compressed from ten to three minutes after the first indication, and to one minute after the last indication, provided that a minimum of three minutes have elapsed since the first indication.

With respect to the reopening of trading after a stock has been halted during the trading day, Exchange Rule 123D currently requires a minimum of five minutes to elapse between the first indication and the reopening of trading, and a minimum of three minutes to elapse after the last indication, provided that at least five minutes has elapsed since the first indication. The Exchange proposes that these minimum time periods be compressed to three minutes after the first indication, and to one minute after the last indication, provided that a minimum of three minutes has elapsed since the first indication.

With respect to the reopening of trading after a stock has been halted during the trading day because of ''Equipment Changeover,'' Exchange Rule 123D currently requires a minimum of five minutes to elapse before trading resumes. Further, if, during the ''Equipment Changeover'' trading halt, a significant order imbalance (*i.e.*, one which would result in a price change from the last sale of one point or more for stocks under $10, the lesser of 10% or three points for stocks between $10–$99.99 and five points for stocks $100 or more—unless a Floor Governor deems circumstances warrant a lower parameter) develops or a regulatory condition occurs, the nature of the halt will be changed and notice must be disseminated and trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE made minor revisions to the proposed rule text and clarified that all market participants may react to published price indications.

[4] *See* Exchange Rule 123D(2).

[5] *See* Exchange Rule 123D.

cannot resume until ten minutes after the first indication of the new halt condition. The Exchange proposes that these minimum time periods be compressed to one minute after an ''Equipment Changeover'' and to three minutes after an ''Equipment Changeover'' during which a significant order imbalance or regulatory condition develops.

The Exchange notes that there are different indication requirements for different classes of securities, such as foreign-listed securities and convertible preferred stock. The proposed amendments to Exchange Rule 123D do not alter those requirements.

The Exchange also proposes that the same minimum time period changes be added to a related rule, Exchange Rule 15 (ITS and Pre-Opening Applications), in order to conform Exchange Rule 15 to the recently amended Intermarket Trading System Plan. Specifically, the Exchange proposes to amend Exchange Rule 15 to require that, when more than one indication is disseminated, a stock may reopen one minute after the last indication if three minutes have elapsed after the first indication.

The Exchange also notes that the Consolidated Tape Association Plan has been amended to provide that following a trading halt, last sale information will be disseminated pursuant to a listing market's rules and Exchange Rule 123D for Exchange-listed securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to 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 would 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 were neither solicited nor received.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–2006–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–49. 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 publicly available. All submissions should refer to File Number SR–NYSE–2006–49 and should be submitted on or before September 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14198 Filed 8–25–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5524]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Art of Jan van der Heyden''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Art of Jan van der Heyden,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Bruce Museum of Arts and Science, Greenwich, Connecticut, from on or about September 16, 2006, until on or about January 10, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

[8] 17 CFR 200.30–3(a)(12).

Dated: August 18, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14236 Filed 8–25–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5526]

Culturally Significant Objects Imported for Exhibition Determinations: ''Brice Marden: A Retrospective of Paintings and Drawings''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Brice Marden: A Retrospective of Paintings and Drawings,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, from on or about October 29, 2006, until on or about January 15, 2007, at the San Francisco Museum of Modern Art, San Francisco, California, beginning on or about February 17, 2007, until on or about May 13, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: August 18, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14234 Filed 8–25–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5525]

Culturally Significant Objects Imported for Exhibition Determinations: ''Glitter and Doom: German Portraits From the 1920s''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Glitter and Doom: German Portraits from the 1920s,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about November 13, 2006, until on or about February 18, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 18, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14239 Filed 8–25–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5510]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice announces a meeting of the International Telecommunication Advisory Committee (ITAC). The International Telecommunication Advisory Committee (ITAC) will meet by conference call to prepare advice on proposed U.S. contributions to Study Group 9 (Integrated broadband cable networks and television and sound transmission) of the International Telecommunication Union's Telecommunication Standardization Sector on Thursday September 14, 2006 2–4 p.m. Eastern Time. This call is open to the public. Particulars on the conference bridge are available from the secretariat *minardje@state.gov*, telephone 202–647–3234.

Dated: August 18, 2006.

James G. Ennis,

Foreign Affairs Officer, International Communications & Information Policy, Multilateral Affairs, Department of State.

[FR Doc. E6–14232 Filed 8–25–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5509]

U.S. National Commission for UNESCO Notice of Teleconference Meeting

The U.S. National Commission for UNESCO will hold a conference call on Wednesday, September 6, 2006 beginning at 11:30 a.m. Eastern Time. The open portion of the call should last one hour and will address recommendations from the Commission's Literacy Subcommittee and U.S. National Committee for the International Hydrological Program. Additional topic areas that relate to UNESCO may be discussed as needed.

The Commission will accept brief oral comments from members of the public during the open portion of this conference call. The public comment period will be limited to approximately fifteen minutes in total with about three minutes allowed per speaker. Members of the public who wish to present oral comments or listen to the conference call must make arrangements with the Executive Secretariat of the National Commission by September 1, 2006.

The second portion of the teleconference meeting will be closed to the public to allow the Commission to discuss applications for the UNESCO–L'OREAL Co-Sponsored Fellowships for Young Women in Life Sciences Program. It has been determined that this portion of the call will be closed to the public pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b [c] [6] because it is likely to involve discussion of information of a personal nature regarding the relative merits of

individual applicants where disclosure would constitute a clearly unwarranted invasion of personal privacy.

For more information or to arrange to participate in the open portion of the teleconference meeting, contact Alex Zemek, Acting Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. Telephone: (202) 663–0026; Fax: (202) 663–0035; E-mail: *DCUNESCO@state.gov.*

Dated: August 22, 2006.

Alex Zemek,

U.S. National Commission for UNESCO, Department of State.

[FR Doc. E6–14237 Filed 8–25–06; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Grant Acquired Property Release at Mount Pleasant Regional Airport, Mount Pleasant, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Charleston County Aviation Authority to waive the requirement that approximately 17.9 acres of airport property (Faison Road), located at the Mount Pleasant Regional Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before September 27, 2006.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Anthony Cochran, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Sam Hoerter, A.A.E., Director of Airports, Charleston County Aviation Authority at the following address: Charleston County Aviation Authority, Charleston International Airport, 5500 International Blvd. #101, Charleston, SC 29418.

FOR FURTHER INFORMATION CONTACT: Anthony Cochran, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7144. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Charleston County Aviation Authority to release approximately 17.9 acres of airport property (Faison Road) at the Mount Pleasant Regional Airport. The property consists of an access road on one parcel roughly located on the East side of the airport. This property is currently shown on the approved Airport Layout Plan as aeronautical use land; however the property is currently not being used for aeronautical purposes and the proposed use of this property is compatible with airport operations. The Charleston County Aviation Authority will ultimately transfer the property to the Town of Mount Pleasant for continued use as a public road in exchange for providing future maintenance/repair of the road and public services to the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Mount Pleasant Regional Airport.

Issued in Atlanta, Georgia on August 16, 2006.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 06–7201 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Raleigh County Memorial Airport, Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 31.413 acres of land at the Raleigh County Memorial Airport, Beckley, West Virginia to the Raleigh County Airport Authority and the Raleigh County Commission for the development of an industrial park. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land will be paid to the Raleigh County Airport and the Raleigh County Commission, and used for Airport purposes.

DATES: Comments must be received on or before September 27, 2006.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Connie Boley-Lilly, Program Specialist, Federal Aviation Administration, Beckley Airports District Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Thomas Cochran, Airport Manager, Raleigh County Memorial Airport at the following address: Thomas Cochran, Airport Manager, Raleigh County Memorial Airport, 176 Airport Circle, Room 105, Beaver, West Virginia 25813.

FOR FURTHER INFORMATION CONTACT: Connie Boley-Lilly, Program Specialist, Beckley Airport District Office, (304) 252–6216 ext. 125, FAX (304) 253–8028.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (April 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Beckley, West Virginia on July 14, 2006.

Matthew P. DiGiulian,

Acting Manager, Beckley Airport District Office, Eastern Region.

[FR Doc. 06–7206 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Adminstration

Notice of Additional Comment Period on Draft Written Reevaluation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for Comments.

SUMMARY: The Federal Aviation Administration (FAA) announces an additional comment period, closing on September 22, 2006, for a Draft Written Reevaluation of environmental impacts of a proposed centerfield taxiway at Boston-Logan International Airport, Boston, Massachusetts.

DATES: Send comments on or before September 22, 2006.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: On August 2, 2002, FAA issued *Record of Decision; Airside Improvements Planning Project; Logan International Airport; Boston, Massachusetts.* This Record of Decision covered projects proposed by the Massachusetts Port Authority and environmentally assessed in an Environmental Impact Statement of the Airside Improvements Planning Project. FAA approved the following projects: (1) Construction and operation of unidirectional Runway 14–32, (2) reconfiguration of the southwest corner taxiway system, (3) extension of Taxiway Delta, and (4) realignment of Taxiway November. FAA deferred a decision concerning the Centerfield Taxiway until FAA conducted an additional evaluation of potential beneficial operational procedures that would preserve or improve the operational and environmental benefits of the Centerfield Taxiway shown in the Final EIS. This additional evaluation was completed with the publication of *Logan International Airport; Additional Taxiway Evaluation Report; Per FAA August 2, 2002, Record of Decision;* May 2006; and this draft written reevaluation. The taxiway evaluation report and Draft Written Reevaluation are available on request (781–238–7602) or on FAA's public Web site (*http://www.faa.gov/airports_airtraffic*). After considering input from the Massachusetts Port Authority, FAA has decided to establish an additional comment period in order to permit more thorough public participation. The new comment period for the Draft Written Reevaluation will close on September 22, 2006. Comments should be mailed to FAA at the above address under the heading: **FOR FURTHER INFORMATION CONTACT.** Questions may be directed to this address or by telephoning John Silva at 781–238–7602.

Dated: Issued in Burlington, Massachusetts on August 14, 2006.

Byron Rakoff,

Acting Manager, Airports Division.

[FR Doc. 06–7202 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting, Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

SUMMARY: The FAA is issuing this notice to advise the public of a first meeting of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning system (HTWAS).

DATES: The meeting will be held September 21, 2006, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036, telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 212 meeting. The agenda will include:

- September 21:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Select Secretary, Agenda Overview).
- RTCA Overview.
- Previous Terrain Awareness and Warning System (TAWS) History.
- Current Committee Scope, Terms of Reference Overview.
  - Presentation, Discussion, Recommendations.
- Organization of Work, Assign Tasks, and Workshops.
  - Select Workgroup members to study historical helicopter CFIT accidents.
  - Assign Responsibilities.
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. Pre-Registration for this meeting is not required for attendance but is desired and can be done through the RTCA secretariat. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Member of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on August 17, 2006.

Francisco Estrada, C.,

RTCA Advisory Committee.

[FR Doc. 06–7203 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Announcement of Application Procedure and Deadlines for the Truck Parking Initiative

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; solicitation of applications.

SUMMARY: This notice solicits applications for the truck parking initiative for which funding is available under Section 1305 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). SAFETEA–LU directs the Secretary to establish a pilot program to address the shortage of long-term parking for commercial motor vehicles on the National Highway System. States, metropolitan planning organizations (MPOs) and local governments are eligible for the funding available for fiscal years (FY) 2006–2009. Section 1305 allows for a wide range of eligible projects, ranging from construction of spaces and other capital improvements to using intelligent transportation systems (ITS) technology to increase information on the availability of both public and private commercial vehicle parking spaces. For purposes of this program, long-term parking is defined as parking available for 10 or more consecutive hours.

DATES: Applications must be received by the FHWA Division Office no later than November 27, 2006.

ADDRESSES: The FHWA Division Office locations can be found at the following URL: *http://www.fhwa.dot.gov/field.html#fieldsites.*

FOR FURTHER INFORMATION CONTACT: Mr. William Mahorney, Office of Freight Management and Operations, telephone 202–366–6817 *bill.mahorney@dot.gov*; for legal questions, Mr. Robert Black, Office of the Chief Counsel, Federal Highway Administration, telephone: (202) 366–1359 *robert.black@dot.gov*; Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

I. Background

The Truck Parking Initiative could further the goals of the Department of Transportation's new National Strategy to Reduce Congestion on America's Transportation Network, announced on May 16, 2006.[1] By creating a program that provides funds to address long-term truck parking on the National Highway System, the Department anticipates that commercial motor vehicles will be better able to plan rest stops and better time their transit or loading/unloading within urban areas, thereby reducing the urban area's congestion.

The shortage of long-term truck parking on the National Highway System (NHS) is a problem that needs to be addressed. The 2002 FHWA Report ''Study of Adequacy of Parking Facilities'' [2] indicated that truck parking shortages are either non-existent or corridor-specific in some States, but more severe and pervasive in some States and regions. The report recommendations include expansion or improvement of public rest areas; expansion or improvement of commercial truck stops and travel plazas; use of public-private partnerships; educating or informing drivers about available spaces; and changing current parking rules. This lack of available parking not only adds to congestion in urban areas, but may affect safety by reducing the opportunities for drivers to obtain rest needed to comply with the Federal Motor Carrier Safety Regulations, Hours of Service of Drivers (49 CFR part 395.3(a)(1)), which prohibits ''driving more than 11 cumulative hours following 10 consecutive hours off-duty.'' Further, parking areas are often designed or maintained for short-term parking only, and as a result, allow parking for limited time periods. Section 1305 of SAFETEA–LU (Pub. L. 109–59; Aug. 10, 2005) directed the Secretary of Transportation to establish a pilot program to address the long-term parking shortages along the National Highway System (NHS). Eligible projects under Section 1305 include projects that:

1. Promote the real-time dissemination of publicly or privately provided commercial motor vehicle parking availability on the NHS using ITS and other means;

2. Opening non-traditional facilities to commercial motor vehicle parking, including inspection and weigh stations, and park and ride facilities;

3. Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year round;

4. Constructing turnouts along the NHS to facilitate commercial motor vehicle access to parking facilities, and/or improving the geometric design of interchanges to improve access to commercial motor vehicle parking facilities;

5. Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas; and

6. Constructing safety rest areas that include parking for commercial motor vehicles.

The FHWA believes that projects designed to disseminate information on the availability and/or location of public or private long-term parking spaces provides the greatest opportunity to maximize the effectiveness of this pilot program.

II. Funding Information

1. The Administrator has determined that $5.385 million is available for grants in FY 2006 under Section 1305, after obligation limitations.

2. Section 1305 authorizes $6.25 million for each of the fiscal years 2006 through 2009. Each year, after Congress has appropriated funds for the program, the obligation limitation will be determined. A similar solicitation for grant applications will be published each fiscal year. Funds authorized to carry out this section remain available until expended.

3. Projects funded under this section shall be treated as projects on a Federal-Aid System under Chapter 1 of Title 23, United States Code.

4. Grants may be funded at an 80 to 100 percent funding level based on the criteria specified in Sections 120(b) and (c) of Title 23, U.S. Code.

This notice will also be posted on the FHWA Office of Freight Management and Operations Web site, *http://www.ops.fhwa.dot.gov/freight.* An original and ten copies of each application must be submitted by a State Department of Transportation to the FHWA's Office of Freight Management and Operations, via the FHWA Division Office in the State in which the application was submitted. Awarded projects will be administered by the applicable State Department of Transportation as a Federal-aid grant. In accordance with the Paperwork Reduction Act, OMB has provided emergency clearance for this action (OMB Control number 2125–0610, July 28, 2006). A request for comments for the new information collection (Docket No. 2006–25066) was published in the **Federal Register** on June 26, 2006. Comments may be submitted in response to this request until August 25, 2006.

III. Proposal Content

All proposals should include the following:

1. A detailed project description, which would include the extent of the long-term truck parking shortage in the corridor/area to be addressed, along with contact information for the project's primary point of contact, and whether funds are being requested under 23 U.S.C. 120(b) or (c). Data helping to define the shortage may include truck volume (Average Daily Truck Traffic—ADTT) in the corridor to be addressed, current number of long-term commercial motor vehicle parking spaces, use of current long-term parking spaces, driver surveys, observational field studies, proximity to freight loading/unloading facilities, and proximity to the NHS.

2. The rationale for the project should include an analysis and demonstration of how the proposed project will positively affect truck parking, safety, traffic congestion, or air quality in the identified corridor. Examples may include: advance information on availability of parking that may help to reduce the number of trucks parked on roadsides and increase the use of available truck parking spaces.

3. The scope of work should include a complete listing of activities to be funded through the grant, including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work, and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements.

4. Stakeholder identification should include evidence of prior consultation and/or partnership with affected Metropolitan Planning Organizations (MPOs), local governments, community groups, private providers of commercial motor vehicle parking, and motorist and

[1] Speaking before the National Retail Federation's annual conference on May 16, 2006, in Washington, DC, former U.S. Department of Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rail, and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion. The transcript of these remarks is available at the following URL: *http://dot.gov/minetasp051606.htm.*

[2] A copy of this document is available for inspection in the docket for this notice.

trucking organizations. Also, include a listing of all public and private partners, and the role each will play in the execution of the project. Commitment/consultation examples may include: Memorandums of Agreement, Memorandums of Understanding, contracts, meeting minutes, letters of support/commitment, and documentation in a metropolitan transportation improvement program (TIP) or statewide transportation improvement program (STIP).

5. A detailed quantification of eligible project costs by activity, an identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-Federal commitment) will be considered by the FHWA as an in-kind match contributing to the project. State matching funds will be required for projects eligible under 23 U.S.C. 120 U.S.C. (b).

6. Applicants should provide a timeline that includes work to be completed and anticipated funding cycles. Gantt charts are preferred.

7. Environmental process: Please include a timeline for complying with the National Environmental Policy Act (NEPA) process, if applicable.

8. Include a project map that consists of a schematic illustration depicting the project and connecting transportation infrastructure.

9. Measurement Plan. Submitter must describe a measurement plan to determine whether or not the project achieved its intended results. The measurement plan must continue for three years beyond the completion date of the project. After the three-year period, a final report quantifying the results of the project must be submitted to the FHWA.

10. Proposals should not exceed 20 pages in length.

IV. Applicant Review Information

Grant applications that contain the mandatory elements will be scored competitively according to the soundness of their methodology and subject to the criteria listed below. Sub-factors listed under each factor are of equal importance unless otherwise noted.

A. Scoring Criteria

1. Demonstration of severe shortage (number of spaces, access to existing spaces or information/knowledge of space availability) of commercial motor vehicle parking capacity/utilization in corridor or area to be addressed (20 percent).

Examples used to demonstrate severe shortage may include:

- Average Daily Truck Traffic (ADTT) in proposal area.
- Average daily shortfall of truck parking in proposal area.
- Ratio of ADTT to average daily shortfall of truck parking in proposal area.
- Proximity to NHS.

2. The extent to which the proposed solution resolves the described shortage (35 percent).

Examples should include:

- Number of truck parking spaces per day that will be used as a result of the proposed solution.
- The effect on highway safety, traffic congestion, and/or air quality.

3. Cost effectiveness of proposal (25 percent).

Examples should include:

- How many truck parking spaces will be used per day per dollar expended?
- Total cost of project, including all non-Federal funds that will be contributed to the project.

4. Scope of proposal (20 percent).

Examples should include:

- Evidence of a wide range of input from affected parties, including State and local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations.
- Whether the principles outlined in the proposal can be applied to other locations/projects and possibly serve as a model for other locations.

B. Review Standards

1. All applications for grants must be submitted to the FHWA Division Office by the State DOT by the date specified in this notice.

2. State DOTs should ensure that the project proposal is compatible with or documented on their planning documents (TIP and STIP). They should also validate, to the extent the can, any analytic data.

3. Each application will be reviewed for conformance with the provisions in this notice.

4. Applications lacking any of the mandatory elements or arriving after the deadline for submission will not be considered. To assure full consideration, proposals should not exceed 20 pages in length.

5. Applicants may be contacted for additional information or clarification.

6. Applications complying with the requirements outlined in this notice will be evaluated competitively by a panel selected by the Director, Office of Freight Management and Operations, and will be scored as described in the scoring criteria.

7. If the FHWA determines that the project is technically or financially unfeasible, FHWA will notify the applicant, in writing.

8. The FHWA reserves the right to partially fund or request modification of projects.

9. All information described in the submitter's mandatory proposal elements must be quantifiable and sourced.

10. Submitter must describe a measurement plan to determine whether or not the project will achieve its intended results. The measurement plan must continue for three years beyond the date of the project. After a three-year period, a final report quantifying the results of the project must be submitted to the FHWA.

11. The proposed projects should not compete with local businesses or commercial enterprises.

V. Selection Process

The grant applications will be ranked by final score. The FHWA will select applications based on those rankings, subject to the availability of funds.

VI. Award Administration Information

A. Award Notices

The FHWA recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. The FHWA will send an award letter with a grant agreement that contains all the terms and conditions for the grant. These successful applicants must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Performance Reporting and Measurement

Failure to provide the measurement plan will be considered during the past-performance element of future grant applications.

Authority: Pub. L. 109–59; Aug. 10, 2005.

Issued on: August 23, 2006.

Frederick G. Wright, Jr.,

Federal Highway Executive Director.

[FR Doc. E6–14254 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5748, FMCSA–99–6480, FMCSA–00–7006, FMCSA–01–11426, FMCSA–02–11714, FMCSA–02–12294]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 9, 2006. Comments must be received on or before September 27, 2006.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–99–5748, FMCSA–99–6480, FMCSA–00–7006, FMCSA–01–11426, FMCSA–02–11714, FMCSA–02–12294, using any of the following methods.

- Web site: *http://dmses.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket 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 numbers for this Notice. 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 or comments received, go to *http://dms.dot.gov* at any time or 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. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@.dot.gov* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This Notice addresses 19 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Ronald M. Aure	Oskia D. Johnson	Kenneth D. Sisk
Frank R. Berritto	Walter R. Morris	Patrick D. Talley
Jack D. Clodfelter	Richard W. O'Neill	John C. Vantaggi
James W. Collins	Larry A. Priewe	Loren R. Walker
Daniel K. Davis, III	Gary L. Reveal	Timothy J. Wilson
Timothy J. Droeger	Billy L. Riddle	
Gary T. Hicks	Randolph L. Rosewicz	

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and

31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 66962; 67 FR 17102; 69 FR 51346; 64 FR 68195; 65 FR 20251; 67 FR 38311; 65 FR 20245; 67 FR 46016; 67 FR 57267; 67 FR 10471; 67 FR 19798; 67 FR 15662; 67 FR 37907). Each of these 19 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by September 27, 2006.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequently comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant the exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received in response to the Notices announcing the applications. The Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 21, 2006.

Pamela M. Pelcovits,

Director, Office of Policy Plans and Regulation.

[FR Doc. E6–14178 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–21324]

Pre-Trip Safety Information for Motorcoach Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: FMCSA seeks comments on its proposed plan to implement National Transportation Safety Board (NTSB) recommendations for providing pre-trip safety information to motorcoach passengers. The NTSB recommends that the agency require, and develop minimum guidelines for, pre-trip safety information to be provided by motorcoach companies to passengers. FMCSA, in conjunction with stakeholders, has developed a basic plan for all motorcoach companies to implement a passenger safety awareness program. FMCSA proposes a flexible plan that would approve several methods of informing motorcoach passengers using visual and/or audio presentation, with or without technology assistance. FMCSA seeks motorcoach industry and stakeholder input in finalizing the plan. The goal of this initiative is to develop, and encourage adoption of, passenger safety awareness guidelines suited for diverse motorcoach operational types.

DATES: We must receive your comments by November 27, 2006.

ADDRESSES: You may submit comments, identified by Docket Number FMCSA–2005–21324, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket 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. Please submit three copies of written comments.
- Hand Delivery: Submit three copies of written comments 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.

Instructions: Comments must refer to Docket Number FMCSA–2005–21324. All comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. For detailed instructions on submitting comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For a summary of DOT's Privacy Act Statement or information on how to obtain a complete copy of DOT's Privacy Act Statement please see the ''Privacy Act'' heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read the application or 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.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Commercial Passenger Carrier Safety Division (MC–ECP), 202–366–5763; Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation

The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''Help'' section of the DMS Web site. If you want us to notify you of receiving your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page displaying after received of on-line comments.

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://dms.dot.gov.*

I. Background

On February 26, 1999, NTSB issued five recommendations to the Secretary of Transportation. This public notice addresses the two 1999 recommendations subsequently delegated to FMCSA:

H–99–7, Provide guidance on the minimum information to be included in safety briefing materials for motorcoach operators.

H–99–8, Require motorcoach operators to provide passengers with pre-trip safety information.

NTSB made similar recommendations to the American Bus Association (ABA) and the United Motorcoach Association (UMA). The two 1999 recommendations were in response to a motorcoach crash on I–95 near Stony Creek, Virginia. On July 29, 1997, a 1985 Transportation Manufacturing Corporation motorcoach operated by Rite-Way Transportation, Inc. drifted off the side of I–95 and down an embankment into the Nottoway River, where it came to rest on its left side. At the time, a driver and 34 passengers were onboard the motorcoach. One passenger was fatally injured. The driver and 3 passengers sustained serious injuries; 28 passengers sustained minor injuries. NTSB believed this fatal accident highlighted the need for motorcoach passengers to receive pre-trip safety information similar to the emergency evacuation information given during pre-flight safety briefings for commercial airline passengers. During several motorcoach crash investigations by NTSB, passengers described a general sense of panic because they did not know what to do or how to get out of the motorcoach.

In the spring of 2003, FMCSA held informal meetings with ABA, UMA, and the Commercial Vehicle Safety Alliance (CVSA) which culminated in a working group to address the NTSB recommendations. Individuals from the motorcoach operating industry, motorcoach manufacturers, insurance industry, safety consulting industry, trade associations, State agencies, and other Federal regulatory agencies comprised the working group. the working group met initially via conference call on August 19, 2003, and reached consensus on a response to the NTSB recommendations on September 16, 2003.

The working group concluded it would be best to initially encourage the motorcoach industry to take voluntary action to improve pre-trip safety awareness. Motorcoach industry officials asserted it is impossible to develop a uniform passenger safety awareness regulation, flexible enough for industry-wide application, due to wide-ranging operational variances within the motorcoach industry. The group believed development and promotion of a list of best practices is a more effective and realistic alternative to ensure motorcoach passengers receive safety information. This notice announces FMCSA's intent to work together with stakeholders on these safety guidelines. The guidelines would allow motorcoach companies to conduct pre-trip safety briefings as they deem appropriate.

In an April 1, 2005, letter to FMCSA, the NTSB stated that the activities described above will provide motorcoach passengers with increased information about safety, and are responsive to recommendation H–99–7. In addition, NTSB stated such activities also provide an acceptable alternate approach to recommendation H–99–8. Based upon FMCSA's actions taken and plans made, NTSB classified recommendation H–99–7 as ''Open—Acceptable Response'' and recommendation H–99–8 as ''Open—Acceptable Alternate Response.'' After reaching general consensus among stakeholders about a basic plan for motorcoach passenger safety awareness and developing a model informational pamphlet, FMCSA will submit such information and material to the NTSB for review. At such time, FMCSA and its safety partners will also begin monitoring crashes and complaints to verify that motorcoach companies are presenting pre-trip safety information to their passengers.

II. Proposed Basic Plan for Motorcoach Passenger Safety Awareness

Minimum Safety Topics To Be Covered

1. Driver Direction—Advise passengers to look to the driver for direction and follow his/her instructions.

2. Avoiding Slips and Falls—Warn passengers to exercise care when boarding and de-boarding the motorcoach, and to use the handrail when ascending or descending steps. Encourage passengers to remain seated as much as possible while the motorcoach is in motion. If it is necessary to walk while the motorcoach is moving, passengers should always use handrails and supports.

Keep the aisle free of all property and debris.

3. Emergency Contact—Advise passengers to call 911 via cellular telephone in the event of an emergency.

4. Emergency exits—Point out the location of all emergency exits (push-out windows, roof vent, and side door) and explain how to operate them, including the emergency door release located on the dash or in the stairwell. Emphasize that, whenever feasible, the motorcoach door should be the primary exit choice. Encourage able-bodied passengers to assist any injured or mobility-impaired passengers during an emergency evacuation.

5. Restroom Emergency Push Button on Switch—Inform motorcoach passengers of the emergency signal advice in the restroom.

6. Fire extinguisher—Point out the location of the fire extinguisher.

Alternative Methods of Presenting the Safety Information

1. During passenger boarding:

a. Informational pamphlets distributed to motorcoach passengers during boarding.

2. After passenger boarding, immediately prior to moving the motorcoach:

a. Suggestion by the driver for passengers to review informational pamphlets located in the pouches or sleeves on the back of seats.

b. Oral presentation on safety information by the motorcoach driver (similar to the presentations by airline flight attendants prior to take-off) with or without informational pamphlets as visual aids.

c. Automated audio presentation broadcasting a cassette tape or compact disk over the motorcoach audio system.

d. Automated video presentation using a videotape or DVD on the motorcoach video system.

Timing and Frequency of the Presentation

Demand-responsive motorcoach operations such as charter and tour service should present the safety information to motorcoach passengers after boarding, prior to movement of the motorcoach.

At a minimum, fixed route motorcoach service operations should present the safety information at all major stops or terminals after boarding, prior to movement of the motorcoach.

III. Request for Comments

FMCSA requests comments on the adequacy and comprehensiveness of the basic plan as well as recommendations for additional plan details.

Issued on: August 21, 2006.

David H. Hugel,

Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 06–7182 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 40]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of the Railroad Safety Advisory Committee (RSAC) meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics include opening remarks from the FRA Administrator, the private crossing safety inquiry, electronically controlled pneumatic brakes, a summary of the Collision Analysis Working Group Final Report, an update on Remote Control Locomotive training efforts, and a status report on the Notice of Proposed Rulemaking on Railroad Operating Rules. Status reports will be given on the Passenger Safety, Roadway Worker, Continuous Welded Rail, and Locomotive Standards working groups. The Committee may possibly be asked to vote to accept a task on medical standards. This agenda is subject to change, and may include briefings on railroad security and other issues.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m., and conclude at 4 p.m., on Thursday, September 21, 2006.

ADDRESSES: The meeting of the RSAC will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. The meeting is open to the public on a first-come, first-serve basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Patricia Butera, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590, (202) 493–6212 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The meeting is scheduled to begin at 9:30 a.m., and conclude at 4 p.m., on Thursday, September 21, 2006. The meeting of the RSAC will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, the Federal Transit Administration, and the Transportation Security Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities.

See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.gov/*. Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on August 23, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–14257 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of July 26 and 27, 2006 meeting with VISA participants.

FOR FURTHER INFORMATION CONTACT: Mr. Taylor E. Jones II, Director, Office of Sealift Support, (202) 366–2323.

SUPPLEMENTARY INFORMATION: The VISA program requires that a notice of the time, place, and nature of each JPAG meeting be published in the **Federal Register**. The full text of the VISA program, including these requirements, is published in 70 FR 55947–55955, dated September 23, 2005.

On July 26 and 27, 2006, the Maritime Administration (MARAD) and the U.S. Transportation Command (USTRANSCOM) co-hosted a meeting of the VISA JPAG at the Military Sealift Command in Washington, DC. Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 52 U.S.-flag carrier corporate participants enrolled in the VISA program, 17 companies participated in the JPAG meeting. In addition, representatives from MARAD and the Department of Defense (DOD) attended the meeting.

Margaret LeClaire, Deputy Director, Strategy, Plans, Policy & Programs, USTRANSCOM, and James Caponiti, Associate Administrator for National Security, MARAD, welcomed the participants. Ms. LeClaire noted that this JPAG was a table-top exercise to match industry capabilities to military requirements related to the findings of DOD's Mobility Capabilities Study (MCS). She asked industry participants to be creative and to collaborate as necessary to offer solutions. She noted that there were DOD representatives present to answer specific questions related to the exercise. Mr. Caponiti remarked that while some progress has been made in recent JPAG meetings regarding the findings of DOD's Mobility Capabilities Study, he expected that this exercise would provide the government with a better appreciation of industry capabilities. He requested that industry representatives itemize their concerns related to the exercise so that they might be addressed after the meeting.

VISA participants coordinated their efforts to ensure that commercial resources were utilized in an efficient and innovative manner. As a result of the exercise there was general agreement that there was more capability in the commercial industry than was assumed in the MCS to meet timelines and satisfy requirements. The participants noted that their responses were based on numerous assumptions. It was agreed that a closer examination of equipment, infrastructure and intermodal constraints was needed, and that factors such as market conditions and trade seasonality should be considered and evaluated before final conclusions could be reached.

The following VISA companies participated in the July 26 and 27, 2006 JPAG meeting: American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; American Shipping Group;

APL Marine Services, Ltd.; APL Maritime Ltd; Central Gulf Lines, Inc.; CP Ships USA, LLC; Farrell Lines Incorporated; Fidelio Limited Partnership; Liberty Global Logistics, LLC; Liberty Shipping Group Limited Partnership; Maersk Line, Limited; Matson Navigation Company, Inc.; Patriot Shipping, LLC; Patriot Titan, LLC; Sealift Inc.; and Waterman Steamship Corporation.

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: August 22, 2006.

Joel C. Richard,

Secretary.

[FR Doc. E6–14260 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25546, Notice 1]

Koenigsegg Automotive AB; Receipt of Application for a Temporary Exemption From Headlamp Requirements of FMVSS No. 108; Advanced Air Bag Requirements of FMVSS No. 208; and Bumper Standard of Part 581

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption from provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment,* FMVSS No. 208, *Occupant Crash Protection,* and 49 CFR part 581, *Bumper Standard.*

SUMMARY: In accordance with the procedures in 49 CFR part 555, Koenigsegg Automotive AB (''Koenigsegg'') has petitioned the agency for a temporary exemption from certain head lighting requirements of FMVSS No. 108, advanced air bag requirements of FMVSS No. 208, and bumper standard requirements of 49 CFR part 581. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.[1]

This notice of receipt of an application for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Eric Stas, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

Comments: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- 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.
- 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. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

Docket: For access to the docket in order to read background documents or 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

We shall consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we shall also consider comments filed after the closing date.

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [2] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any

[1] To view the application, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter the docket number set forth in the heading of this document.

[2] *See* 65 FR 30680 (May 12, 2000).

temporary exemptions granted by this agency. In the present case, we are seeking comments on a petition for a temporary exemption from the advanced air bag requirements. As part of the same document, the petitioner also seeks a temporary exemption from the agency's headlamp requirements and bumper standard. The petitioner is a manufacturer of very expensive, low volume, exotic sports cars.

II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Koenigsegg has petitioned the agency for a temporary exemption from certain headlight requirements of FMVSS No. 108 (S7), advanced air bag requirements of FMVSS No. 208 (S14), and bumper requirements of 49 CFR part 581. The basis for each portion of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with these standards. A copy of the petition [3] is available for review and has been placed in the docket for this notice.

III. Statutory Background for Economic Hardship Exemptions

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

IV. Petition of Koenigsegg

Background. Koenigsegg Automotive is a Swedish corporation formed in 1999 to produce high-performance sports cars. This application concerns the Koenigsegg CCX which was developed as the next generation of Koenigsegg vehicles, after production of the CCR model ended on December 30, 2005. The CCX model (the company's only model at this point) is scheduled to go into production in 2006 and to continue at least through the end of 2009. Originally, Koenigsegg planned to sell vehicles only in the European, Mid-East, and Far-East markets, but the company decided in late 2005 to seek entry to the U.S. market for reasons related to ongoing financial viability.

The petitioner argues that it tried in good faith, but could not bring the vehicle into compliance with the headlamp, advanced air bag, and bumper requirements, and would incur substantial economic hardship if it cannot sell vehicles in the U.S. after January 1, 2007.

Eligibility. Koenigsegg is a small, privately-owned company with 30 full-time staff members and several part-time employees. The company is a small volume manufacturer whose total production is less than 50 cars per year, having produced between four and eight vehicles per year for the past four years. According to the company, its sales revenues have averaged approximately $3.7 million per year. Koenigsegg is not affiliated with any other automobile manufacturer.

According to its current forecasts, Koenigsegg anticipates the following number of CCX vehicles would be imported into the United States, if its requested exemptions were to be granted: 25 in calendar year (CY) 2007; 30 in CY 2008, and 30 in CY 2009.

Requested exemptions. Koenigsegg states that it intends to certify the CCX as complying with the rigid barrier belted test requirement using the 50th-percentile adult male test dummy set forth in S14.5.1 of FMVSS No. 208. The petitioner states that it previously determined the CCX's compliance with rigid barrier unbelted test requirements using the 50th-percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Koenigsegg states that it, therefore, cannot at present say with certainty that the CCX will comply with the unbelted test requirement under S14.5.2, which is a 25 mph rigid barrier test.

As for the CCX's compliance with the other advanced air bag requirements, Koenigsegg states that it does not know whether the CCX will be compliant because to date it has not had the financial ability to conduct the necessary testing.

As such, Koenigsegg is requesting an exemption for the CCX from the rigid barrier unbelted test requirement with the 50th-percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th-percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th-percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th-percentile adult female test dummy at the driver position (S25).

Koenigsegg further requests an exemption from the headlamp requirements set forth in S7 of FMVSS No. 108 and the bumper standard in 49 CFR part 581.

Koenigsegg stated its intention to produce a second generation of the CCX model by late 2009, which would be certified as complying with all applicable U.S. standards, including ones for headlamps (FMVSS No. 108 S7), advanced air bags (FMVSS No. 208 S14), and bumpers (49 CFR part 581). Accordingly, Koenigsegg seeks an exemption from the enumerated requirements from January 1, 2007 through December 31, 2009.

Economic hardship. Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the CCX project will result in financial losses unless Koenigsegg obtains a temporary exemption.

In the past three years (2003 to 2005), the company has had losses totaling $1,637,399, and during this time period, the company's factory burned to the ground and had to be rebuilt. Koenigsegg did make a profit of $58,341 in 2003 and $722,406 in 2004, but it incurred a substantial loss of $2,418,416 in 2005.

As of the time of the application, Koenigsegg has invested over $3.2 million on the CCX project in order to have the vehicle meet U.S. standards—not including the three provisions which are the subject of the present petition for temporary exemption. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

Koenigsegg stated that costs for external assistance with developing an

[3] The company requested confidential treatment under 49 CFR part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain such information that the agency has determined to be confidential.

advanced air bag system would cost over $3 million (over $9 million if internal costs are included for interior redesign, testing, and tooling), and meeting the headlamp and bumper requirements would entail an additional $1 million in expenditures.

In its petition, Koenigsegg reasoned that worldwide sales (including the U.S. market) of the current CCX in higher volumes over the next 3 years is necessary to reduce production costs and to make available funding for development of the next generation of the CCX, which would be compliant with all U.S. air bag, headlamp, and bumper requirements. In essence, Koenigsegg argued that the exemption is necessary to allow the company to ''bridge the gap'' until fully compliant vehicles can be funded, developed, tooled, and introduced.

If the exemption is denied, Koenigsegg projects a net loss of $82.4 million over the period from 2006–2009. However, if the petition is granted, the company anticipates a profit of over $27 million during that same period. The petitioner argued that a denial of this petition could preclude entry into the U.S. market until 2010 or later, a development which would have a highly adverse impact on the company. According to the petitioner, if the exemption request is not granted, the company would face a ''virtually insurmountable problem'' in terms of funding and introducing a vehicle that meets all applicable U.S. requirements, and it might ultimately drive the company out of business because the rest of the world export market would be inadequate to ensure profitability.

Good faith efforts to comply. As stated above, Koenigsegg initially planned to produce vehicles for the European, Mid-East, and Far-East markets, but once it was determined in 2005 that entry into the U.S. market was a necessary part of its business plan, the company invested over $3.2 million on research and development and tooling for its U.S. CCX program. In 18 months, the company was able to bring the vehicle into compliance with all applicable NHTSA regulations (other than those which are the subject of the present exemption petition), as well as the emissions regulations administered by the Environmental Protection Agency (EPA).

In light of limited resources, the petitioner stated that it was necessary to first develop the vehicle with a standard U.S. air bag system. The company reengineered the CCX with an Audi TT driver air bag system and developed a new passenger air bag system, a $641,000 project which is nearing completion.

According to its petition, Koenigsegg anticipates that 2 years will be needed to install an advanced air bag system on the CCX. Modifications would involve development of new components, such as changes to the instrument panel design and advanced air bag installation components such as mountings and brackets. Vehicle testing would also be conducted during that time.

Furthermore, because the vehicle was not originally designed for the U.S. market, it likewise did not have headlamps or a bumper system or an underlying bumper structure that complies with U.S. requirements. According to Koenigsegg, achieving compliance with those requirements will necessitate a redesign of the vehicle body and headlamps at the same time, so to that extent, the petitioner argued that these two modifications should be considered together.

To provide a part 581-compliant bumper would require re-engineering and retooling the current CCX bumper system. The company explained that it has undertaken redesign of its front and rear bumper systems in an effort to achieve compliance with U.S. bumper standard requirements, including inserting foam and reinforcements, increasing rear deck offset, and moving the front bumper cut line as high and inboard as possible. However, Koenigsegg stated that it has been unable to fully meet the requirements of part 581, for the following reasons.

First, the petitioner stated that extremely low vehicle height and aerodynamic requirements for the vehicle dictate that the standard 20-inch pendulum height falls above the current bumper cut lines. In addition, the company stated that packaging constraints for the structure required to fulfill the high-speed crash requirements of FMVSS No. 208 and the requirements of the roof stowage under the front hood dictate the maximum size of the front bumpers. Koenigsegg argued that despite its good faith efforts, additional time will be required to achieve full compliance with part 581, and the company does not currently have the resources to fund the requisite development efforts.

As to headlamps, Koenigsegg explained that it has undertaken significant efforts in pursuit of CCX compliance with the headlamp requirements of FMVSS No. 108, but problems have stemmed from the company's inability to find a supplier. The petitioner stated that given the unique shape of the CCX, there is no available ''off-the-shelf'' headlamp system available, and efforts to find a supplier willing to undertake the project to produce a FMVSS No. 108-compliant headlamp for the CCX have been unavailing, presumably due to the ultra-low quantity of vehicles involved.[4] Instead, Koenigsegg decided to produce a headlamp for the CCX in-house (homologated to European Union requirements), utilizing a lighting source from a major lighting manufacturer (Hella). The petitioner stated that the plexiglass lens of the headlamp box is an integral part of the vehicle body and design. The company explained that despite its good faith efforts, the headlamps for the CCX as yet do not fully comply with the headlamp requirements of FMVSS No. 108. Specifically, while the CCX headlamps have been designed to pass the geometry requirements of FMVSS No. 108, the required aerodynamic lens will not pass environmental testing and must be re-engineered.

According to Koenigsegg, the company did explore the possibility of developing an ''interim U.S. headlamp'' without a polycarbonate cover. However, that alternative was determined to be unworkable for the following reasons. First, there were concerns that the absence of the polycarbonate lens ''ruins the design of the body,'' a result which customers were deemed unlikely to accept and which was expected to result in decreased sales.[5] Second, it was determined that an interim headlamp without a polycarbonate lens would have unacceptable aerodynamic effects which would negatively impact vehicle performance. Third, there were concerns that by engineering an interim headlamp exclusively for the U.S. market, the company would lose the advantages associated with producing a ''world car'' which can be introduced into any market, something of great importance for an ultra-low-volume manufacturer. In addition, Koenigsegg determined that the cost of developing the interim headlamp could not be justified when amortized over the small number of units involved.

In light of the above, the company again stated that because of the cost and length of this project, such headlighting

[4] In an August 10, 2006 supplement to its application (included in this docket, following the Koenigsegg petition), Koenigsegg stated that it may have now identified a large lighting manufacturer interested in developing a FMVSS No. 108-compliant headlighting system for the CCX, but it would be ''at a price higher than the $500,000 thus far estimated.''

[5] The petitioner asserted that such considerations were a factor in the agency's earlier decision to grnt a ''waiver'' for the headlamp of the Lotus Elise.

efforts must await the second generation of the U.S. CCX.

In short, Koenigsegg argued that, despite good faith efforts, limited resources prevent it from bringing the vehicle into compliance with all applicable requirements, and it is beyond the company's current capabilities to bring the vehicle into full compliance until such time as additional resources become available as a result of U.S. sales. With funding from sale of the current generation of U.S. CCX, the company expects that additional development efforts could start in 2007, thereby allowing production of a fully compliant vehicle in late 2009.

Koenigsegg argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Koenigsegg argued that the vehicle would be equipped with a fully-compliant standard U.S. air bag system (i.e., one meeting the requirements of FMVSS No. 208 except for the advanced air bag requirements). As to headlamps, Koenigsegg stated that the CCX's current headlamps (designed to European specifications) are very close to meeting the photometric requirements of FMVSS No. 108, and consequently, they do not pose a safety risk. The petitioner stated that the CCX's carbonfibre body system should reduce low-speed damage repair costs even in the absence of a conventional bumper that meets the requirements of part 581. However, the company stated that it would also place information in the vehicle owner's manual regarding the need for greater care due to the absence of a conventional bumper system. In all other areas, Koenigsegg emphasized that the CCX will comply with applicable FMVSSs.

As additional bases for showing that its requested exemption would be in the public interest, Koenigsegg offered the following. The company asserted that there is consumer demand in the U.S. for the CCX, and granting this application will allow the demand to be met, thereby expanding consumer choice. The company also suggested another reason why granting the exemption would not be expected to have a significant impact on safety, specifically because the vehicle is unlikely to be used extensively by owners, due to its ''sporty (second car) nature.'' Koenigsegg reasoned that given its very low production volume and customer base, the possibility of any child being in the vehicle is extremely small. Finally, Koenigsegg indicated that the CCX incorporates advanced engineering and certain advanced safety features that are not required by the FMVSSs, including racing brakes with anti-lock capability and traction control. In addition, the company argued that the CCX has enhanced fuel efficiency due to its highly aerodynamic design.

V. Issuance of Notice of Final Action

We are providing a 15-day comment period, in light of the short period of time between now and the time the advanced air bag requirements become effective for small volume manufacturers (i.e., September 1, 2006). After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: August 18, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E6–14247 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25544, Notice 1]

SS II of America, Inc.; Receipt of Application for a Temporary Exemption From the Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption from provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: In accordance with the procedures in 49 CFR part 555, SS II of America, Inc. (SS II) has petitioned the agency for a temporary exemption from the air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.[1]

This notice of receipt of an application for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the application.

[1] To view the application, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter the docket number set fourth in the heading of this document.

DATES: You should submit your comments not later than September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Eric Stas, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

Comments: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- 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.
- 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. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

Docket: For access to the docket in order to read background documents or 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

We shall consider all comments received before the close of business on the comment closing date indicated

above. To the extent possible, we shall also consider comments filed after the closing date.

I. Air Bag Requirements and Small Volume Manufacturers

Under S4.1.5.3 of FMVSS No. 208, new passenger vehicles manufactured on or after September 1, 1997 are required to be equipped with an inflatable restraint system (*i.e.*, an air bag) at the driver's and right front passenger's positions. These air bags must provide the vehicle occupants in those seating positions with frontal crash protection meeting the requirements of S5.1 of the standard by means that require no action on the part of those occupants.

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [2] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

[2] See 65 FR 30680 (May 12, 2000).

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are seeking comments on a petition for a temporary exemption from the air bag requirements submitted by a manufacturer of very expensive, low volume, exotic sports cars.

II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, SS II has petitioned the agency for a temporary exemption from the air bag requirements of FMVSS No. 208 (S4.1.5.3 and S14). The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. A copy of the petition is available for review and has been placed in the docket for this notice.

III. Statutory Background for Economic Hardship Exemptions

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

IV. Petition of SS II of America, Inc.

Background. SS II is a privately-held company that was incorporated in the State of Nevada in 2005 and began operations in January 2006. According to the petitioner, SS II acquired the tooling for the Shelby Series 1 vehicle under a licensing agreement from Shelby American Corporation, pursuant to which SS II has the right to produce 250 Shelby Series II, a convertible sports car based upon the Shelby Series 1 design. The Shelby Series II will utilize the same chassis as the Shelby Series 1, but it will use modified exterior, interior, and powertrain components. SS II operates independently and is not affiliated with any other vehicle manufacturer.

In a supplement to its petition, SS II stated that Shelby American Inc. (another small volume manufacturer) produced Shelby Series 1 vehicles for sale only in model year 1999, and these vehicles were sold without an inflatable restraint system, because NHTSA granted that company a temporary exemption under part 555 (*see* 64 FR 6736 (Feb. 10, 1999)). As a result, when SS II acquired the tooling for the Shelby Series 1, there was no air bag system, so development efforts in this area must, by necessity, start from a very fundamental level.

The petitioner argued that it tried in good faith, but could not bring the vehicle into compliance with the air bag requirements of FMVSS No. 208, and that it would incur substantial economic hardship if it cannot sell vehicles in the U.S. after September 1, 2006.

Eligibility. SS II is a U.S. company incorporated in Nevada in 2005. The company is a small volume manufacturer of specialty sports cars with approximately 30 employees. The organization obtained the rights to produce 250 ''Shelby'' vehicles under a licensing agreement from Shelby American Corporation. However, SS II is an independent automobile manufacturer; no vehicle manufacturer has an ownership interest in SS II, and the reverse is likewise true.

As a relatively new company, SS II has not produced any vehicles in prior years. According to its current forecasts, SS II anticipates the following production of Shelby Series II vehicles over calendar years (CY) 2006–2008: 86 vehicles in CY 2006; 120 vehicles in CY 2007, and 44 vehicles in CY 2008.

Requested exemption. SS II stated its intention to certify compliance of Shelby II vehicles with all applicable U.S. standards by July 2008, including advanced air bags. The company envisions a later generation of Shelby III

vehicles that would similarly comply with all applicable standards. Accordingly, SS II seeks an exemption from the requirements of S4.1.5.3 and S14 of FMVSS No. 208 from the date of approval of its petition to July 31, 2008.

Economic hardship. The financial documents submitted to NHTSA by the petitioner indicate that the SS II Shelby Series II project will result in financial losses unless SS II obtains a temporary exemption. As discussed below, the company has invested significant resources to ensure that the Shelby Series II meets current U.S. standards, and it has plans for the development of an inflatable restraint system that meets the ''advanced air bag'' requirements of FMVSS No. 208.

As of the time of the application, SS II has invested over $1.4 million on the design, development, and homologation of the Shelby Series II project in order to have the vehicle meet U.S. standards—not including the air bag requirements which are the subject of the present petition for temporary exemption. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

SS II stated that costs associated with air bag engineering and development (including materials, tooling, testing, and test vehicles) have been estimated to be almost $4.2 million. In its petition, SS II reasoned that sales in the U.S. market must commence in order to finance this work and that the exemption is necessary to allow the company to ''bridge the gap'' until fully compliant vehicles can be funded, developed, tooled, and introduced.

If the exemption is denied, SS II projects a net loss of nearly $4.8 million over the period from calendar years 2006–2008. However, if the petition is granted, the company anticipates a net profit of over $1.7 million during that same period.[3] According to the petitioner, if its exemption request is denied, the company would not have sufficient funds to sustain its air bag development program, and it would have to discontinue the Shelby Series II and subsequent vehicle programs for USA-compliant vehicles, thereby causing substantial economic hardship to the company.

Good faith efforts to comply. As noted above, SS II has invested over $1.4 million on the design, development, and homologation of the Shelby Series II project in order to have the vehicle meet U.S. standards (other than the air bag provisions). Furthermore, to date, SS II has invested over $22,500 related to the installation of passenger and driver air bags in Shelby Series II vehicles. Since the company's start-up, it has been able to bring the vehicle into compliance with all applicable NHTSA regulations, except for the air bag provisions of FMVSS No. 208.

SS II considered the alternative of installing a standard air bag system (*i.e.*, one that meets the requirements of FMVSS No. 208, except for the advanced air bag provision) in the Shelby Series II, but it was determined that a temporary exemption would still be necessary, because such an interim measure could not be implemented before the second quarter of 2008. Thus, in light of limited resources, the petitioner reasoned that it would be logical to move directly to the development of an air bag system that meets the advanced air bag requirements of FMVSS No. 208, without first seeking to develop a standard air bag system. According to SS II, installation of an advanced air bag system would require just a few more months in terms of development time at slightly higher cost. In contrast, SS II stated that it would have been cost-prohibitive for the company to develop and install a non-advanced air bag, which would then be followed by an advanced air bag system. According to the petitioner, the modifications to the vehicle to implement any inflatable restraint system are substantial, and not all the changes that would be appropriate for a non-advanced system would be suitable for an advanced system, so the company reasoned that it would be a waste of resources not to immediately pursue the advanced air bag technology already mandated under FMVSS No. 208.

The petitioner estimates that development of an advanced air bag system for the SS II would entail an average expenditure of $174,000 per month for the approximately 24 months it would take to develop and validate the system. According to its petition, even though air bags are beyond its current capabilities, SS II is nonetheless planning for the introduction of these devices.

The company expects to subcontract most of the air bag development project to an experienced outside company, and as noted above, current plans estimate a cost of nearly $4.2 million and a minimum lead time of 24 months for the advanced air bag project. SS II stated that the following engineering efforts are needed to equip the Shelby Series II with an advanced air bag system: (1) Tooling for both prototypes and production vehicles; (2) contractor engineering; (3) air bag system materials; (4) cost of test vehicles; (5) integration of air bag wiring; (6) radio frequency interference/electromagnetic compatibility (RFI/EMC) testing and engineering; (7) design and development of a new seat with sensors; (8) frontal barrier crash testing; and (9) system validation.

In terms of specific vehicle modifications necessary to install air bags in the Shelby Series II, the petitioner stated that the following changes are required: (1) Redesign of the dashboard exterior and supporting skeletal structure to add a passenger-side air bag; (2) redesign of the steering column to install a driver-side air bag; (3) installation of new seats with sensors; (4) integration of the air bag system's wiring harness with the vehicle's main wiring harness, and (5) installation of crash sensors and a properly calibrated restraint control module.

In short, SS II argued that, despite good faith efforts, limited resources prevent it from bringing the vehicle into compliance with all applicable requirements, and it is beyond the company's current capabilities to bring the vehicle into full compliance until such time as additional resources become available as a result of U.S. sales. With funding from sale of the current generation of Shelby Series II vehicles, the company expects that additional development efforts could commence as would permit production of a fully compliant vehicle in July 2008.

SS II argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically, SS II emphasized that the Shelby Series II will comply with all applicable FMVSSs, except for air bags.

The company asserted that granting the exemption will benefit U.S. employment, companies, and citizens, because Shelby Series II vehicles will be produced in the U.S., will have major components (*e.g.*, chassis, body, and engine) produced by U.S. companies, and will be sold and serviced through U.S. dealers. SS II also argued that

[3] It should be noted that the two sets of financial projections supplied by SS II reflect slightly different timeframes. For the scenario in which the agency denies the company's requested exemption, figures are provided for January 2006 to December 2008. However, for the scenario in which the agency grants the company's requested exemption, figures are provided for January 2006 to June 2008. The truncated financial figures under the ''grant'' scenario reflect the fact that if the petition is granted, SS II expects to have produced all 250 Shelby Series II vehicles permitted under its licensing agreement by mid-2008.

denial of the exemption request would have an adverse impact on consumer choice, suggesting that there is domestic demand for Shelby Series II vehicles.

As an additional basis for showing that its requested exemption would be in the public interest, SS II stated that Shelby Series II vehicles have utilized advanced composite technology and lightweight materials, which provide both strength and durability. According to SS II, this reduced weight translates into improved emissions and fuel efficiency.

V. Issuance of Notice of Final Action

We are providing a 15-day comment period, in light of the short period of time between now and the time the advanced air bag requirements become effective for small volume manufacturers (*i.e.*, September 1, 2006). After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: August 18, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E6–14261 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25545, Notice 1]

YES! Sportscars; Receipt of Application for a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption from provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

SUMMARY: In accordance with the procedures in 49 CFR part 555, YES! Sportscars has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.[1]

[1] To view the application, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter the docket number set fourth in the heading of this document.

This notice of receipt of an application for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Eric Stas, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Ttlephone: (202) 366–2992; fax: (202) 366–3820.

Comments: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
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Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

Docket: For access to the docket in order to read background documents or 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

We shall consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we shall also consider comments filed after the closing date.

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [2] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before

[2] *See* 65 FR 30680 (May 12, 2000).

advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are seeking comments on a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of very expensive, low volume, exotic sports cars.

II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, YES! Sportscars has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. A copy of the petition [3] is available for review and has been placed in the docket for this notice.

III. Statutory Background for Economic Hardship Exemptions

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

IV. Petition of YES! Sportscars

Background. YES! Sportscars is a division of Funke & Will Aktiengesellschaft (AG), a German corporation formed in 2000. Funke & Will AG is a specialized engineering firm which offers engineering services to the automobile industry on small volume projects. Although the parent company's two founders together own 85 percent of the corporation's shares, the German state of Saxony does have a 15-percent ownership stake.[4]

YES! Sportscars, a separate vehicle manufacturing part of the company, began production in 2001 of high-performance sports cars based on an aluminum spaceframe. This application concerns the YES! Roadster (currently the company's only model) which is expected to retail for $59,000. To date, the primary markets for the YES! Roadster have been Europe and the Middle East, with the following numbers of vehicles being produced over the past five years: 12 vehicles in 2001; 37 vehicles in 2002; 42 vehicles in 2003; 48 vehicles in 2004, and 54 vehicles in 2005. None of those vehicles has been sold in the U.S. market.

According to the petition, the company had originally planned to produce vehicles for the European market, but it has been determined to be a matter of financial necessity for YES! Sportscars to enter the U.S. market, particularly given the limited but global market for these high-end sports cars. The company anticipates that approximately 65 percent of its total sales will be to the U.S. market.

The petitioner argued that it tried in good faith, but could not bring the vehicle into compliance with the advanced air bag requirements, and would incur substantial economic hardship if it cannot sell vehicles in the U.S. after September 1, 2006.

Eligibility. As discussed in the petition, YES! Sportscars is a division of Funke & Will AG, a German corporation formed in 2000. The entire organization currently employs 49 people. No other vehicle manufacturer has an ownership interest in either YES! Sportscars or Funke & Will AG, and the reverse is likewise true. Stated another way, YES! Sportscars is an independent automobile manufacturer which does not have any common control or is otherwise affiliated with any other vehicle manufacturer.

The company is a small volume manufacturer whose total production has ranged from 12 to 54 vehicles per year over the period from 2001 to 2005. According to its current forecasts, YES! Sportscars anticipates that approximately 250 vehicles would be imported into the U.S. during the three-year period for its requested exemption, if such request were granted.

Requested exemption. YES! Sportscars stated that it intends to certify the YES! Roadster as complying with the rigid barrier belted test requirement using the 50th-percentile adult male test dummy set forth in S14.5.1 of FMVSS No. 208. The petitioner stated that it previously determined the YES! Roadster's compliance with rigid barrier unbelted test requirements using the 50th-percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. YES! Sportscars stated that it, therefore, cannot at present say with certainty that the YES! Roadster will comply with the unbelted test requirement under S14.5.2, which is a 25 mph rigid barrier test.

As for the YES! Roadster's compliance with the other advanced air bag requirements, YES! Sportscars stated that it does not know whether the YES! Roadster will be compliant because to date it has not had the financial ability to conduct the necessary testing.

As such, YES! Sportscars is requesting an exemption for the YES! Roadster from the rigid barrier unbelted test requirement with the 50th-percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th-percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th-percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th-percentile adult female test dummy at the driver position (S25).

YES! Sportscars stated its intention to certify compliance of a second generation of the YES! Roadster, to be produced by September 1, 2009, which would be certified as complying with all applicable U.S. standards, including advanced air bags. Accordingly, the company seeks an exemption from the above-specified requirements of FMVSS No. 208 from September 1, 2006 to August 31, 2009.

Economic hardship. Publicly available information and also the

[3] The company requested confidential treatment under 49 CFR part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain such information that the agency has determined to be confidential.

[4] According to the petitioner, the German state government took an ownership interest in the firm in exchange for subsidies for capital investment in facilities and equipment. According to YES! Sportscars, these subsidies cannot be used for operational expenditures and research and development funding.

financial documents submitted to NHTSA by the petitioner indicate that the YES! Roadster project will result in financial losses unless YES! Sportscars obtains a temporary exemption.

Over the period 2001–2005, the YES! Sportscars division of Funke & Will AG has had net operational losses totaling 484,000 euros ($618,000 at an exchange rate of 1 euro = $1.277).[5] As of the time of the application, YES! Sportscars has invested over $3.0 million on the design, development, and homologation of the YES! Roadster project in order to have the vehicle meet U.S. standards—not including the advanced air bag requirements which are the subject of the present petition for temporary exemption. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

YES! Sportscars stated that costs associated with advanced air bag engineering and development (including research and development, testing, tooling, and test vehicles) have been estimated to be $1.7 million (including internal costs). In its petition, YES! Sportscars reasoned that sales in the U.S. market must commence in order to finance this work and that non-U.S. sales alone cannot generate sufficient income for this purpose. In essence, YES! Sportscars argued that the exemption is necessary to allow the company to ''bridge the gap'' until fully compliant vehicles can be funded, developed, tooled, and introduced for the U.S. market.

If the exemption is denied, YES! Sportscars projects a net loss of $1.1 million over the period from 2006–2008 (assuming a delayed start of U.S. sales until 2008). However, if the petition is granted, the company anticipates a profit of nearly $1.4 million during that same period. The petitioner argued that a denial of this petition could preclude financing of the project for USA-compliant vehicles, a development which would have a highly adverse impact on the company.

Good faith efforts to comply. As stated above, YES! Sportscars initially planned to produce vehicles for the European, Mid-East, and Far-East markets, but once it was determined in 2005 that entry into the U.S. market was a necessary part of its business plan, the company invested over $3.0 million on research and development and tooling for its U.S. YES! Roadster program. In that time, the company was able to bring the vehicle into compliance with all applicable NHTSA regulations, except for than the advanced air bag provisions of FMVSS No. 208.

In light of limited resources, the petitioner stated that it was necessary to first develop the vehicle with a standard U.S. air bag system. The company has spent over $630,000 to reengineer the YES! Roadster to include a standard air bag system, which it stated will then be ''expanded'' into an advanced air bag system.

According to its petition, even though advanced air bags are beyond its current capabilities, YES! Sportscars is nonetheless planning for the introduction of these devices. The company stated that Siemens Restraint Systems will spearhead this effort, and current plans estimate a cost of $1.1 million (excluding internal costs) and a minimum lead time of 24 months for the advanced air bag project. YES! Sportscars stated that the following engineering efforts are needed to upgrade the YES! Roadster's standard air bag system to an advanced air bag system: (1) Interior redesign work to the dashboard, steering column, and electronic systems; (2) sourcing and organization of supplier and engineering personnel and resources for development work (including sensor calibration); (3) construction of prototypes, and (4) testing.

In addition, YES! Sportscars stated that finding suppliers willing to work with a manufacturer with very low production volumes has proven extremely difficult, and as a result, the company must wait for technology to ''trickle down'' from larger manufacturers and suppliers. YES! Sportscars further stated that small volume manufacturers simply do not have the internal resources to do full U.S. homologation projects without reliance on outside suppliers of advanced engineering technologies.

In short, YES! Sportscars argued that, despite good faith efforts, limited resources prevent it from bringing the vehicle into compliance with all applicable requirements, and it is beyond the company's current capabilities to bring the vehicle into full compliance until such time as additional resources become available as a result of U.S. sales. With funding from sale of the current generation of YES! Roadsters, the company expects that additional development efforts could start in 2007, thereby allowing production of a fully compliant vehicle in September 2009.

YES! Sportscars argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically, YES! Sportscars argued that the vehicle would be equipped with a fully-compliant *standard* U.S. air bag system (i.e., one meeting all requirements of FMVSS No. 208 prior to implementation of S14). Furthermore, the company emphasized that the YES! Roadster will comply with all other applicable FMVSSs.

The company asserted that granting the exemption will benefit U.S. employment, companies, and citizens, because YES! Roadsters will be sold and serviced through a network of U.S. dealers. YES! Sportscars also argued that denial of the exemption request would have an adverse impact on consumer choice, suggesting that there is domestic demand for a performance vehicle in the YES! Roadster's price range. The company also argued that an exemption is unlikely to have a significant safety impact because these vehicles are not expected to be used extensively by their owners, due to their ''second vehicle'' nature and ''minimalist design.'' The company also reasoned that given the nature of the vehicle, it is less likely to be used to transport young children than most other vehicles.

As an additional basis for showing that its requested exemption would be in the public interest, YES! Sportscars stated that the YES! Roadster has an extremely strong and protective chassis, which is composed of aluminum tubes and composite structure parts. According to YES! Sportscars, the vehicle design is such that occupants are effectively placed in a ''protective 'cell' '' with the chassis structure built around them.

V. Issuance of Notice of Final Action

We are providing a 15-day comment period, in light of the short period of time between now and the time the advanced air bag requirements become effective for small volume manufacturers (i.e., September 1, 2006). After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: August 18, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

FR Doc. E6–14252 Filed 8–25–06; 8:45 am]

BILLING CODE 4910–59–P

[5] According to the YES! petition, the engineering portion of Funke & Will AG has made a modest profit in the past few years, but in total, such profits would only amount to 45 percent of the funding needed to finance the requisite advanced air bag work.

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Revised Notice of Funds Availability (NOFA) inviting applications for the FY 2007 Funding Round of the Community Development Financial Institutions (CDFI) Program.

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

DATES: Applications for the FY 2007 Funding Round of the CDFI Program must be received by 5 p.m. ET on November 14, 2006.

Executive Summary: On December 21, 2005, the Community Development Financial Institutions Fund (the Fund) published a NOFA in the **Federal Register** (70 FR 75860) in connection with two consecutive funding rounds of the CDFI Program: (i) The FY 2006 Funding Round and (ii) the FY 2007 Funding Round. Through this revised NOFA, the Fund announces revised dates for the FY 2007 Funding Round. Because the FY 2006 Funding Round is now complete, this revised NOFA is being issued for the FY 2007 Funding Round only. Parties interested in the FY 2007 Funding Round should review and refer to this revised NOFA, disregarding the December 21, 2005 NOFA, as the FY 2007 Funding Round dates in the December 21, 2005 NOFA have been changed.

I. Funding Opportunity Description

A. Through the CDFI Program, the Fund provides: (i) Financial Assistance (FA) awards to CDFIs that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) Technical Assistance (TA) grants to CDFIs and entities proposing to become CDFIs in order to build their capacity to better address the community development and capital access needs of their particular Target Markets, to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and/or to become certified CDFIs.

B. The regulations governing the CDFI Program are found at 12 CFR Part 1805 (the Interim Rule) and provide guidance on evaluation criteria and other requirements of the CDFI Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Interim Rule, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. Funding Availability

1. FY 2007 Funding Round

Through this NOFA, and subject to funding availability, the Fund expects that it may award approximately $26 million in appropriated funds, of which: (i) Approximately $2 million in appropriated funds may be awarded to Category I/SECA Applicants in the form of FA awards that may be coupled with TA grants; (ii) approximately $22 million in appropriated funds may be awarded to Category II/Core Applicants in the form of FA awards that may be coupled with TA grants; and (iii) approximately $2 million in appropriated funds may be awarded to Applicants in the form of TA grants only. The Fund reserves the right to award in excess of $26 million in appropriated funds to Applicants (and/or more or less than $2 million to Category I/SECA Applicants, and/or more or less than $22 million to Category II/Core Applicants) in the FY 2007 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. Availability of Funds for the FY 2007 Funding Round

Funds for the FY 2007 Funding Round have not yet been appropriated. If funds are not appropriated for the FY 2007 Funding Round, there will not be a FY 2007 Funding Round. Further, it is possible that if funds are appropriated for the FY 2007 Funding Round, the amount of such funds may be less than the amounts set forth above.

B. Types of Awards

An Applicant may submit an application either for: (i) A FA award only; (ii) a FA award and a TA grant; or (iii) a TA grant.

1. FA Awards

The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which is requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application. The Fund reserves the right, in its sole discretion, to provide a FA award on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. TA Grants

(a) The Fund may provide TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which are requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as business, strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new Target Market, and tools that allow the Applicant to assess the impact of its activities in its community. Each Applicant for a TA grant through this NOFA is required to provide information in the application regarding the expected cost, timing and provider of the TA, and a narrative description of how the TA grant will enhance its capacity to provide greater community development impact and/or to become certified as a CDFI, if applicable.

(c) Eligible TA grant uses include, but are not limited to: (i) Acquiring consulting services; (ii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; (iii) acquiring training for staff, management and/or board members; and (iv) paying recurring expenses, including staff

salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market and/or to become certified as a CDFI.

C. Notice of Award; Assistance Agreement

Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award. For further information, see Sections VI.A and VI.B of this NOFA.

III. Eligibility Information

A. Eligible Applicants

The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. FA Applicant Categories

All Applicants for FA awards through this NOFA must meet the criteria for one of the following two categories of CDFIs:

FA applicant category	Criteria	What can it apply for?
Category I/Small and/or Emerging CDFI Assistance (SECA).	A Category I/SECA Applicant is a Certified CDFI or Certifiable CDFI that: Has total assets, as of the end of the Applicant's most recent fiscal year end or September 30, 2006, as follows: • Insured Depository Institutions and Depository Institution Holding Companies: Up to $250 million. • Insured Credit Unions: Up to $10 million. • Venture capital funds: Up to $10 million. • Other CDFIs: Up to $5 million. OR Began operations on or after January 1, 2003. AND Prior to the application deadline, has not been selected to receive in excess of $500,000 in FA award(s) in the aggregate from the CDFI Program or Native Initiatives Funding Programs.	A Category I/SECA Applicant may request up to and including $500,000 in FA funds, and up to and including $100,000 in TA funds.
Category II/Core	A Category II/Core Applicant is a Certified CDFI or a Certifiable CDFI that meets all other eligibility requirements described in this NOFA.	A Category II/Core Applicant may request up to and including $2 million in FA funds, and up to and including $100,000 in TA funds.

Please note: Any Applicant, regardless of total assets, years in operation, or prior Fund awards, that requests FA funding in excess of $500,000 is classified as a Category II/Core Applicant.

For the purposes of this NOFA, the term ''began operations'' is defined as the month and year in which the Applicant first incurred operating expenses of any type. Also, for purposes of this NOFA, the term ''Native Initiatives Funding Programs'' refers to the following programs administered by the Fund: the Native American CDFI Technical Assistance (NACTA) Component of the CDFI Program, the Native American CDFI Development (NACD) Program, the Native American Technical Assistance (NATA) Component of the CDFI Program, and the Native American CDFI Assistance (NACA) Program.

The Fund will evaluate, rank and make awards to Category I/SECA Applicants separately from Category II/Core Applicants. The Fund, in its sole discretion, reserves the right to award amounts in excess of or less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

2. TA Applicants

TA applicants	Criteria	What can it apply for?
All TA Applicants	A TA Applicant must be a Certified CDFI, a Certifiable CDFI, or an Emerging CDFI.	The Fund anticipates making TA grants up to $100,000 each.

The Fund, in its sole discretion, reserves the right to award amounts less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

3. CDFI Certification Requirements

For purposes of this NOFA, eligible FA Applicants include Certified CDFIs and Certifiable CDFIs; eligible TA Applicants include Certified CDFIs, Certifiable CDFIs and Emerging CDFIs, defined as follows:

(a) *Certified CDFIs:* A certified CDFI whose certification has not expired and that has not been notified by the Fund that its certification has been terminated. Each such Applicant must submit a ''Certification of Material Event Form'' to the Fund not later than October 11, 2006, or such other dates as the Fund may proscribe, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov*.

Please note: The Fund provided a number of CDFIs with certifications expiring in 2003 through 2005 written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement.

(b) *Certifiable CDFIs:* For purposes of this NOFA, a Certifiable CDFI is an entity from which the Fund receives a complete CDFI Certification Application no later than October 11, 2006, or such other dates as the Fund may proscribe, evidencing that the Applicant meets the requirements to be certified as a CDFI.

Applicants may obtain the CDFI Certification Application through the Fund's Web site at *http://www.cdfifund.gov*. Applications for certification must be submitted as instructed in the application form. FA Applicants that are Certifiable CDFIs please note: while your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse award funds unless and until the Fund has certified your organization as a CDFI. If the Fund is unable to certify your organization as a CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging CDFIs:* For purposes of this NOFA, an Emerging CDFI is an entity that demonstrates to the satisfaction of the Fund that it has a reasonable plan to be certified as a CDFI by December 31, 2009 or such other date selected by the Fund. Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to become certified as a CDFI by a date certain.

4. Contacting the Fund

The Fund will respond to questions and provide support concerning CDFI certification related to this NOFA between the hours of 9 a.m. and 5 p.m. ET, through October 4, 2006. The Fund will not respond to questions or provide support concerning CDFI certification, related to this NOFA, that are received after 5 p.m. ET on October 4, 2006, until after the deadline for submitting applications under this NOFA. The CDFI Certification Application and other information regarding CDFI certification may be obtained from the Fund's Web site at *http://www.cdfifund.gov*.

D. Prior Awardees

Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

1. $5 Million Funding Cap

The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. In general, the three-year period extends back three years from the date that the Fund signs a Notice of Award; for purposes of this revised NOFA, and for ease of administration, the Fund will count any assistance documented with a Notice of Award dated between July 31, 2004 and July 31, 2007 (which is the anticipated date that the Fund will issue Notices of Award for the FY 2007 Funding Round).

2. Failure To Meet Reporting Requirements

The Fund will not consider an application submitted by an Applicant if the Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the applicable application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. Pending Resolution of Noncompliance

If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

4. Default Status

The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s).

5. Termination in Default

The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) Within the 12-month period prior to the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2006. Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) Within the 12-month period prior to the applicable application deadline, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2006.

6. Undisbursed Balances

The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any

Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed funds. For purposes of this section, ''undisbursed funds'' is defined as: (i) In the case of a prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee; and (ii) in the case of a prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the Awardee. ''Undisbursed funds'' does not include: (i) Tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the application deadline of this NOFA.

7. Exception for Applicants Impacted by Hurricanes Katrina and/or Rita

Please note that the provisions of paragraphs 2 (Failure to meet reporting requirements) and 6 (Undisbursed balances) of this section do not apply to any Applicant that has an office located in, or that provides a significant volume of services or financing to residents of or businesses located in, a county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita. Said requirements are waived for those Applicants under this NOFA.

8. Contact the Fund

Accordingly, Applicants that are prior Awardees are advised to: (i) Comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). All outstanding reports, disbursement or compliance questions should be directed to the Grants Manager by E-mail at *grantsmanagement@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through November 10, 2006 (two business days before the respective application deadlines). The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or E-mail inquiries that are received after 5 p.m. on said dates, until after the respective funding application deadlines.

9. Limitation on Awards

An Applicant may receive only one award through either the CDFI Program or the Native American CDFI Assistance (NACA) Program in the same funding year. An Applicant may apply under both the CDFI Program and the NACA Program, but will not be selected for funding under both. A CDFI Program Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) A tax credit allocation through the NMTC Program, but only to the extent that the activities approved for CDFI Program awards are different from those activities for which the Applicant receives a NMTC Program allocation; and (ii) an award through the BEA Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102).

10. Other Targeted Populations as Target Markets

Other Targeted Populations are defined as identifiable groups of individuals in the Applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that Alaska Natives residing in Alaska, Native Hawaiians residing in Hawaii, and Other Pacific Islanders residing in other Pacific Islands, lack adequate access to loans, Equity Investments or Financial Services. An Applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services.

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented:

(a) American Indian, Native American or Alaska Native: a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: a person having origins in any of the black racial groups of Africa (terms such as ''Haitian'' or ''Negro'' can be used in addition to ''Black or African American'');

(c) Hispanic or Latino: a person of Cuban, Mexican, or Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term ''Spanish origin'' can be used in addition to ''Hispanic or Latino''); and

(d) Native Hawaiian: a person having origins in any of the original peoples of Hawaii; and

(e) Other Pacific Islander: a person having origins in any of the original

peoples of Guam, Samoa or other Pacific Islands.

E. Matching Funds

1. Matching Funds Requirements in General

Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting a FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are eligible as matching funds. The Fund encourages Applicants to review the Interim Rule at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the Fund's Web site for further information.

2. Matching Funds Requirements Per Applicant Category

Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline under this NOFA. Specifically, FA Applicants must meet the following matching funds requirements:

(a) *Category I/SECA Applicants:* A Category I/SECA Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2008.

(b) *Category II/Core Applicants:* A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 100 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 5, 2006 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate.

3. Matching Funds Terms Defined; Required Documentation

(a) *''Matching funds in-hand''* means that the Applicant has actually received the matching funds. If the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (*i.e.*, grant, loan, and equity investment). For a loan, the Applicant must provide the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) *''Firmly committed matching funds''* means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are ''firmly committed,'' the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within 2 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

4. Special Rule for Insured Credit Unions

Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report.

5. Severe Constraints Exception to Matching Funds Requirement; Applicability to Applicants Located in FEMA-Designated Major Disaster Areas Created by Hurricanes Katrina and/or Rita

In the case of any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, any county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita, and that has severe constraints on available sources of matching funds, such Applicant may be eligible for a ''severe constraints waiver'' (see section 1805.203 of the Interim Rule) if (i) it can demonstrate to the satisfaction of the Fund that an Investment Area(s) or Targeted Population(s) would not be adequately served without such a waiver and (ii) it projects to use the assistance to address issues resulting from Hurricanes Katrina and/or Rita (such as a significant volume of loan defaults) or to provide financial products, financial services, or Development Services to residents of or businesses located in any county that is within a ''major disaster area'' as declared by FEMA as a result of Hurricanes Katrina and/or Rita. If eligible for such a waiver, the Applicant may comply with the matching funds requirements of this NOFA as follows: (i) The matching funds requirement for such Applicant would be reduced to 50 percent (meaning, the Applicant must match 50 percent of the Fund's FA award rather than 100 percent), or (ii) such an Applicant may provide matching funds in alternative (meaning, non-monetary) forms if the Applicant has total assets of less than $100,000 at the time of the application deadline, serves non-metropolitan or rural areas, and is not requesting more than $25,000 in financial assistance from the Fund. In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2006 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 50 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any such Applicant that demonstrates that it has less than 50 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2008. In the case of item (ii) of this paragraph, the CDFI Program funding application contains further instructions on the type of documentation that the Applicant must provide as evidence that such match was received and its valuation. The Fund reserves the right, in its sole discretion, to disallow any such match for which adequate documentation or valuation is not provided.

IV. Application and Submission Information

A. Form of Application Submission

Applicants may submit applications under this NOFA either (i) electronically (via an Internet-based application) or (ii) in paper form. Applications sent by facsimile or other form will not be accepted.

B. Electronic Applications

Electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form. Applications are accessible only through an active myCDFIFund account (see Section E, below). Applicants must have access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher, Windows 98 or higher (or other system compatible with the above Explorer and Netscape software) and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. The Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed; incomplete applications cannot be submitted. Please note that each application must include the signature of the Applicant's Authorized Representative and certain supporting documentation; for an electronic application, the Applicant must submit such documents separately, in paper form, to the address and by the deadlines set forth below. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application.

C. Paper Applications

If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application using the CDFI Program Paper Application Submission Form, and the request must be received by 5 p.m. ET on October 11, 2006. The CDFI Program Paper Application Submission Form may be obtained from the Fund's Web site at *http://www.cdfifund.gov* or the form may be requested by E-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–7754. The completed CDFI Program Paper Application Submission Form should be directed to the attention of the Fund's Chief Information Officer and must be sent by facsimile to (202) 622–7754. These are not toll free numbers. Paper applications must be submitted in the format and with the number of copies specified in the application instructions.

D. Application Content Requirements

Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An electronic application that does not include an EIN is incomplete and cannot be transmitted to the Fund. A paper application that does not include a valid EIN is incomplete and will be rejected and returned to the sender. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as a DUNS number or EIN information).

E. MyCDFIFund Accounts

All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. An Applicant must be registered as both a User and an Organization in myCDFIFund as of the applicable application deadline in order to be considered to have submitted a

complete application. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

F. Application Deadlines; Address for Paper Submissions; Late Delivery

Applicants must submit all materials described in and required by the application by the applicable deadline.

1. Application Deadlines

Electronic applications must be received by the Fund via the Applicant's myCDFIFund account and in accordance with the instructions provided on the Fund's Web site, by 5 p.m. ET on November 14, 2006. In addition, Applicants that submit electronic applications must separately submit (by mail or other courier/delivery service) a signature page, signed by the Applicant's Authorized Representative, and all other required paper attachments; said documents must be received at the address set forth below by 5 p.m. ET on November 17, 2006. Paper applications, including the requisitesigned signature page and all attachments, must be received at the address set forth below by 5 p.m. ET on November 17, 2006.

2. Address for Paper Submissions

A complete paper application (or, in the case of an electronic application, the required paper submissions) must be received at the following address, within the applicable deadline: CDFI Fund Grants Manager, CDFI Program, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–6088 (this is not a toll free number). Any documents received in any other office, including the Fund's Washington, DC office, will be rejected and returned to the sender.

3. Late Delivery

The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected and returned to the sender. An electronic application, the required signed signature page, and all required paper attachments must be received by the applicable time and date set forth above. A paper application, including the required signed signature page, and all required paper attachments, must be received by the applicable time and date set forth above. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

D. Intergovernmental Review

Not applicable.

E. Funding Restrictions

For allowable uses of FA proceeds, please see the Interim Rule at 12 CFR 1805.301.

V. Application Review Information

A. Criteria

The Fund will evaluate each application using numeric scores with respect to the following five sections:

1. Market Analysis

(TA-only Applicants: 25 points; Category I/SECA: 25 points; Category II/Core: 20 points): The Fund will evaluate: (i) The extent and nature of the economic distress within the designated Target Market including the Applicant's understanding of its current and prospective customers; and (ii) the extent of demand for the Applicant's Financial Products, Development Services, and Financial Services within the designated Target Market. The Fund will give special consideration to any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, (i) any county that is within the area declared to be a ''major disaster'' by FEMA as a result of Hurricanes Katrina and/or Rita; and/or (ii) any state that has been declared a ''reception state'' by FEMA. The form and content of such special consideration will be further clarified in the CDFI Program application.

2. Business Strategy

(TA-only Applicants: 25 points; Category I/SECA: 25 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's business strategy for addressing market demand and creating community development impact through: (i) Its Financial Products, Development Services, and/or Financial Services; (ii) its marketing, outreach, and delivery strategy; and (iii) the extent, quality and nature of coordination with other similar providers of Financial Products and Financial Services, government agencies, and other key community development entities within the Target Market. The Fund will take into consideration whether the Applicant is proposing to expand into a new Target Market.

3. Community Development Performance and Effective Use

(TA-only Applicants: 20 points; Category I/SECA: 20 points; Category II/Core: 20 points): The Fund will evaluate (i) The Applicant's vision for its Target Market, specific outcomes or impacts for measuring progress towards achieving this vision, and the extent to which this award will allow it to achieve them; (ii) the Applicant's track record in providing Financial Products, Financial Services, and Development Services to the Target Market; (iii) the extent to which proposed activities will benefit the Target Market; (iv) the likelihood of achieving the impact projections, including the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market by promoting homeownership, affordable housing development, job creation or retention, the provision of affordable financial services, and other community development objectives; and (v) the extent to which the Applicant will maximize the effective use of the Fund's resources. If an Applicant has a prior track record of serving Investment Areas(s) or Targeted Population(s), it must demonstrate that (i) it has a record of success in serving said Investment Area(s) or Targeted Population(s) and (ii) it will expand its operations into a new Investment Area or to serve a new Targeted Population, offer more products or services, or increase the volume of its current business.

4. Management

(TA-only Applicants: 20 points; Category I/SECA: 20 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's organizational capacity to achieve the objectives set forth in its Comprehensive Business Plan as well as its ability to use its award successfully and maintain compliance with its Assistance Agreement through an evaluation of: (i) The capacity, skills, size and experience of the Applicant's current and proposed Governing Board, management team, and key staff; and (ii) the Applicant's management controls and risk mitigation strategies including policies and procedures for portfolio underwriting and review, financial management, risk management, management information systems.

5. Financial Health and Viability

(TA-only Applicants: 10 points; Category I/SECA: 10 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's: (i) Audited or otherwise prepared Financial Statements; (ii) safety and soundness, including an analysis of the Applicant's financial services industry ratios (capital, liquidity, deployment and self-sufficiency) and ability to sustain positive net revenue; (iii) projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and (iv) portfolio performance including loan delinquency, loan losses, and loan loss reserves. If an Applicant does not have 100 percent of the required matching funds in-hand (versus committed), the Applicant must demonstrate to the satisfaction of the Fund that it will raise the outstanding balance of matching funds within the time table set forth above.

6. Technical Assistance Proposal

Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the application, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs. An Applicant that is not a Certified CDFI and that requests TA to address certification requirements, must explain how the requested TA grant will assist the Applicant in meeting the certification requirement. The Fund will assess the reasonableness of the plan to become certified by December 31, 2009, taking into account the requested TA. For example, if the Applicant does not currently make loans and therefore does not meet the Financing Entity requirement, it might describe how the TA funds will be used to hire a consultant to develop underwriting policies and procedures to support the Applicant's ability to start its lending activity. An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. Such an Applicant also must describe the additional benefits that would accrue to its capacity or to the Target Market(s) if the Applicant receives another award from the Fund, such as plans for expansion of staff, market, or products. The Fund will not provide funding for the same activities funded in prior awards.

B. Review and Selection Process

1. Eligibility and Completeness Review

The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application will be rejected as incomplete and returned to the sender. If an Applicant does not meet eligibility requirements, its application will be rejected and returned to the sender.

2. Substantive Review

If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each FA application will be reviewed and scored by multiple readers. Each TA application will be read and scored by one reader. Readers may include Fund staff and other experts in community development finance. As part of the review process, the Fund may contact the Applicant by telephone or through an on-site visit for the purpose of obtaining clarifying or confirming application information. The Applicant may be required to submit additional information to assist the Fund in its evaluation process. Such requests must be responded to within the time parameters set by the Fund.

3. Application Scoring; Ranking

(a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award. In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in calendar year 2006 in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2005 and FY 2006); (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2003, FY 2004 or FY 2005 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the CDFI Program. All questions regarding outstanding reports or compliance should be directed to the Grants Manager by E-mail at *grantsmanagement@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through November 10, 2006. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on November 10, 2006 until after the applicable funding application deadline.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest, as follows:

(i) *TA-only Applicants and Category I/SECA Applicants* will be ranked from highest to lowest, based on each

Applicant's scores for all five criteria categories added together.

(ii) *Category II/Core Applicants* must receive scores in both the Management category and the Financial Health and Viability category that each equal at least 50 percent of the available points in each of those sections. For Category II/Core Applicants that exceed this threshold, the Fund will use the combined scores of the Market Analysis, Product Design and Implementation Strategy, and Community Development Performance categories to rank such Applicants, highest to lowest.

4. Award Selection

The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. Subject to the availability of funding, the Fund will award funding in the order of the ranking. TA-only Applicants, Category I/ SECA and Category II/Core Applicants will be ranked separately. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. Insured CDFIs

In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve a FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a ''3'' or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2007 or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

6. Award Notification

Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues will be provided a written debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by E-mail using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. Notice of Award

The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees, among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. Failure To Meet Reporting Requirements

If an Awardee, or an entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. Pending Resolution of Noncompliance

If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering

into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. Default Status

If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the applicant or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. Termination in Default

If (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2006, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2006, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. Deobligated Awards

An Awardee that receives a FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the application deadline, may not apply for a new award through another NOFA for one CDFI or NACA Program funding round after the date of said deobligation.

B. Assistance Agreement

Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. Reporting

1. Reporting Requirements

The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report; (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA); (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial Assistance and Matching Funds Report (for Awardees receiving Financial Assistance); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports,

Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the CDFI Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. Accounting

The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an award must provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through November 10, 2006. The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

A. Information Technology Support

Technical support can be obtained by calling (202) 622–2455 or by E-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll-free numbers.

B. Programmatic Support

If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. Grants Management Support

If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

D. Compliance and Monitoring Support

If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

E. Legal Counsel Support

If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How To Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov*. Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site is provided for illustrative purposes only and should not be relied on for purposes of this NOFA).

F. Communication With the CDFI Fund

The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Applicants must register through myCDFIFund in order to submit a complete application for funding. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp*.

VIII. Information Sessions and Outreach

The Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: August 22, 2006.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. E6–14253 Filed 8–25–06; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 2006.

Last name	First name	Middle name/ initials
Pedersen	Torben	Bach.
Pedersen	Christine	
CHAN	ABRAHAM	LOK-SHUNG.
FANG	ALEX	
LOPEZ	RAILI	K.
Hsu	Joyce	I-Yin.
GURDJIAN	ALEXIS	P.
EISENBEISS	PHILIP	WILLIAM.
GOURY DU ROSLAN	MARIE	EDMEE C.
LE TOURNEUR	JULIEN	DIDIER.
BELENKAYA	TATYANA	
Holliday-Smith	Roderic	
FUJIMORI	MITSUKO	
CADY	SUSANNE	CARMEN BOOTH.
Kanai	Umiko	
KANE	PATRICIA	MARY.
Cookson	Adam	
GRIFFIN	STEVEN	EUGENE.
HAMMES	VOLKER	ALFONS.
Ko	Maria	Yin.
Fitzjohn	Naomi	
Fitzjohn	Jacqueline	
Fitzjohn	David	Roy.
HUNT	GISELA	
VLAD	CONSTANTIN	MIRCEA.
Weibel	Dominique	
Chan	Henry	Homing.
BRIGGS	HILARY	BONNIE.
GALLET	ALAIN	
PALO	ANTERO	E.
SETHI	ANOOP	

Dated: July 25, 2006.

Angie Kaminski,

Examinations Operations, Philadelphia Compliance Services.

[FR Doc. E6–14188 Filed 8–25–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held September 20 and 21, 2006.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 20 and 21, 2006, in Room 4136 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5609 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on September 20 and 21, 2006, in Room 4136 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax 2 returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Karen S. Ammons,

Deputy Chief, Appeals.

[FR Doc. E6–14189 Filed 8–25–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel 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 Wednesday, September 20, 2006, at 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. 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 Area 2 Taxpayer Advocacy Panel will be held Wednesday, September 20, 2006 at 2:30 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 E. De Jesus, TAP Office, 1000 South Pine Island Rd., 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 E. 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 the following: Various IRS issues.

Dated: August 17, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–14223 Filed 8–25–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel 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, September 19, 2006 from 11:30 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

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 Area 3 Taxpayer Advocacy Panel will be held Tuesday, September 19, 2006, from 11:30 a.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 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., 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 Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: August 17, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–14224 Filed 8–25–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Cancellation—Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the meeting of the Geriatrics and Gerontology Advisory Committee scheduled to be held at VA Central Office, 810 Vermont Avenue, NW., Washington, DC on September 19–20, 2006 *has been cancelled.*

For more information, please contact Mrs. Marcia Holt-Delaney, Program Analyst, Office of Geriatrics and Extended Care, at (202) 273–8540.

Dated: August 22, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–7199 Filed 8–25–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
August 28, 2006

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 563
Event Data Recorders; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 563

[Docket No. NHTSA–2006–25666]

RIN 2127–AI72

Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule specifies uniform requirements for the accuracy, collection, storage, survivability, and retrievability of onboard motor vehicle crash event data in passenger cars and other light vehicles equipped with event data recorders (EDRs). This final rule responds to the growing practice in the motor vehicle industry of voluntarily installing EDRs in an increasing number of light vehicles. This final rule is intended to standardize the data obtained through EDRs so that such data may be put to the most effective future use and to ensure that EDR infrastructure develops in such a way as to speed medical assistance through providing a foundation for automatic crash notification (ACN). This final regulation: requires that the EDRs installed in light vehicles record a minimum set of specified data elements; standardizes the format in which those data are recorded; helps to ensure the crash survivability of an EDR and its data by requiring that the EDR function during and after the front and side vehicle crash tests specified in two Federal motor vehicle safety standards; and requires vehicle manufacturers to ensure the commercial availability of the tools necessary to enable crash investigators to retrieve data from the EDR. In addition, to ensure public awareness of EDRs, the regulation also requires vehicle manufacturers to include a standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR and describing the functions and capabilities of EDRs.

This final rule for standardization of EDR data will ensure that EDRs record, in a readily usable manner, the data necessary for ACN, effective crash investigations, and analysis of safety equipment performance. Standardization of EDR data will facilitate development of ACN, e-911, and similar systems, which could lead to future safety enhancements. In addition, analysis of EDR data can contribute to safer vehicle designs and a better understanding of the circumstances and causation of crashes and injuries.

DATES: *Effective Date:* This rule is effective October 27, 2006. The incorporation by reference of a certain publication listed in the regulation is approved by the Director of the Federal Register as of October 27, 2006.

Compliance Dates: Except as provided below, light vehicles manufactured on or after September 1, 2010 that are equipped with an EDR and manufacturers of those vehicles must comply with this rule. However, vehicles that are manufactured in two or more stages or that are altered are not required to comply with the rule until September 1, 2011.

Petitions: If you wish to submit a petition for reconsideration of this rule, your petition must be received by October 12, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

For technical and policy issues: Ms. Lori Summers, Office of Crashworthiness Standards (Telephone: 202–366–1740) (Fax: 202–493–2739).

For legal issues: Mr. Eric Stas, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Regulation

Event data recorders have been used in recent years in a variety of transportation modes to collect crash information. EDR data will play an increasing role in advancing developing networks for providing emergency medical services. Specifically, EDR data can help the safety community develop ACN, electronic 911 (e-911), and other emergency response systems to improve medical services to crash victims. In addition, EDR data can also provide information to enhance our understanding of crash events and safety system performance, thereby potentially contributing to safer vehicle designs and more effective safety regulations.

EDRs have experienced dramatic changes in the past decade, both in terms of their technical capabilities and fleet penetration. EDRs today demonstrate a range of features, with some systems collecting only vehicle acceleration/deceleration data, but

others collecting these data plus a host of complementary data such as driver inputs (*e.g.*, braking and steering) and vehicle system status. The challenge for NHTSA has been to devise an approach that would encourage broad application of EDR technologies in motor vehicles and maximize the usefulness of EDR data for the medical community, researchers, and regulators, without imposing unnecessary burdens or hampering future improvements to EDRs.

In light of the relatively high new vehicle fleet penetration of EDRs (currently estimated at 64%) and present trends, we do not believe that it is necessary to mandate the installation of EDRs in all new vehicles. Were these trends reversed or slowed, we would consider revisiting this assessment. For now, we believe that standardization of EDR data represents the most important area of opportunity in terms of enhancing the yield of benefits from EDRs. We recognize that the automobile industry has already invested considerable effort and resources into developing effective EDR technologies, so we want to be especially careful not to adopt requirements that would result in unnecessary costs.

Accordingly, this final rule regulates voluntarily-provided EDRs by specifying a minimum core set of required data elements and accompanying range, accuracy, and resolution requirements for those elements. This will help ensure that EDRs provide the types of data most useful for the emergency medical services (EMS) community and crash reconstructionists, and in a manner that promotes the consistency and comparability of these data. We note that by specifying this minimum data set, we are not limiting manufacturers' ability to design EDRs that collect a broader set of data, provided that the required elements are present.

The rule also includes requirements for the survivability of EDR data (so that it is not lost in most crashes) and the retrievability of EDR data (so that it can be obtained by authorized users). In sum, the objectives of our regulation are to get the right data, in sufficient quantity and in a standardized format, and to ensure that the data can survive most crash events and be retrieved by intended users.

By promulgating a uniform national regulation for EDRs, it is our intent to provide one consistent set of minimum requirements for vehicle manufacturers that choose to install EDRs. We believe that this approach will not only enhance the quality of EDR data, but also facilitate increased numbers of new light vehicles equipped with EDRs. We also believe that this minimum data set provides key elements in a standardized format that will be useful for ACN or other telematic systems.

B. Developments Culminating in the Notice of Proposed Rulemaking

1. Early Agency Efforts on EDRs

NHTSA has been assessing the potential benefits of EDR for over a decade, and in that time, we have witnessed a significant maturation of EDR technology. The agency initially began examining EDRs in 1991 as part of the Special Crash Investigations (SCI) program. In 1997, the National Transportation Safety Board (NTSB) and the National Aeronautics and Space Administration (NASA) Jet Propulsion Laboratory (JPL) recommended that NHTSA consider the possibility of requiring the installation of EDRs in motor vehicles. NTSB made additional recommendations related to EDRs in 1999 (i.e., suggesting that EDRs be installed in school buses and motor coaches). Since 1998, NHTSA has sponsored two Working Groups to examine and report on EDR issues.

As discussed below, the agency received two petitions for rulemaking in the late 1990s asking that light vehicles be equipped with ''black boxes'' (i.e., EDRs) that would record data during a crash so that it could be read later by crash investigators. However, the agency denied those petitions because the industry was already moving voluntarily in the direction recommended by the petitioners, and because the agency believed that certain outstanding issues would best be addressed in a non-regulatory context.

In 2001, NHTSA received a third petition for rulemaking related to EDRs from Dr. Ricardo Martinez, seeking a requirement for installation of EDRs as well as standardization of EDR data. After considering the Martinez petition and the current situation vis-à-vis EDRs, we decided to publish a request for comments as to what future role the agency should take related to the continued development and installation of EDRs in motor vehicles. This notice was published on October 11, 2002 (67 FR 63493), and after considering the input from a variety of interested stakeholders and the public, we decided to grant the Martinez petition in part (i.e., the request for standardization and retrievability) and to deny it in part (i.e., the request for an EDR mandate).

2. The Notice of Proposed Rulemaking

On June 14, 2004, NHTSA published a notice of proposed rulemaking (NPRM) proposing requirements for EDRs voluntarily installed by light vehicle manufacturers (69 FR 32932).[1] The decision to conduct rulemaking reflected careful deliberation and our belief that EDRs represent a significant technological safety innovation, particularly for the emergency response safety community.[2] Again, the proposal sought to standardize the elements and format of data deemed most appropriate for advancing our goals of enabling ACN and improving crash reconstructions and for ensuring the retrievability of that information. Most of these data elements are already recorded by current EDRs. It was not our intention to require an exhaustive list of non-essential data elements that would significantly increase the cost of EDRs, thereby jeopardizing the current, high rate of installation.

In summary, the NPRM proposed to require light vehicles voluntarily equipped with an EDR to meet uniform, national requirements for the collection, storage, and retrievability of onboard motor vehicle crash event data. The proposal included Table I, *Data Elements Required for All Vehicles Equipped with an EDR,* which included 18 required elements that would have to be recorded during the interval/time and at the sample rate specified in that table. The proposal also included Table II, *Data Elements Required for Vehicles Under Specified Conditions,* which included 24 elements that would have to be recorded (during the interval/time and at the sample rate specified in that table) if the vehicle is equipped with certain devices or is equipped to measure certain elements. Table III, *Recorded Data Element Format,* included proposed range, accuracy, precision, and filter class requirements for each data element.

The NPRM also proposed a methodology for data capture under specified conditions and circumstances (i.e., providing a hierarchy for when new EDR data would overwrite existing data already stored in memory). Simply put, EDRs are constantly monitoring a variety of vehicle systems and parameters when the vehicle is in operation, but the devices only have a limited amount of short-term (volatile) memory and long-term (non-volatile) memory available for recording for these

[1] Docket No. NHTSA–2004–18029–2.

[2] We note that NHTSA has been assessing the potential benefits of EDRs for over a decade, and in that time, we have witnessed a significant maturation of EDR technology. For further information on these agency research and analytical efforts, please consult the NPRM, which discussed this topic extensively (*see* 69 FR 32932, 32933 (June 14, 2004)).

purposes. So when vehicle manufacturers develop EDRs, they must make judgments as to which data are the most important to be captured and recorded (e.g., events surrounding the deployment of an air bag are generally regarded as very important). Frequently, data stored in non-volatile memory are over-written (replaced) or deleted. The NPRM's proposed provisions related to data capture were intended to ensure that EDRs not only capture data according to a uniform methodology, but also that the methodology maximizes the generation of data suitable for the agency's safety purposes.

Because data standardization is only beneficial if the data can be retrieved and used, the agency decided to address the issue of data retrievability as part of our rulemaking. The NPRM also proposed to require vehicle manufacturers to submit sufficient non-proprietary technical information to the public docket as would permit third parties to manufacture a device capable of accessing, interpreting, and converting the data stored in the EDR. Under the proposal, such information would be required to be submitted to the docket not later than 90 days prior to the start of production of the EDR-equipped vehicle makes and models to which the information relates, and vehicle manufacturers would be required to keep that information updated, by providing information not later than 90 days prior to making any changes that would make the previously submitted information no longer valid. However, as discussed in the NPRM, our proposal offered one possible way to handle the data retrievability issue, and we sought comment on alternative approaches.

In addition, the NPRM proposed survivability requirements for EDR data when the vehicle is crash tested under existing testing requirements of Federal Motor Vehicle Safety Standard (FMVSS) Nos. 208, *Occupant Crash Protection,* 214, *Side Impact Protection,* and 301, *Fuel System Integrity,* and it also proposed to require that the data be retrievable by the methodology specified by the vehicle manufacturer for not less than 30 days after the test and without external power.

Finally, the NPRM proposed a specific owner's manual statement related to EDRs that would make members of the public aware when their vehicle is equipped with an EDR and also explain the intended purpose of the EDR and how it operates.

C. Requirements of the Final Rule

After careful consideration of the public comments on the NPRM, we are promulgating this final rule to establish a regulation for voluntarily-installed EDRs in order to standardize EDR data. The approach of this final rule is generally consistent with that of the NPRM, although we have further tailored the requirements of the regulation to advance the stated purposes of this rulemaking without requiring substantial costs or impeding the technological development of EDRs. We believe that with certain modest modifications, many current EDR systems can meet our goals of facilitating ACN and improving crash reconstructions.

In overview, the final rule specifies uniform, national requirements for light vehicles voluntarily equipped with EDRs, including the collection, storage, and retrievability of onboard motor vehicle crash event data. It also specifies requirements for vehicle manufacturers to make tools and/or methods commercially available so that authorized crash investigators and researchers are able to retrieve data from such EDRs.

Specifically, the regulation applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service, that are equipped with an event data recorder and to manufacturers of these vehicles. Subject to an exception for final-stage manufacturers and alterers discussed below, compliance with the requirements of the final rule commences for covered vehicles manufactured on or after September 1, 2010. The final rule is intended to be technology-neutral, so as to permit compliance with any available EDR technology that meets the specified performance requirements.

The following points highlight the key provisions of the final rule:

- Each vehicle equipped with an EDR must record all of the data elements listed in Table I, during the interval/time and at the sample rate specified in that table. There are 15 required data elements (*see* paragraph 563.7(a), Table I). Examples of these data elements are ''delta-V, longitudinal,'' ''maximum delta-V, longitudinal,'' ''speed, vehicle indicated,'' and ''safety belt status, driver.''
- Each vehicle equipped with an EDR that records any of the data elements listed in Table II identified as if recorded (most elements in that table) must capture and record that information according to the interval/time and at the sample rate specified in that table. Data elements listed in Table II as ''if equipped'' (i.e., ''frontal air bag deployment, time to n^{th} stage, driver'' and ''frontal air bag deployment, time to n^{th} stage, right front passenger'') must record the specified information if they are equipped with the relevant item, even if they are not presently doing so.[3] There are 30 data elements included in Table II (see paragraph 563.7(b), Table II). Examples of these data elements are ''lateral acceleration,'' ''longitudinal acceleration,'' ''frontal air bag suppression switch status, right front passenger (on, off, or auto), and safety belt status, right front passenger (buckled, not buckled).
- The data elements required to be collected by the EDR pursuant to Tables I and II, as applicable, must be recorded in accordance with the range, accuracy, and resolution requirements specified in Table III, *Recorded Data Element Format* (*see* paragraph 563.8(a), Table III).
- For EDRs that record acceleration, the longitudinal and lateral acceleration time-history data must be filtered in accordance with the filter class specified in Table III (i.e., Society of Automotive Engineers (SAE) Recommended Practice J211–1, March 1995, ''Instrumentation For Impact Test—Part 1—Electronic Instrumentation'' (SAE J211–1, Class 60), which the regulation incorporates by reference (*see* paragraph 563.8(b)). Such filtering may be done during collection or post-processing.
- The EDR must collect and store data elements for events in accordance with the following conditions and circumstances as specified in paragraph 563.9:

(1) In an air bag deployment crash, the data recorded from any previous crash must be deleted; the data related to the deployment must be recorded, and the memory must be locked in order to prevent any future overwriting of these data.

[3] The ''frontal air bag deployment, time to n^{th} stage'' data elements provide critical timing data for vehicles equipped with multi-stage air bags, which will help in assessing whether an air bag is deploying correctly during a crash (*i.e.,* whether the sensors are functioning properly). In drafting this final rule, we had considered including these two elements as required elements under Table I, but we recognized that not all vehicles are equipped with multi-stage air bags. Thus, by including these elements in Table II and requiring recording of that information if the vehicle is so equipped, we are, in effect, requiring this data from all vehicles equipped with an EDR and multi-stage air bags.

(2) In an air bag non-deployment crash that meets the trigger threshold, all previously recorded data in the EDR's memory must be deleted from the EDR's memory, and the current data (up to two events) must be recorded.

• In order to ensure the survivability of EDR data in most crashes, the EDR is tested in conjunction with crash tests already required under FMVSS No. 208, *Occupant Crash Protection*, and FMVSS No. 214, *Side Impact Protection* (*see* paragraph 563.10). Except for elements discussed below, the data elements required under Tables I and II must be recorded in a specified format, must exist at the completion of the crash test, and must be retrievable by a methodology specified by the vehicle manufacturer for not less than 10 days after the test.

The EDR is not required to meet the above survivability requirements for the following data elements: (1) ''Engine throttle, % full,'' (2) ''service brake, on/off,'' and (3) ''engine RPM.'' These elements have been excluded from these requirements because vehicles are crash tested without the engine running for safety reasons, so the EDR would not be able to record the above data elements under those circumstances.

• For vehicles equipped with an EDR, vehicle manufacturers must include a specified statement in the owner's manual to make the operator aware of the presence, function, and capabilities of the EDR.

• In order to ensure the retrievability of EDR data, each vehicle manufacturer that installs EDRs must ensure by licensing agreement or other means that the necessary tool(s) are commercially available for downloading the required EDR data. The tool must be commercially available not later than 90 days after the first sale of the vehicle for purposes other than resale.

D. Lead Time

In order to limit the transition costs associated with the standardization of EDR data, we sought in the NPRM to provide adequate lead time to manufacturers to enable them to incorporate necessary changes as part of their routine production cycles. To that end, the NPRM proposed a compliance date of September 1, 2008 for the EDR regulation. However, vehicle manufacturers commented that the lead time in the proposed rule would be inadequate to allow manufacturers to incorporate the necessary changes as part of their regular production cycle. Those commenters argued that a longer lead time is needed to minimize the costs and burdens associated with the EDR rule, particularly for those manufacturers which have already incorporated EDRs in a large proportion of their fleets.

After carefully considering the public comments on lead time, we have decided to require covered vehicles manufactured on or after September 1, 2010 to comply with the requirements of this final rule, subject to the exception below. Again, it is our intention to limit the costs associated with this final rule for the standardization of EDR data, including implications associated with new definitions, new pre-crash data collection, data download strategies, and data element costs associated with meeting the range and accuracy requirements. We believe that a lead time in excess of four years should prove adequate for all vehicle manufacturers and all vehicle lines, without the need for a phase-in. Vehicle manufacturers may voluntarily comply with these requirements prior to this date.

Consistent with the policy set forth in NHTSA's February 14, 2005 final rule on certification requirements under Federal motor vehicle safety standards for vehicles built in two or more stages and altered vehicles (70 FR 7414), we are providing final-stage manufacturers and alterers that produce vehicles covered by this regulation with an extra year to comply. Accordingly, these manufacturers must meet the requirements of this final rule for vehicles manufactured on or after September 1, 2011. However, final-stage manufacturers and alterers may voluntarily comply with the requirements of the regulation prior to this date.

E. Differences Between the Final Rule and the Notice of Proposed Rulemaking

As noted above, NHTSA has decided to issue the present final rule to standardize EDR data in order to further our stated purposes of ensuring that EDRs record the data necessary for effective implementation of ACN, crash investigations, and analysis of safety equipment performance. In order to achieve these objectives (and to garner the derivative benefits that EDR-generated data may provide in terms of safer vehicle designs), we have largely retained the general approach presented in the NPRM. However, after further study and a careful review of the public comments, we have decided to make a number of modifications as part of the final rule in order to better reflect the current state of EDR technology and the data elements (including form and format) that will meet our research and policy objectives in a manner that is both effective and practicable.

The main differences between the NPRM and the final rule involve a change in the definition of ''event data recorder,'' selection of data elements (i.e., which elements are required), changes to the range/accuracy/resolution requirements, modification of the test requirements related to EDR survivability, and extension of lead time for implementing the regulation. A number of minor technical modifications are also incorporated in the final rule in response to public comments on the NPRM. All of these changes and their rationale are discussed fully in the balance of this document. However, the following points briefly describe the main differences between the NPRM and this final rule.

• In the NPRM, the term ''event data recorder'' was defined as ''a device or function in a vehicle that records any vehicle or occupant-based data just prior to or during a crash, such that the data can be retrieved after the crash. For purposes of this definition, vehicle or occupant-based data include any of the data elements listed in Table I of this part.'' However, several commenters stated that under this definition, virtually all vehicles would be considered to have an EDR, because most vehicles capture freeze-frame data required for internal processing; therefore, commenters argued that the proposed definition is overly broad (i.e., covering vehicles not equipped with a true EDR) and would create a *de facto* mandate for EDRs, contrary to the agency's expressed intent. Therefore, in this final rule, we have revised the definition of ''event data recorder'' to read as follows: ''a device or function in a vehicle that records the vehicle's dynamic, time-series data during the time period just prior to a crash event (e.g., vehicle speed vs. time) or during a crash event (e.g., delta-V vs. time), intended for retrieval after the crash event. For the purposes of this definition, the event data do not include audio and video data.''

• In the final rule, we have decided to make certain modifications to the proposed tables of EDR data elements. Table I, *Data Elements Required For All Vehicles Equipped With an EDR*, has been amended by deleting five data elements (i.e., (1) longitudinal acceleration (moved to Table II); (2) engine RPM (moved to Table II); (3) frontal air bag deployment level, driver; (4) frontal air bag deployment level, right front passenger, and (5) time from event 2 to 3) and by adding two data

elements (i.e., (1) time, maximum delta-V, and (2) delta-V, longitudinal).

Table II, *Data Elements Required for Vehicles under Specified Conditions*, has been modified in two ways from the NPRM. First, the data elements now listed in Table II as ''if recorded'' will be required only if the data elements are recorded by the EDR (i.e., stored in non-volatile memory as would permit later retrieval), rather than the NPRM's approach which would have required those elements if the vehicle were equipped to measure those elements. However, for the final rule's data elements listed in Table II as ''if equipped,'' a manufacturer's EDRs must record the specified information, even if its current EDRs are not doing so.

Furthermore, Table II has been amended by adding six data elements (i.e., Table II includes four new elements: (1) Lateral delta-V; (2) lateral cumulative maximum delta-V; (3) time to cumulative maximum lateral delta-V, and (4) time to cumulative maximum resultant delta-V. In addition, as indicated above, two items have been moved from Table I to Table II: (1) Longitudinal acceleration; and (2) engine RPM.).

• In the NPRM, we proposed a definition for ''trigger threshold,'' the point at which a recordable event is recognized by the EDR, as a ''change in vehicle velocity * * * that equals or exceeds 0.8 km/h within a 20 ms interval.'' That definition encompassed movement in either a longitudinal or lateral direction.

In the final rule, we decided to change the definition of ''trigger threshold'' for the longitudinal direction to ''a change in vehicle velocity * * * that equals or exceeds 8 km/h within a 150 ms interval.'' For vehicles whose EDRs measure lateral delta-V or lateral acceleration, we are using the same trigger threshold. In the final rule, we have changed the definition of ''time zero'' to account for different EDR crash detection strategies (i.e., using a ''wake-up'' time for EDRs that wake up just as a crash starts, or a change in velocity over a short period for EDRs that are continuously running). We have also added a new definition for ''end of event time.'' ''Time zero'' and ''end of event time'' are defined in a manner consistent with SAE J1698.

• In the final rule, we have changed our approach in terms of the type of data that an EDR may capture to assess crash severity. Specifically, the NPRM proposed to require EDRs to measure vehicle acceleration, but the final rule requires the EDR to record delta-V. However, if the EDR records acceleration data in non-volatile memory, that information must also be captured and recorded under the final rule.

• As part of the final rule, the agency has decided to reduce the number of events that must be recorded in a multi-event crash from three (as proposed in the NPRM) to two.

• For each of the proposed data elements (when applicable), the NPRM specified a recording interval and sampling rate in order to standardize EDR data across the spectrum of new light vehicles. We have decreased the pre-crash recording interval from 8 seconds prior to the crash, as proposed in the NPRM, to 5 seconds prior to the crash, and we have reduced the amount of time allocated for collecting crash data from 0.5 second, as proposed in the NPRM, to 0.25 second in this final rule.

• The final rule has modified the NPRM s data format requirements, which proposed to require covered data elements to be recorded in accordance with the range, accuracy, precision, and filter class specified in Table III, *Recorded Data Element Format*, where applicable. The major changes were: (1) To reduce the maximum range for acceleration measurements from 100 G maximum, as proposed in the NPRM, to 50 G maximum, and (2) to reduce the required accuracy of these same devices (and the data generated therefrom) from within ±1 percent, as proposed in the NPRM, to within ±5 percent.

• After requesting comments on alternate approaches in the NPRM, the agency has adopted a different approach for ensuring that manufacturers make sufficient information available to permit EDR data to be downloaded by potential users. The NPRM proposed to require vehicle manufacturers make publicly available sufficient information to permit third parties to build a retrieval tool for EDR data by submitting such materials to the NHTSA Docket (and keeping such information updated). However, in the final rule, we have decided, consistent with manufacturers' comments, to require manufacturers to ensure by licensing agreement or other means that retrieval tools for EDR data are commercially available.

• In the NPRM, we proposed to require manufacturers to send detailed information on an ongoing basis to the agency about retrieval tools for EDR data. However, in the final rule, we have decided to require vehicle manufacturers to ensure that EDR retrieval tools are commercially available, something which manufacturers may accomplish either by producing the tools themselves or working directly with their suppliers through licensing agreements. Accordingly, the need for reports to the agency, as contemplated in the NPRM, no longer exists.

• The final rule clarifies that EDR survivability testing will be conducted without the engine running, in order to prevent a potentially hazardous situation for testing personnel and facilities. The final rule specifies that the ''engine throttle,'' ''service brake, on/off,'' and (3) ''engine RPM'' data elements are not required to be recorded as part of survivability testing. While we are retaining the general approach for survivability testing, we are decreasing the number of tests required to demonstrate survivability. Under the NPRM, we proposed using FMVSS Nos. 208 (frontal), 214 (side), and 301 (rear) tests, but in the final rule, we have decided to delete the requirement for the Standard No. 301 test.

• We have decided as part of the final rule to extend the lead time for compliance by covered vehicles by two years, until September 1, 2010. In addition, the final rule sets the compliance date for final-stage manufacturers and alterers at one year beyond the compliance deadline for other manufacturers (i.e., September 1, 2011).

F. Impacts of the Final Rule

It is difficult for the agency to quantify the benefits expected to result from this final rule for standardization of EDR data. That is because the EDR devices themselves are not designed to be systems for crash avoidance or crashworthiness, but instead they offer an important tool to enable better EMS response and to better understand crashes and crash-related events. However, it is possible to describe the benefits of EDRs in qualitative terms.

To the extent that EDR data are compatible with developing ACN and e-911 systems, emergency medical personnel are likely to arrive at a crash site better informed and thus better prepared to deal with the injuries they encounter. Because expedient and appropriate post-crash medical care is often critical to achieving the best possible outcome for the injured person, we believe that EDR data have the potential to make a positive contribution in this area.

We also believe that EDRs can provide important benefits by giving researchers a relatively inexpensive way of obtaining higher quality data and thus a more accurate and detailed understanding of the circumstances surrounding crashes, including how the vehicles and their safety systems performed. In many cases, such

information may be derived from crash reconstructions, but such measurements tend to be reasoned estimates, as compared to the directly measured data provided by the EDR. There is certain information, such as how the air bag deployed (e.g., low level or high level) or when it deployed, that cannot be determined without an EDR. To the extent that EDRs help researchers and policymakers to better understand the events surrounding crashes, NHTSA and vehicle manufacturers will be better able to develop effective safety countermeasures as reflected in Federal motor vehicle safety standards and new vehicle designs.

In sum, we believe that having a uniform and standardized data set for EDRs will increase the compatibility, comparability, and overall usefulness of EDR data, which will benefit the public directly through the availability of ACN and e-911, and indirectly through improved crash information for research and regulatory efforts.

In terms of costs, we believe that the costs of this final rule should be minimal, averaging up to $0.17 per vehicle. Several factors contribute to this result. First, we estimate that about 64 percent of new light vehicles in 2005 are already equipped with EDRs, which have been provided by adding the EDR capability to the vehicles' air bag control systems. Thus, EDRs largely capture information that is already being processed by the vehicle, so EDRs are not responsible for the much higher costs of sensing much of the data in the first place. Therefore, the costs of this final rule reflect the incremental costs for vehicles voluntarily equipped with EDRs to comply with the requirements of the regulation.

Second, the agency has sought to limit the number of EDR data elements and associated requirements to the minimum necessary to achieve our stated purposes. We have determined that the industry's current state-of-the-art largely meets our purposes, so we have found it generally unnecessary to specify requirements for additional sensors or other hardware that would increase EDR costs appreciably. (The most significant technology cost may involve the need to upgrade EDR memory chips.) Furthermore, we expect that administrative costs and compliance costs will be negligible.

In sum, for the 64 percent of new light vehicles already equipped with an EDR, the estimated total cost to comply with the requirements of this final rule (i.e., Table I data elements) will range up to $1.7 million. If we were to assume that all 15.5 million new light vehicles were equipped with EDRs, the estimated total cost will range up to $10.9 million.

II. Background

A. Overview of EDR Technology

Event data recorders capture vehicle crash information.[4] Basic EDRs capture only vehicle acceleration/deceleration data, while more sophisticated EDRs capture these data plus a host of complementary data, such as driver inputs (e.g., braking and steering) and the status of vehicle safety systems (e.g., seatbelt pretensioners).

The EDR captures crash data by monitoring several of the vehicle's systems, such as brakes, air bags, and seat belts. It continuously captures and overwrites (erases) information on these systems so that a record of the most recent period (up to a few seconds) is always available. If an ''event'' occurs (i.e., a crash meeting a pre-determined threshold of severity), then the EDR moves captured pre-crash information (up to a few seconds) into its long-term memory. EDRs also record (in long-term memory) data after the start of the crash (up to a few seconds), such as the timing and manner of the deployment of the air bags.

EDRs have been installed as standard equipment in most light motor vehicles in recent years, particularly vehicles with air bags. We estimate that 64 percent of model year (MY) 2005 passenger cars and other light vehicles have some recording capability, and that more than half record data elements such as crash pulse data. This is based on manufacturer reports regarding their 2005 vehicles and then weighted using 2003 corporate-level vehicle sales figures to determine a fleet average.

B. Chronology of Events Relating to NHTSA's Consideration of EDRs

In 1991, NHTSA's Special Crash Investigations program first utilized EDR information in an agency crash investigation. General Motors, the vehicle's manufacturer, cooperated with the program. Throughout the 1990s, NHTSA's SCI team utilized EDRs as one of their investigative tools, and from 1991 through 1997, SCI worked with manufacturers to read approximately 40 EDRs. Starting around 2000, the collection of EDR data was automated, and to date, NHTSA's crash investigation programs have collected information on about 2,700 crashes with EDR files.

The National Transportation Safety Board has also played a role in agency efforts related to event data recorders. The NTSB has been active in data recorders for a long time, first concentrating on aircraft and later on railroads and ships. More recently, NTSB has been active in the area of EDRs for highway vehicles. In 1997, the Safety Board issued its first highway vehicle EDR-related Safety Recommendation, H–97–18,[5] to NHTSA, recommending that the agency ''pursue crash information gathering using EDRs.'' NTSB recommended that the agency ''develop and implement, in conjunction with the domestic and international automobile manufacturers, a plan to gather better information on crash pulses and other crash parameters in actual crashes, utilizing current or augmented crash sensing and recording devices.'' NTSB subsequently closed this recommendation, citing NHTSA's actions as acceptable. Also in that year, the National Aeronautics and Space Administration (NASA) Jet Propulsion Laboratory (JPL), in a study conducted for NHTSA about advanced air bag technology, recommended that the agency ''study the feasibility of installing and obtaining crash data for safety analyses from crash recorders on vehicles.''

In early 1998, NHTSA's Office of Vehicle Safety Research formed an EDR Working Group comprised of members from industry, academia, and other government organizations. The working group was formed in response to NHTSA's growing interest in EDRs, the NTSB's recommendation, and interest from vehicle manufacturers. The group's objective was to facilitate the collection and utilization of collision avoidance and crashworthiness data from on-board EDRs. The NHTSA-sponsored EDR Working Group published a final report on the results of its deliberations in August 2001.[6] The working group found that EDRs have the potential to greatly improve highway safety, for example, by improving occupant protection systems and improving the accuracy of crash reconstruction.

In 1999, NTSB issued a second set of recommendations to NHTSA related to

[4] The term ''EDR'' can be used to describe many different types of devices. For this final rule, the term EDR means a device or function in a vehicle that captures the vehicle's dynamic, time-series data during the time period just prior to a crash event (e.g., vehicle speed vs. time) or during a crash event (e.g., delta-V vs. time), such that the data can be retrieved after the crash event. For the purposes of this definition, the event data do not include audio and video data.

[5] NTSB public forum on air bags and child passenger safety (March 1997). *See http://www.ntsb.gov/publictn/1997/rp9701.pdf.*

[6] Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, August 2001, Final Report (Docket No. NHTSA–99–5218–9).

EDRs (H–99–53 and H–99–54 [7]) recommending that the agency require standardized EDRs to be installed on school buses and motor coaches. In 2000, NHTSA responded to these NTSB recommendations by sponsoring a second working group related to EDRs—the NHTSA Truck & Bus EDR Working Group. This Working Group collected facts related to use of EDRs in trucks, school buses, and motor coaches—a natural follow-up activity from the first working group that concentrated on light vehicles. The final report of the NHTSA Truck and Bus EDR Working Group was published in May 2002.[8]

In 2004, NTSB issued EDR recommendations to NHTSA for a third time. This set of recommendations was prompted by a crash that occurred at a farmers' market in Santa Monica, CA, which resulted in multiple deaths. In examining that crash, the Safety Board found that they could not determine exactly what occurred with respect to the driver controls and indicated that EDRs should be installed on all new vehicles. Recommendation H–04–26 [9] reads: ''Once standards for event data recorders are developed, require their installation in all newly manufactured light-duty vehicles.'' In 2005, NHTSA sent a letter to the Safety Board asking them to reconsider their recommendation, indicating that many new cars and light trucks are already equipped with EDRs and that standardization of installed EDRs is the main issue, which is being addressed by this final rule.

For further information, NHTSA has developed a website about highway-based EDRs located at the following address: *http://www-nrd.nhtsa.dot.gov/edr-site/index.html.*

C. Petitions for Rulemaking

1. Petitions From Mr. Price T. Bingham and Ms. Marie E. Birnbaum

In the late 1990s, the agency denied two petitions for rulemaking asking us to require the installation of EDRs in new motor vehicles (*see* 63 FR 60270 (November 9, 1998) and 64 FR 29616 (June 2, 1999)).

The first petition, submitted by Mr. Price T. Bingham,[10] a private individual, asked the agency to initiate rulemaking to require air bag sensors to record data during a crash so that it could later be read by crash investigators. The petitioner cited a concern about air bag deployments that might be ''spontaneous,'' but he did not limit the petition to that issue.

The second petition, submitted by Ms. Marie E. Birnbaum,[11] also a private individual, asked us to initiate rulemaking to require passenger cars and light trucks to be equipped with ''black boxes'' (*i.e.*, EDRs) analogous to those found on commercial aircraft.

In responding to these petitions, NHTSA acknowledged that EDRs could provide valuable information useful for analyzing crashes and improving motor vehicle safety. However, the agency decided to deny the petitions because the motor vehicle industry was already voluntarily moving in the direction recommended by the petitioners, and because the agency believed ''this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.'' [12]

2. Petition From Dr. Ricardo Martinez

In October 2001, the agency received a petition [13] from Dr. Ricardo Martinez, President of Safety Intelligence Systems Corporation and former Administrator of NHTSA, asking us to ''mandate the collection and storage of onboard vehicle crash event data, in a standardized data and content format and in a way that is retrievable from the vehicle after the crash.''

In his petition for rulemaking, Dr. Martinez argued that understanding what happens in a crash is essential to preventing injuries and deaths, and that EDRs would improve crash reconstruction analysis. The petitioner also stated that current crash reconstruction analysis is costly, time consuming, laborious, and often inaccurate. According to Dr. Martinez, the increasing sophistication and decreasing costs of information technology have created the opportunity to now mandate the capture, storage, and retrieval of onboard crash data, and a NHTSA rulemaking could greatly accelerate the development of ACN.

The petition from Dr. Martinez was submitted shortly after the NHTSA EDR Working Group had published its final report. As discussed in more detail in the next section of this document, in October 2002, after the second working group had completed its work, we decided to request public comments on what future role the agency should take related to the continued development and installation of EDRs in motor vehicles. We decided to respond to Dr. Martinez's petition after considering those comments.

D. October 2002 Request for Comments

On October 11, 2002, NHTSA published a request for comments concerning EDRs in the **Federal Register** (67 FR 63493).[14] In that document, the agency discussed its prior involvement concerning EDRs, and it requested comments on what future role NHTSA should take related to the continued development and installation of EDRs in motor vehicles. The request for comments discussed a range of issues, including safety benefits, technical issues, privacy issues, and the role of the agency, and it also posed several questions.

In response to this request, we received comments from light and heavy vehicle manufacturers, equipment manufacturers, vehicle users, the medical community, advocacy organizations, safety research organizations, crash investigators, insurance companies, academics, and government agencies. We also received comments from a number of private individuals.

To summarize, these comments raised issues concerning the safety benefits of EDRs (with most commenters suggesting EDRs will improve vehicle safety), technical issues surrounding a potential rulemaking on EDRs (such as the types of data elements to be collected, amount of data to be recorded, and crash survivability of EDR data), potential privacy issues associated with EDRs, NHTSA's role in the future of EDRs, and public perception of EDRs.

After considering the comments and other information NHTSA had gathered on EDRs, NHTSA decided to grant the Martinez petition in part and commenced rulemaking.

III. Notice of Proposed Rulemaking

A. Summary of the NPRM

On June 14, 2004, NHTSA published a NPRM in the **Federal Register** (69 FR 32932)[15] proposing to: (1) Require that EDRs voluntarily installed in light vehicles record a minimum set of specified data elements useful for crash investigations, analysis of safety equipment performance, and automatic

[7] Bus Crashworthiness Issues, Highway Special Investigation Report (NTSB/SIR–99/04) (Washington, DC (1999)). *See http://www.ntsb.gov/publictn/1999/sir9904.pdf.*

[8] Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, May 2002, Final Report, Volume II, Supplemental Findings for Trucks, Motor Coaches, and School Buses. (Docket No. NHTSA–2000–7699–6).

[9] Rear-End Collision and Subsequent Vehicle Intrusion into Pedestrian Space at Certified Farmers' Market Santa Monica, California (July 16, 2003). *See http://www.ntsb.gov/publictn/2004/har0404.pdf.*

[10] Docket No. NHTSA–1998–4368–1.

[11] Docket No. NHTSA–1998–4367–22.

[12] 63 FR 60270, 60270 (Nov. 9, 1998) (Docket No. NHTSA–1998–4672–1); 64 FR 29616, 29616 (June 2, 1999) (Docket No. NHTSA–1999–5737–1).

[13] Docket No. NHTSA–2002–13546–3.

[14] Docket No. NHTSA–2002–13546–1.

[15] Docket No. NHTSA–2004–18029–2.

collision notification systems; (2) specify requirements for data format; (3) increase the survivability of the EDRs and their data by requiring that the EDRs function during and after the front, side, and rear vehicle crash tests specified in several Federal motor vehicle safety standards; (4) require vehicle manufacturers to make publicly available information for a download tool that would enable crash investigators to retrieve data from the EDR; and (5) require vehicle manufacturers to include a brief standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR and describing purposes of that device.

NHTSA tentatively concluded that the proposed requirements would help ensure that EDRs record, in a readily usable manner, the data necessary for effective crash investigations, analysis of safety equipment performance, and automatic crash notification systems. NHTSA stated its belief that its proposal would help provide a better understanding of the circumstances under which crashes and injuries occur and would lead to derivative benefits, such as safer vehicle designs.

In the NPRM, NHTSA responded to the Martinez petition [16] for rulemaking, which asked the agency to ''mandate the collection and storage of onboard vehicle crash event data, in a standardized data and content format and in a way that is retrievable from the vehicle after the crash.'' The agency granted the petition in part, to the extent that it proposed a regulation to specify standardized data content and format for EDRs in a manner that is retrievable from a vehicle after a crash.

However, NHTSA denied the petition to the extent that the agency did not propose to mandate EDRs. In the NPRM, the agency stated its belief that a mandatory EDR rule was not the best approach at this time, and we noted that the industry is continuing to move in the direction of installing EDRs in an increasing percentage of new vehicles. Further, the industry trend is toward designing EDRs to include greater amounts of crash data. Given this trend, we did not deem it necessary for us to propose to require the installation of EDRs, but remained open to considering this in the future.

The NPRM also discussed other key issues including data elements to be recorded, data standardization, data retrieval, crash survivability, privacy, and lead time. The NPRM provided detailed tables of the data elements to be recorded under the proposal and the relationship of the data elements to the stated purposes of the rulemaking. While the NPRM did propose specific technical requirements and specifications, NHTSA requested comments on the proposed data elements, including whether the list sufficiently covers technology that is likely to be in vehicles in the next five to ten years.

In terms of data standardization, the NPRM proposed a standardized format for each data element, specifying the corresponding recording intervals/times, units of measurement, sampling rates, data range/accuracy/precision requirements, and where appropriate, filter class. However, the NPRM noted that there was currently not an industry standard for EDR format.

The NPRM also solicited comments on EDR data retrieval. Specifically, NHTSA sought alternative approaches to the data retrieval requirements proposed in the NPRM, which would have required vehicle manufacturers to submit specifications for accessing and retrieving the stored EDR data and information in sufficient detail to permit companies that manufacture diagnostic tools to develop and build devices for accessing and retrieving the EDR's stored data.

Regarding the functioning of EDRs and crash survivability, the NPRM proposed requirements for the EDR trigger threshold, EDR recording in multi-event crashes, capture of EDR data, and the performance of EDRs in crash tests.

The NPRM discussed privacy issues related to EDRs, but it also noted that most privacy issues involve Federal and State laws separate from NHTSA's primary statutory authority.

Finally, the NPRM discussed lead time for the regulation's proposed compliance date. The NPRM proposed a compliance date of September 1, 2008, to permit manufacturers to make EDR-related design changes as a part of their regular production cycle in order to minimize costs.

B. Summary of Public Comments to the NPRM

NHTSA received over 100 comments on the NPRM from automobile manufacturers,[17] motor vehicle equipment suppliers and businesses,[18] trade associations,[19] advocacy and special interest groups,[20] and individuals. (All of the comments on the NPRM can be reviewed in Docket No. NHTSA–2004–18029.) Commenters expressed a wide range of views, with vehicle manufacturers, motor vehicle equipment suppliers, and trade associations generally supporting the NPRM in concept, while raising a number of significant issues and recommending modifications. Special interest groups advocating highway safety generally called for a more extensive regulation; for example, these commenters asked NHTSA to require EDRs in all vehicles, to require more data elements to be recorded, and/or to require uniform EDR data retrieval so that first responders and other emergency personnel may easily access EDR data. A number of individuals who commented on the NPRM raised potential privacy concerns.

The following overview of the public comments reflects the key issues raised by the commenters, including whether the EDR rule should be mandatory, the number and type of data elements to be recorded, EDR data standardization requirements, EDR data retrieval and whether to require a standardized data retrieval tool/universal interface, and EDR crash survivability. Other commenters addressed the proposed owner's manual disclosure statement, potential privacy concerns, lead time, and costs. A more in-depth analysis of

[16] Docket No. NHTSA–2002–13546–3.

[17] Comments were received from the following *vehicle manufacturers:* (1) American Honda Motor Company (Honda); (2) DaimlerChrysler, VSO (DaimlerChrysler); (3) Ford Motor Company (Ford); (4) General Motors Corporation (GM); (5) Hyundai America Technical Center, Inc. (Hyundai and Kia); (6) Mitsubishi Motors R & D of America, Inc. (Mitsubishi); (7) Nissan North American, Inc. (Nissan); (8) Porsche Cars North American, Inc. (Porsche); (9) Subaru of America, Inc. (Subaru); and (10) Toyota Motor North America, Inc. (Toyota).

[18] Comments were received from the following *motor vehicle equipment suppliers and other businesses:* (1) Bendix Commercial Vehicle Systems, L.L.C. (Bendix); (2) Delphi; (3) Gelco Corporation d/b/a GE Fleet Services (Gelco); (4) Kast, GmbH (Kast); (5) Injury Sciences, L.L.C. (Injury Sciences); (6) Racing Information Systems; (7) Safety Intelligence Systems Corporation (SISC); (8) Siemens VDO Automotive, AG (Siemens); (9) TRW Automotive (TRW); and (10) Wyle Laboratories, Inc. (Wyle Laboratories).

[19] Comments were received from the following *trade associations:* (1) Alliance of Automobile Manufacturers (Alliance); (2) American Trucking Association (ATA); (3) Association of International Automobile Manufacturers, Inc.—Technical Affairs Committee (AIAM); (4) National Automobile Dealers Association (NADA); (5) Property Casualty Insurers Association of America (PCIAA); and (6) Specialty Equipment Market Association (SEMA).

[20] Comments were received from the following *advocacy (and other) groups:* (1) Advocates for Highway and Auto Safety (Advocates); (2) Albemarle County Police Department; (3) American Automobile Association (AAA); (4) Canada Safety Council; (5) Children's Hospital of Philadelphia; (6) Electronic Privacy Information Center (EPIC); (7) European Commission; (8) Garthe Associates (Garthe); (9) Institute of Electrical and Electronics Engineers Vehicular Technology Society (IEEE–VTS); (10) Insurance Institute for Highway Safety (IIHS); (11) National Motorist Association; (12) National Transportation Safety Board (NTSB); (13) Public Citizen; and (14) Society of Automotive Engineers (SAE).

comments along with the agency's response follows in section IV.B of this document.

Whether NHTSA Should Require EDRs

In their comments, most automobile manufacturers supported the EDR standardization requirements for voluntarily-installed EDRs. However, GM, Ford, some industry associations, and most advocacy and special interest groups, urged NHTSA to require EDRs to be installed in all new vehicles. Commenters as diverse as GM and Public Citizen urged mandatory installation of EDRs. Arguments for why installation should be mandatory varied, but included concerns that manufacturers will opt out under a voluntary installation approach, that standardization requirements for voluntary-installed EDRs will discourage EDR installation, and that voluntary installation would take many years to build up sufficient information for useful study.

Number and Types of Required Data Elements

The NPRM separated EDR data elements into two categories. The first category consisted of a set of data elements that must be recorded if an automobile manufacturer currently uses an EDR for any one data element (i.e., ''required'' data elements). The second category consisted of data elements that must be recorded only if the vehicle is equipped with a specified system or sensing capability (i.e., ''if equipped'' data elements). The NPRM listed 18 required data elements and an additional 24 ''if equipped'' data elements.

Overall, automobile manufacturers, and other commenters connected to the automotive industry, stated their belief that the number of proposed required data elements is excessive in light of NHTSA's stated purposes. However, manufacturers differed in their assessment as to which of the data elements should be required to be recorded and their rationale why. The manufacturers agreed that the number of data elements should be reduced due to: (1) The estimated (excessive) cost of the EDR proposal; (2) limitations in memory and microprocessing capability of EDRs; (3) the potential to inhibit collection of more useful data; and (4) the desire to avoid complete electrical redesigns.

In contrast, highway safety advocacy groups, such as Public Citizen and Advocates, suggested that the number of required elements is insufficient. This group of commenters generally argued that more data elements should be recorded in order to: (1) Provide additional data contribution for a more definitive crash causation evaluation; (2) address equipment likely to be used in the future; and/or (3) encourage uniformity. Some commenters, including Injury Sciences and Public Citizen, suggested adding the Vehicle Identification Number (VIN) as a recorded data element. Still others commented that certain data elements in the ''if equipped'' category should be moved to the ''required'' category or vice versa.

EDR Data Standardization

The NPRM proposed specific technical specifications for each data element, including sampling rates and recording intervals, data standardization requirements, and data retrieval requirements. The commenters on this issue, mostly from the automobile industry, raised concerns about the proposed recording frequency and sampling rates, especially regarding the amount of microprocessing and memory required to process and store the proposed EDR data. According to the manufacturers, the increase in microprocessing and memory capabilities that would be required to comply with the proposed rule would be more costly than the agency anticipated. Therefore, manufacturers recommended alternative sampling rates and recording intervals that they believe would be less expensive. Automotive industry commenters also recommended other technical adjustments to the proposed recording requirements. They also generally disagreed with the proposed multiple-event recording requirement, with most stating that it is unnecessary and not current industry practice.

Automobile manufacturers generally commented that the range, accuracy, and precision specifications contained in the NPRM should not be included in the final rule because the proposed parameters are beyond what is currently utilized in the state-of-the-art EDRs and the provisions are not necessary to achieve the agency's goals. Other commenters agreed with the concept of standardization, but suggested that it be accomplished in another manner, such as leaving it to the discretion of the manufacturers for optimal restraint system performance or applying SAE J1698.

Highway safety advocates commented that sampling rates and recording intervals should be of sufficient duration to record the full crash event, especially for ''rollover'' crashes.

EDR Data Retrieval and Whether To Require a Standardized Data Retrieval Tool

With regard to data retrieval requirements, most manufacturers objected to furnishing non-proprietary technical specifications to NHTSA and offered alternative approaches for retrieving EDR data, such as through licensing agreements or making retrieval tools available to the public at a reasonable price. Highway safety advocacy groups argued that NHTSA should require standardization of data retrieval methods, that first responders should have access to EDR data, and that NHTSA should require a uniform architecture for data retrieval with a standardized interface location.

EDR Survivability and Crash Test Performance Requirements

The NPRM proposed that EDR data must exist upon completion of each crash test and be retrievable by a methodology specified by the vehicle manufacturer for not less than 30 days after the test and without external power. Several automobile manufacturers commented that the proposed crash test requirement is impracticable because they believe it would require tests to be performed with engines running and various vehicle systems activated, which would cause a danger to test personnel. As an alternative, commenters suggested a simulated laboratory test. Automobile manufacturers commented that the proposed rule would greatly increase testing costs. There were also comments on whether an alternative power source would be required to meet the 30-day provision in Sec. 563.10(d). Other commenters, including NTSB and Public Citizen commented that NHTSA should require that EDR data survive fire, fluid immersion, and severe crashes.

Other Issues

The NPRM proposed a compliance date of September 1, 2008, for the EDR regulation. Nearly all commenters, especially automobile manufacturers, believed that the agency underestimated the amount of time needed to meet the requirements of the proposed rule. Several manufacturers suggested that, as part of the final rule, the agency should provide a phase-in (e.g., a four-year phase-in beginning in 2008).

In order to educate the public about EDRs and to gain public acceptance for use in passenger vehicles, the NPRM proposed that vehicles equipped with an EDR must also include a specified statement in the owner's manual. This

statement would inform the vehicle owner about the presence of the EDR and its purposes. Most commenters, including automobile manufacturers and privacy advocates, expressed support for a disclosure statement. However, several commenters (including automobile manufacturers, EPIC, and individuals) suggested alternative language. Comments concerning the disclosure statement ranged from concerns about privacy and ownership of the EDR data to preemption and State disclosure requirements.

Commenters, especially individuals, raised concerns about privacy. In the NPRM, we addressed privacy issues, stating our position that NHTSA's use of the data collected from EDRs would not raise privacy concerns. NHTSA obtains the owner's consent for collecting and using EDR data and carefully protects any information that could potentially be used to identify an individual. In the context of EDRs, the information in question that may be linked to an individual is the vehicle identification number (VIN), which is collected at the time EDR information is downloaded. The following discussion explains why it is necessary for the agency to collect VIN information in connection with EDRs, how such information is used by the agency, and the safeguards the agency takes related to the release of such information.

VIN information (e.g., relevant to the make/model in question) is necessary to download and process the EDR data, because the commercial EDR download tool requires the VIN to be inputted into the program in order to link the EDR file with data to ensure proper engineering output. Without VIN input, similar data may mean different things depending on the vehicle from which it comes.

This final rule does not require EDRs to record VIN information. However, the full VIN of a vehicle must be inputted into current EDR extraction tools as a key to ensure proper conversion of the electronic EDR data to a usable format. The full VIN is needed in order to account for running changes that may occur during a particular model year, thereby rendering it infeasible to use a shortened VIN. We note that such VIN information is normally available through other means during the course of crash reconstruction (i.e., through reading the VIN label on the vehicle itself). Further, other parties, such as law enforcement, could combine the EDR data with the type of personally identifying data routinely acquired during a crash investigation.

In terms of the use of EDR data, the agency takes the EDR-generated information that it collects and incorporates the information into large crash-related databases in order to gain a more comprehensive understanding of certain crash events; the information contained in these databases is not retrieved or retrievable by name or other individual identifier.

The agency's rationale for protection of the VIN information contained in EDRs is as follows. By way of background, the VIN data identify the vehicle itself and do not specifically provide name, address, or other personal identifier information on an individual. Furthermore, EDR data alone cannot confirm exactly who was driving the vehicle at any given time (e.g., vehicle owner or other individuals (either with or without permission)). However, even though VIN information is not a ''record'' [21] or part of a ''system of records'' [22] as those terms are defined under the Privacy Act, NHTSA has nevertheless taken steps to prevent the release of VIN information, because VIN information can be used in various commercially-available programs to determine the identity of the current owner of a vehicle.

As a practical matter, information contained in these records that has the potential indirectly to identify individuals is not made public, except as specifically required by law. Furthermore, prior to the release of information from databases containing EDR data (usually aggregated reports), the agency strips out the last six characters of the VIN (i.e., the portion that would allow identification of a specific vehicle and, potentially by indirect means, the identity of the vehicle's current owner). In light of the above, we believe that the agency has taken adequate steps to ensure individual privacy vis-à-vis its use of EDR data.

However, we recognized that there may be privacy issues associated with EDRs related to the use of EDR data by entities other than NHTSA, such as law enforcement and EMS personnel, other government entities, and the automotive industry. Notwithstanding our extensive treatment of the privacy issue, we still received comments from individuals who believe that EDRs are an intrusion of their privacy because EDRs might record aspects of their driving behavior (e.g., whether they are speeding or not wearing a safety belt) that they do not want to be known. Automobile manufacturers and highway safety groups commented that the potential benefits of EDRs outweigh any privacy concerns.

In addition to lead time, privacy, and owner's manual disclosure statement issues, commenters raised additional substantive issues including cost, preemption, and inclusion of ACN as a goal of the EDR rule.

Many commenters, mostly automobile manufacturers, believed that NHTSA's cost estimates were significantly understated. According to these commenters, the proposed requirements outlined in the NPRM would contribute to higher costs because of the additional microprocessors and memory needed to handle larger amounts of saved data. These commenters also argued that the dynamic testing requirements would increase costs along with the requirements of accuracy, range, and precision, which they argued are in excess of current industry practice.

Commenters requested that NHTSA specifically preempt inconsistent State and local regulations related to EDRs. Automobile manufacturers were concerned about the possibility of having to comply with inconsistent State regulations, especially concerning owner's manual disclosure statements and technical specifications of EDRs.

With respect to ACN as a stated goal of the EDR rule, commenters associated with the automotive industry argued that this goal should be removed, since the proposed rule would not require ACN or specifically state that the rule will not limit the ability of manufacturers to offer ACN.

Other, more specific and technical issues were raised by commenters. These issues will be treated and addressed in section IV.B of this notice.

IV. The Final Rule and Response to Public Comments

A. The Final Rule

1. Summary of the Requirements

After careful consideration of the public comments on the NPRM, we are promulgating this final rule to establish a regulation for voluntarily-installed EDRs in order to standardize EDR data. The requirements of this regulation are tailored to advance the stated purposes of this rulemaking without imposing unnecessary burdens or unduly

[21] The Privacy Act of 1974 defines ''record'' as ''any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.'' 5 U.S.C. 552(a)(4).

[22] The Privacy Act defines ''system of records'' as ''a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.'' 5 U.S.C. 552(a)(5).

impeding the future technological development of EDRs. In overview, the final rule specifies uniform, national requirements for EDR-equipped vehicles covered by the regulation, including the collection, storage, and retrievability of onboard motor vehicle crash event data. It also specifies requirements for vehicle manufacturers to make retrieval tools and/or methods commercially available so that crash investigators and researchers are able to retrieve data from EDRs.

Specifically, the regulation applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service, that are equipped with an event data recorder and to manufacturers of these vehicles.[23] Subject to an exception for final-stage manufacturers and alterers discussed below, compliance with the requirements of the final rule commences for covered vehicles manufactured on or after September 1, 2010. The final rule is intended to be technology-neutral, so as to permit compliance with any available EDR technology that meets the specified performance requirements.

The following points highlight the key provisions of the final rule:

- Term ''event data recorder'' is defined as ''a device or function in a vehicle that captures the vehicle s dynamic, time-series data during the time period just prior to a crash event (e.g., vehicle speed vs. time) or during a crash event (e.g., delta-V vs. time), such that the data can be retrieved after the crash event. For the purposes of this definition, the event data do not include audio and video data.''
- Each vehicle equipped with an EDR must record all of the data elements listed in Table I, during the interval/time and at the sample rate specified in that table. There are 15 required data elements (*see* paragraph 563.7(a), Table I). Examples of these data elements are ''delta-V, longitudinal,'' ''maximum delta-V, longitudinal,'' ''speed, vehicle indicated,'' and ''safety belt status, driver.''
- Each vehicle equipped with an EDR that records any of the data elements listed in Table II identified as ''if recorded'' (most elements in that table) must capture and record that information according to the interval/time and at the sample rate specified in that table. Data elements listed in Table II as ''if equipped'' (i.e., ''frontal air bag deployment, time to nth stage, driver'' and ''frontal air bag deployment, time to nth stage, right front passenger'') must record the specified information, even if they are not presently doing so. (The ''frontal air bag deployment, time to nth stage'' data elements provide critical timing data for vehicles equipped with multi-stage air bags, which will help in assessing whether an air bag is deploying correctly during a crash (i.e., whether the sensors are functioning properly). In drafting this final rule, we had considered including these two elements as required elements under Table I, but we recognized that not all vehicles are equipped with multi-stage air bags. Thus, by including these elements in Table II and requiring recording of that information if the vehicle is so equipped, we are, in effect, requiring this data from all vehicles equipped with an EDR and multi-stage air bags.)

There are 30 data elements included in Table II (*see* paragraph 563.7(b), Table II). Examples of these data elements are ''lateral acceleration,'' ''longitudinal acceleration,'' ''frontal air bag suppression switch status, right front passenger (on, off, or auto),'' ''frontal air bag deployment, time to nth stage, driver,'' and ''safety belt status, right front passenger (buckled, not buckled).''

- The data elements required to be collected by the EDR pursuant to Tables I and II, as applicable, must be recorded in accordance with the range, accuracy, and resolution requirements specified in Table III, *Recorded Data Element Format* (*see* paragraph 563.8(a), Table III).
- For EDRs that record acceleration, the longitudinal, lateral, and normal acceleration time-history data must be filtered in accordance with the filter class specified in Table III (i.e., SAE J211–1, Class 60) (*see* paragraph 563.8(b)). Such filtering may be done during collection or post-processing.
- The EDR must collect and store data elements for events in accordance with the following conditions and circumstances as specified in paragraph 563.9:

(1) In an air bag deployment crash, the data recorded from any previous crash must be deleted; the data related to the deployment must be recorded, and the memory must be locked in order to prevent any future overwriting of these data.

(2) In an air bag non-deployment crash that meets the trigger threshold, all previously recorded data in the EDR's memory must be deleted from the EDR's memory, and the current data (up to two events) must be recorded.

- In order to ensure that survivability of EDR data in most crashes, the EDR is tested in conjunction with crash tests already required under FMVSS No. 208, *Occupant Crash Protection*, and FMVSS No. 214, *Side Impact Protection* (*see* paragraph 563.10). Except for the elements discussed below, the data elements required under paragraph 563.7 must be recorded in the format specified by paragraph 563.8, must exist at the completion of the crash test, and must be retrievable by the methodology specified by the vehicle manufacturer (as required under paragraph 563.12) for not less than 10 days after the test. The ''complete file recorded (yes, no)'' data element must read ''yes'' after the test.

The EDR need not meet the above survivability requirements for the following data elements: (1) ''Engine throttle, % full,'' (2) ''service brake, on/off,'' and (3) ''engine RPM.'' These elements have been excluded from these requirements because vehicles are crash tested without the engine running for safety reasons, so the EDR would not be able to record the above data elements under those circumstances.

- For vehicles equipped with an EDR, vehicle manufacturers must include a specified statement in the owner's manual to make the operator aware of the presence, function, and capabilities of the EDR (*see* paragraph 563.11).
- In order to ensure the retrievability of EDR data, each vehicle manufacturer that installs EDRs must ensure by licensing agreement or other means that retrieval tool(s) are commercially available for downloading the required EDR data. The retrieval tool must be commercially available not later than 90 days after the first sale of the vehicle for purposes other than resale.

2. Lead Time

In order to minimize the costs associated with the standardization of EDR data, we have stated our intention to provide adequate lead time to manufacturers to enable them to incorporate necessary changes as part of their routine production cycles. In the NPRM, we had proposed a compliance date of September 1, 2008. However, in their comments on our proposal, some manufacturers had argued that a longer lead time is needed to make the necessary design and production changes. Others requested a phase-in of the EDR requirements, which was characterized as particularly important for manufacturers that already have a

[23] These are the same applicability limits set for the air bag requirements in frontal crashes in Federal Motor Vehicle Safety Standard No. 208.

significant portion of their fleet equipped with EDRs.

In light of the fact that installation of EDRs remains voluntary on the part of vehicle manufacturers and our concomitant desire to minimize costs, we have decided to adopt the recommendations of commenters to provide vehicle manufacturers with additional lead time. Accordingly, subject to the exception below, we have decided to require covered vehicles manufactured on or after September 1, 2010 to comply with the requirements of this final rule. We believe that lead time in excess of four years, particularly given the revised technical requirements, should prove adequate for all vehicle manufacturers and all vehicle lines, without the need for a phase-in. Vehicle manufacturers may voluntarily comply with these requirements prior to this date.

Beyond the suggestions of the automobile manufacturers to increase the lead time associated with this rule, NHTSA conducted its own analysis of the technical changes needed to meet the standardization requirements and specifications of this final rule. As discussed below, we determined that the final rule will necessitate a number of design and technical changes to current EDRs.

For example, current EDR systems have been designed independently by the vehicle manufacturers, thereby resulting in differences in data definitions. Thus, in implementing this final rule, manufacturers will need to make technical changes to their systems to reflect standardization in the data elements.

Further, we have added new definitions related to EDR operation that will necessitate changes to EDRs. The ''trigger threshold'' required by this final rule is different than that which any vehicle manufacturer currently utilizes. Generally, vehicle manufacturers use wake-up levels to start collecting data, based upon vehicle deceleration. However, our final rule specifies that data collection be triggered by using change-in-velocity (delta-V) over a specified time period, which will require algorithm development and possibly additional non-volatile memory buffers to capture and analyze these vehicle data. The two-event capture and recording requirement in the final rule is also different from that which any vehicle manufacturer currently uses. While some current EDRs do capture and record two events, the data are not captured with standardized logic, as is specified in the final rule (e.g., standardization of the calculation of time between events). Another new requirement is that the EDR must lock the file if an air bag deploys during an event; this requirement is one that will need to be newly implemented by most of vehicle manufacturers.

Another requirement in the final rule that is likely to necessitate changes in EDRs is the requirement for the capture and recording of pre-crash data. With the exception of GM and Toyota, no other vehicle manufacturer captures and records pre-crash data that can be downloaded using a commercially available tool. Ford is developing a pre-crash data recording capability, but Ford is collecting those data in the engine control module. All other vehicle manufacturers will need to update their systems to achieve pre-crash data collection, which will necessitate algorithm development and possibly additional non-volatile memory to continuously capture and hold these data until an event occurs. Further, the sampling of the pre-crash data will need to be standardized to two samples per second, in order to meet the requirements of the final rule. To our knowledge, no vehicle manufacturer currently collects pre-crash data at this sample rate (e.g., most GM and Toyota vehicles capture data at one sample per second during the interval specified in the final rule). Again, updating these systems in this fashion will require additional algorithm development and possible additional non-volatile memory.

In addition, we anticipate that development of a turnkey operation for downloading EDR data will take significant time to accomplish. Vehicle manufacturers will need time to develop their licensed partner relationships for production of download tools.

Finally, we note that the latest version of GM's EDR (e.g., ones used in the 2004 Malibu) does not capture and record delta-V data within the accuracy requirement specified in the final rule. In two tests performed by IIHS, which shared results with NHTSA for use in a paper for presentation at an International Technical Conference on the Enhanced Safety of Vehicles (ESV), the delta-Vs recorded by the EDR were at or outside the accuracy specifications of the final rule.[24] Additionally, we note that GM has previously reported that the current generation of EDRs have data resolution and accuracy outside the levels specified in the final rule.[25] In sum, sufficient lead time will be required for vehicle manufacturers to make the changes necessitated by the final rule without incurring significant additional costs.

Consistent with the policy set forth in NHTSA's February 14, 2005 final rule on certification requirements under Federal motor vehicle safety standards for vehicles built in two or more stages and altered vehicles (70 FR 7414), final-stage manufacturers and alterers of covered vehicles must comply with the requirements of this final rule for vehicles manufactured on or after September 1, 2011. However, final-stage manufacturers and alterers may voluntarily comply with the requirements of the regulation prior to this date.

B. Response to Public Comments

1. Whether NHTSA Should Require EDRs

We expressly stated in the NPRM that we were not proposing to require all light vehicles to be equipped with EDRs. Under the proposed rule, vehicle manufacturers retained discretion regarding the decision of whether to install EDRs. However, if a vehicle were equipped with an EDR, the vehicle would be required to comply with the requirements of the proposed Part 563. We stated that we did not believe it was necessary to mandate installation of EDRs at this time, noting that the industry has substantially progressed in the development and installation of EDRs without the agency's requiring them. We estimated that at least 64 percent of model year 2004 passenger cars and other light vehicles have some recording capability, and more than half record elements such as crash pulse data. We noted also that industry was expected to install EDRs in an increasing percentage of new vehicles.

The agency received several comments on the issue of whether we should require manufacturers to install EDRs in all new vehicles. GM commented that NHTSA should adopt a FMVSS that would mandate installation of EDRs on all passenger cars and light trucks with a GVWR up to 3,855 kg (8,500 pounds). GM stated that a mandatory EDR requirement would maximize safety benefits by ensuring that all covered vehicles capture and record key crash data. According to GM, an EDR mandate would also eliminate incentives for manufacturers to remove existing EDRs or to delay their introduction. In addition, GM argued that the standard should prohibit

[24] Niehoff, Peter, *et al.,* Evaluation of Event Data Recorders in Full Systems Crash Tests, ESV Paper No. 05–0271 (2005).

[25] ''Recording Automotive Crash Event Data,'' Chidester, Hinch, Mercer & Schultz, NTSB (1999). *See http://www.ntsb.gov/events/symp_rec/proceedings/authors/chidester.pdf.*

switches that would permit EDR disablement.

Public Citizen, Advocates, NADA, and NTSB urged NHTSA to require the installation of EDRs. Public Citizen stated that NHTSA should require EDRs because these devices can provide valuable safety benefits, including: (1) Better understanding of crash causation and injury sources; (2) enhanced commercial vehicle safety; (3) better data on defect trends; (4) safer highway designs; and (5) improved emergency response to crashes. Advocates argued that unless the agency requires EDRs, data collection would take many years to gather sufficient information for useful study. Mr. Fink, a crash reconstructionist, stated that the rule should require EDRs in all vehicles sold in the U.S. Four individuals commented that they supported the NPRM, one of which indicated that EDRs should be mandatory.

Several commenters argued that NHTSA's proposal to apply the rule to only those vehicles equipped with EDRs would either act as an incentive for manufacturers to remove EDRs from product lines currently equipped with EDRs or would discourage manufacturers from installing EDRs in new product lines. Ford argued the agency would need to issue a rule that requires installation of EDRs to accomplish the objectives set forth in the agency's proposal. Ford stated that it has been unable to develop a workable definition of an EDR that would uniformly create a truly voluntary requirement for all vehicle manufacturers and that avoids incentives for removal of existing recording capability or the deferred introduction of such capabilities.

IIHS, Public Citizen, PCIAA, and Children's Hospital of Philadelphia joined Ford and GM in arguing that not requiring manufacturers to install EDRs would act as an incentive for vehicle manufacturers to remove EDRs from vehicles and/or would discourage installation of EDRs in new product lines. According to these commenters, the net result would be a reduction in the number of vehicles equipped with EDRs. While Ford expressed support for modifying language to create a truly voluntary requirement that would at the same time address these concerns, IIHS, Public Citizen, PCIAA, GM, and Children's Hospital argued for a mandatory rule (with PCIAA noting that the industry needs ample lead time to comply), which would eliminate the incentive to remove EDRs and/or the discretion not to install EDRs in new product lines.

SISC supported the proposal's position that EDRs should include minimum standards for capturing crash data. SISC stated that current EDRs are focused on capturing data to evaluate the performance of safety systems; however, they do not adequately address the needs of capturing data for crash investigations. SISC stated that without mandatory minimum standards for capturing crash data, EDRs would not provide the type of information needed for safety research.

On the other hand, DaimlerChrysler and Toyota supported a voluntary approach to EDR installation. DaimlerChrysler also commented that the definition of EDR should be modified to ensure that EDRs are voluntary. In explaining its request for modification, DaimlerChrysler stated that the NPRM's definition of EDR references the deployable restraint control module for the purpose of determining whether a vehicle is equipped with an EDR. DaimlerChrysler argued that all light vehicles are equipped with such control modules; therefore, the adoption of a definition making such a reference would effectively mandate EDRs for all applicable vehicles, contrary to the agency's stated intent.

Porsche also argued that the NPRM's definition of EDR would effectively require manufacturers to install EDRs. Porsche argued that a vehicle might be capable of recording and storing a few pieces of static freeze frame data in the air bag control unit (i.e., an isolated observation or snapshot of a set of data such as the seat belt status, frontal air bag warning lamp status, etc., triggered by an impact exceeding a defined trigger threshold). Although such systems fall outside the common understanding of EDRs, Porsche argued that this type of recorded data would fall within the proposed EDR definition. Porsche stated that storage of freeze frame data should not, by itself, be a sufficient basis for determining that a vehicle is equipped with an EDR, particularly since such data do not provide information on pre-crash events. Siemens VDO Automotive AG characterized the rule as ''semi-compulsory.''

We have carefully considered the arguments presented by the commenters for requiring the installation of EDRs in all subject vehicles.

We are not yet persuaded that it is necessary or appropriate to mandate the installation of EDRs. We believe that the industry's voluntary development and installation of EDRs, combined with the standardization requirements in this rule, will be sufficient to meet the agency's and public's near term needs. Standardized EDR data from the growing population of vehicles with EDRs, collected and compositely analyzed, will enable the agency to investigate crashes more effectively and to analyze safety equipment performance, resulting in improved agency understanding of crash and injury causation. These data will also lay a foundation for advanced crash notification systems.

Further, insofar as achieving those near term goals is concerned, adopting a rule mandating EDR installation would result in an unnecessary cost for automobile manufacturers and consumers. To operate, EDRs need a databus.[26] Since less expensive vehicles are not equipped with a databus, a rule mandating EDR installation would require manufacturers to install a databus in those vehicles. While we are not presently compelling the installation of EDRs, it is our intention that their use continue to expand.

As for the agency's longer terms goals related to EDRs, we expect the extent of installation in new vehicles to continue increasing and to reach approximately 85 percent by model year 2010. Based on currently available information, such as that obtained in connection with our NCAP program, the new vehicles lacking an EDR in that model year will be primarily those manufactured either in Germany or Korea. As Korea has expressed interest in the development of an EDR standard under the International Standards Organization, it appears that Korean built vehicles also might eventually be voluntarily equipped with EDRs.

Further, we believe that allowing the current voluntary, gradualist approach to increased installation of EDRs to continue is more appropriate for meeting those longer term goals than mandating an acceleration of further increases in the extent of installation. We are aware that some consumers are concerned about the ownership and use of EDR data. The voluntary approach provides additional time for implementing measures concerning those concerns.

We have considered the comments of Advocates and SISC, asking us to mandate EDRs so that it is possible to gather additional data for safety research. The agency seeks to gather EDR information in a readily usable manner to analyze crashes and the performance of safety equipment as composite information (i.e., to discover statistically significant trends). We

[26] The bus (connections between and within the central processing unit, memory, and peripherals) is used to carry data.

believe that the current level of EDR installation, combined with our standardization requirement, will yield data of statistical significance. The expected further increases in the extent of installation will improve the quality of our data still further. In light of our expected ability to meet these near term goals, we do not see the need to mandate EDR installation at this time.

We will monitor future increases in the extent of installation of EDRs and revisit this issue if appropriate.

We do not agree with the comments that our decision to adopt data standardization requirements without also mandating the installation of EDRs will induce manufacturers to remove EDRs from the vehicles in which they are currently installed or to drop plans for installing them in additional vehicles. The fact that approximately two-thirds of new vehicles are already equipped with EDRs is strong evidence of a significant incentive to install these devices. Further, as noted below, the data standardization requirements we are adopting in this final rule are less extensive and thus less costly that the ones we proposed in the NPRM. More specifically, we lowered the number of events and elements to be recorded. Based on our cost estimates (discussed below), we do not believe that adoption of our revised data standardization requirements will increase costs sufficiently to create a countervailing incentive for manufacturers to remove EDRs. We also note that consumer products, such as OnStar®, incorporate EDRs into their services. The consumer appeal of these consumer products strengthens the existing incentive for manufacturers to install EDRs in their vehicles.[27] In sum, we conclude that there are major benefits from the use of EDRs, but the marketplace appears to be adopting EDRs and we do not currently see a need to mandate their installation. The agency will monitor further progress in this area, and will be prepared to consider this question further if needed.

We have also considered GM's comment urging us to ban EDR ''on/off switches'' and the comments of other commenters asking that we require them. This final rule concerns the standardization of EDR data elements and ensuring that downloaded EDR data are available to intended users. We did not propose either requiring or precluding on/off switches in the NPRM. We note, however that on/off switches could limit the benefits provided by EDRs. As with the issue of mandating installation of EDRs, we think it premature to compel action on this issue, and will continue to monitor and assess whether action is warranted in the future.

2. EDR Data Elements

a. Number and Types of Required Data Elements

The NPRM provided a list of required data elements (a minimum set of elements required to be recorded if a vehicle is equipped with an EDR, regardless of whether those elements are presently recorded by the vehicle's EDR) and a list of ''if equipped'' elements (elements that would be required to be recorded only if the vehicle is equipped with the relevant safety system or sensing capability).

NHTSA received several comments on the proposal's number of required data elements. Several manufacturers commented that the proposal's required number of data elements was excessive; however, manufacturers' comments differed as to which of the data elements should be deleted. Commenters representing highway safety advocacy groups suggested that the number of required elements is insufficient to meet NHTSA's stated goals of improving data compatibility, crash investigation, and safety. Some commenters suggested adding the VIN as a required data element.

GM, DaimlerChrysler, IIHS, and Mitsubishi argued that the NPRM proposed an excessive number of data elements. GM provided a critique of the each of the data elements and recommended a different list of required data elements. GM's position was that the NPRM's data elements go beyond the minimum set of data elements needed by safety researchers and crash reconstructionists. GM argued that the number of required elements in the NPRM could compromise the ability of the vehicle's control modules to perform their primary function of deploying restraint systems. The number of required elements could also inhibit manufacturers from collecting other, more potentially useful data, to the extent that the required elements consume available processing capacity.[28] IIHS made a similar comment, stating that the number of proposed data elements increases the burden on manufacturers and the incentive for manufacturers to delay or eliminate safety features. Mitsubishi commented that NHTSA should only require those data elements that are needed to capture crash data that would truly be useful in improving motor vehicle safety.

Hyundai and Kia offered several comments regarding NHTSA's proposed data elements. First, they requested that, ''data capture be limited to events that trigger air bag deployment.'' Second, they commented that ''engine RPM'' and ''engine throttle'' data serve the same purpose and requested that only one of those data elements be required. Third, Hyundai and Kia commented that the data elements ''Ignition cycle, crash'' and ''Ignition cycle, download'' should not be required; Hyundai's and Kia's position is that these data elements do not provide data about the crash event, and that these elements would require additional programming and memory. According to these companies, requiring these data elements would increase costs and necessary lead time.

Delphi recommended that NHTSA limit ''the content of event records to those data that are of significant value to crash investigation and safety system performance analysis' in order to reduce the amount of memory that will be required. Delphi stated that each required parameter would consume memory for six instances of that parameter because of the need to hold and compare up to three events in temporary and permanent memory.

Subaru and AIAM argued that the NPRM contained too many data elements, and each provided a recommendation for which data elements the final rule should require. Subaru recommended that NHTSA should re-select and prioritize data elements in order to increase the feasibility of compliance with a final regulation. Specifically, Subaru recommended that NHTSA ''omit acceleration direction, tolerance range, and accuracy of G sensors from the requirement or allow significant additional lead time on a phase-in schedule.'' AIAM commented that to reduce the number of systems that would require a complete redesign of vehicle electrical architecture, the minimum data set should include only the following data elements: (1) Driver and front passenger belt use; (2) throttle

[27] In response to the concerns that the breadth of our proposed EDR definition could have the effect of requiring the installation of EDRs, we note that we have revised the definition of EDR, as discussed below, to exclude static freeze-frame data elements.

[28] Accordingly, GM, Daimler Chrysler, Ford, and Toyota recommended deletion of the following ''required'' data elements: (1) Engine RPM; (2) Longitudinal Acceleration (x-direction); (3) Multi-event Crash; and (4) Frontal Air Bag Deployment Level. The four automakers also recommended deletion of the following ''if equipped'' data elements: (1) ABS Activity; (2) Lateral Acceleration (y-direction); (3) Normal Acceleration (z-direction); (4) Occupant Size Classification; (5) Seat Position; (6) Steering Wheel Angle; (7) Stability Control; (8) Frontal Air Bag Suppression Switch Status; (9) Vehicle Roll Angle; (10) Disposal (second stage of a frontal air bag).

position; (3) brakes on/off; (4) ABS engaged/not engaged; (5) vehicle speed; (6) longitudinal and lateral vehicle acceleration; (7) delta-V; and (8) time of air bag deployment.

In contrast to the commenters who suggested that the NPRM contains too many required data elements, Public Citizen and PCIAA encouraged NHTSA to require additional data elements. Public Citizen stated that to maximize the benefits of the EDR rule, NHTSA should standardize (i.e., require) a far more extensive list of EDR data elements. Public Citizen pointed to the Institute of Electrical and Electronics Engineers (IEEE) Project 1616 (''Motor Vehicle Event Data Recorders''), which includes 80 EDR data elements used by different groups. Public Citizen commented that NHTSA did not propose to require many of the ''top ten'' data elements listed by the NHTSA-sponsored EDR Working Group.[29] Public Citizen argued that standardizing EDR data elements would ensure compatibility of EDR data.

PCIAA commented that the proposed rule focuses too much on restraint systems and not enough on systems to help the driver avoid collisions. PCIAA suggested that NHTSA should require data elements that would track driver inputs and the performance of the steering, suspension, or braking systems. According to PCIAA, the rule should include other equipment such as vehicle lighting or ''intelligent vehicle'' systems and should address equipment that is likely to be in used in the future, such as stability control systems, radar, cameras, and similar technology to monitor the driving environment.

Nissan, Mr. Fink, Mr. Kast,[30] Bendix, and AAA all suggested specific data elements they believe should be required. Several data elements that the commenters suggested we require were not proposed in the NPRM. Nissan suggested that the following elements be required: (1) Delta-V direction (lateral, longitudinal, vertical); (2) roll rate (roll acceleration); (3) yaw rate; (4) gear position; (5) traction control system status; (6) number of downloads after event; and (7) passenger air bag disable indicator status. Mr. Fink stated that the rule should require a standard data set, including ''vehicle speed, brake switch status, accelerator status, engine rpm, seat belt switch status and air bag deployment/belt pre-tensioner status.'' Mr. Kast commented that, based on his studies of EDR data, the following elements are necessary to evaluate the cause of a crash: (1) Status of dimmed headlights; (2) status of high beam; (3) status of indicator left; (4) status of indicator right; (5) status of any special signals; and (6) yaw angle or yaw angle velocity. Mr. Kast's rationale is that the status of the lighting equipment and turn signals are important for the evaluation of crashes that occur in the dark. Mr. Kast also emphasized the importance of knowing the yaw angle or yaw angle velocity in order to calculate the trajectory of the vehicle.

Bendix Commercial Vehicle Systems, L.L.C. commented that the following data elements should be included in the minimum requirements: (1) Transmission status (gear selection on automatic transmissions); (2) brake switch status; (3) accelerator (%); (4) engine speed (RPM); (5) date time; (6) engine hours; (7) odometer reading; (8) headlights on/off; (9) turn signal status; (10) cruise control (on/off); (11) ABS fault status; and (12) tire pressure (axle or each wheel or as regulated by NHTSA).

AAA commented that rear seat air bags are being installed with increasing frequency and stated that NHTSA should consider requiring the recording of data elements associated with rear seat air bags in vehicles so equipped (e.g., rear seat occupant presence, size, seating position, and restraint use).

SISC, Children's Hospital of Philadelphia, Delphi, and Public Citizen commented on the NPRM's categorization of data elements as ''required for all vehicles equipped with an EDR'' (Table I) or ''required for vehicles under specified conditions'' (Table II) and suggested that we change the categorization of certain data elements. SISC stated that NHTSA should mandate lateral acceleration as part of the required set of data elements. According to SISC, multi-axis accelerometers are becoming less expensive, and both longitudinal and lateral acceleration are essential to determining the true delta-V and the principal direction of force, which are critical elements of general crash investigation, biomechanics research, and the understanding of injury causation. Children's Hospital of Philadelphia made a similar comment, stating lateral acceleration should be a mandatory data element.

Delphi suggested that data elements not normally part of the restraint control system should be moved from the table of data elements required if the vehicle is equipped with an EDR to the table (NPRM's Table II) of elements required under specific conditions (e.g., vehicle indicated speed, engine RPM, engine throttle, service brake status). According to Delphi, this would lower the cost of implementation for many manufacturers.

On the other hand, Public Citizen argued for re-categorizing several data elements that the NPRM proposed to be recorded only under specified conditions (Table II) and instead require them (i.e., place them in Table I). Public Citizen believes that the final rule should require these data elements to be recorded (e.g., seat belt status for the front passenger). Public Citizen's rationale is that many of these elements only require additional sensing capabilities, which are fairly inexpensive in most cases.

NTSB expressed concern that Table I and Table II will result in different data being available from different EDRs. It stated that the rule should require the same information from all EDRs to encourage uniformity of data and standardization of EDR usage. NTSB encouraged NHTSA to develop a comprehensive standardized list of data elements that would apply to all highway vehicles, including heavy vehicles.

Several commenters, including Mr. Kast, Injury Sciences, Public Citizen, and EPIC, recommended requiring some type of date/time stamp and/or VIN information. Mr. Kast and Injury Sciences commented that a date/time stamp should be added to the required elements in order to correlate the recorded data with a crash event. Mr. Kast explained that the linkage is particularly important since low intensity accidents may be recorded. If this information is not required, Injury Sciences urged NHTSA to consider alternatives for linking data to a particular vehicle and accident. Public Citizen stated that a VIN data element would significantly increase the usefulness of EDR data by permitting crosschecks across various NHTSA databases. EPIC commented that the EDR should record the first eleven digits of the VIN, although ''the unique serial number portion of the VIN—a personal identifier—should not be collected.'' EPIC's rationale is that make, model, and manufacturing origin are important data for crash analysis.

GM and Delphi raised cost issues pertaining to the data elements. GM requested that the final rule expressly state that the specified list of data elements is not intended to limit manufacturers' ability to voluntarily collect and record additional data elements. Delphi suggested that the

[29] We note that this group was a fact-finding group, and the findings were those of the group and not NHTSA's findings.

[30] Mr. Kast's comments were submitted independently and by Siemens VDO Automotive, AG. According to Mr. Kast, he is an ''independent expert in the field of accident investigation and accident data recorders.''

condition for an element to be required (Table II of the NPRM) be changed from ''vehicle is equipped,'' to ''data is available to the recording device.'' According to Delphi, this would lower the cost of implementation for many manufacturers.

Siemens VDO Automotive AG and Bendix commented on the state of technology and our EDR proposal. Siemens VDO Automotive AG commented that the NPRM definitions for data elements should be modified (i.e., made more stringent) to reflect the state of technology already available and in use. Siemens predicted that the changes would not result in significantly higher costs because the standardization and adoption by all manufacturers would lower the costs of production. Bendix suggested that solid state digital storage media and non-volatile storage devices could be used in conjunction with emerging technologies in the area of high-speed data links, which combine data, voice, and video data on a single communications link to record additional types of data.

Nissan and Honda requested clarification on specific technical aspects of our proposal. Nissan stated that instead of recording the engine throttle, we should require recording the accelerator pedal operation. Additionally, Nissan suggested that the rule should permit two alternatives for determining the beginning of an event, as provided in SAE J1698, *Vehicle Event Data Interface—Vehicular Output Data Definition*. Nissan also sought clarification about the ''complete file recorded'' data element. Nissan questioned whether the ''Yes'' value indicates that the EDR functioned the whole time or whether the data set is complete (i.e., the EDR received good data from all systems). Honda sought clarification related to the data element for ''frontal air bag deployment level.'' Honda sought to confirm its understanding that this term means the percentage of maximum inflator output used for occupant restraint (i.e., inflator output excluding the output of the deployment for disposal, regardless of the delay timing of the second (disposal) stage deployment).

TRW Automotive commented that the status of the anti-lock braking system (ABS) is not adequately indicated by the ''ABS Activity'' data element. TRW suggested that ''ABS Warning Lamp (On/Off)'' would provide a better indication of the status of the ABS system at the time a crash occurred. TRW Automotive commented that the data attributes for stability control systems should be modified because they do not clearly indicate the status. According to TRW, ''off'' should indicate that the driver has turned off the system, and an attribute ''Not Available'' should be added to indicate that the system is in a ''not available'' state.

We indicated in the NPRM that it was not our intention to require manufacturers to install expensive technological hardware or software to meet our EDR standardization proposal. In the NPRM, we emphasized that vehicle manufactures have voluntarily made significant investments in EDRs and are already recording several data elements that suit our goals. The NPRM explained that our proposal sought to build upon the automotive industry's EDR accomplishments by standardizing the way data elements are captured and recorded. In other words, we considered our proposal to record the most important data elements relevant to crash reconstruction, the analysis of safety equipment performance, and ACN in light of the data already being processed by vehicles.

We envisioned and it was our intent that the proposed EDR standardization requirements could be implemented by vehicle manufacturers at a minimal cost, since vehicle manufacturers had made EDR capability an additional function of a vehicle's air bag control system. We did not intend to require vehicle manufacturers to install equipment, such as additional accelerometers, to comply with the rule. (We estimated, for example, that an additional accelerometer could cost $20 per vehicle.)

Our approach of standardizing the most important data elements at a minimal cost remains the same. However, after carefully considering the comments, we have re-evaluated the number and types of data elements that manufacturers should be required to standardize. We learned from the comments that the frequency, range, accuracy, and precision requirements (discussed subsequently) for many of the data elements we proposed would require an upgrade in sensors, microprocessors, and memory capability that would substantially add to the cost of complying with this rule. This was not our intention. We also learned that it is not current industry practice to record some of the data elements we proposed. In order to remain consistent with our approach of standardizing data at a minimal cost, we have revised the number of required data elements to reduce implementation cost and better reflect current industry practice.

In revising the number and types of data elements to be recorded if a vehicle is equipped with an EDR (i.e., Table I), we deleted five items that we had proposed in the NPRM: ''longitudinal acceleration,'' ''engine RPM,'' ''frontal air bag deployment level, driver,'' ''frontal air bag deployment level, right front passenger,'' and ''time from event 2 to 3.'' We added two items: ''time, maximum delta-V'' and ''delta-V, longitudinal.'' [31]

We deleted the ''engine RPM'' from Table I but added it to Table II. ''Engine RPM'' is somewhat related to ''accelerator pedal position.'' Accelerator pedal position reflects the driver's input to the engine. Engine RPM indicates the engine's response to that input. We believe that the two data elements are closely related, although distinct. We have reviewed many of GM's EDR crash data sets, and see little value in requiring ''engine RPM'' at this time. Moving this data element to Table II will reduce memory costs and the amount of data manipulation during pre-crash.

After carefully considering the comments, we have also decided to remove ''frontal air bag deployment level, driver'' and ''frontal air bag deployment level, right front passenger'' from the list of required data elements (Table I). These elements would have indicated the deployment level of the driver's and right front seat passenger's air bag system. After further consideration, we believe that the same information we anticipated gathering from these deleted data elements can be ascertained using other data elements: ''frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, driver'' (and the right front passenger equivalent) from Table I and ''frontal air bag deployment time to n^{th} stage, driver'' (and the right front passenger equivalent) from Table II.

In revising the number and types of data elements to be recorded under specified conditions (Table II), we added four items that did not appear in the NPRM: ''delta-v, lateral,'' ''maximum delta-V, lateral,'' ''time to maximum delta-V, lateral,'' and ''time to maximum, delta-V, resultant.'' [32] Commenters had requested changes in the data elements for longitudinal acceleration and delta-V, and as noted elsewhere in this document, the agency has adopted a number of those changes

[31] A discussion of our changes relating to the acceleration and delta-V data elements occurs in the next subsection, titled ''The Acceleration and Delta-V Data Elements.''

[32] A discussion of the data elements related to acceleration and delta-V follows below in section titled ''The Acceleration and Delta-V Data Elements.''

as part of this final rule. However, in order to fully implement those changes for the longitudinal direction, we believe it is necessary to also adopt data elements that constitute the lateral counterpart of the requested changes. This was done to provide standardized data elements that are consistent with those in Table I for longitudinal acceleration and delta-V. However, we have incorporated these additional data elements in Table II, rather than Table I.

After considering the comments, we have decided to retain a number of the data elements that some manufacturers recommended that we delete, including ''occupant size classification'' and ''frontal air bag suppression switch status.'' Occupant size classification is important in determining whether the advanced restraint systems are working properly by drawing a comparison between the occupant and the safety system's classification. We believe that this is vital to that purpose of obtaining EDR data for the analysis of safety equipment performance. Frontal air bag on/off switch status is important in cases where the right front passenger air bag does not deploy. There is a possibility in some vehicles with no back seats that the air bag was turned-off at the time of the crash. It is critical that the EDR capture this evidence to enable an evaluation of whether advanced restraint systems functioned properly.

We have also decided to retain ''ignition cycle, crash'' and ''ignition cycle, download.'' These two data elements provide a method to identify whether the data stored in the EDR is related to a crash under investigation or to a previous crash.

As indicated above, several commenters recommended recording other data elements that we did not propose to record (e.g., roll rate, yaw rate, gear position, number of downloads after event, passenger air bag disable indicator status, status of lamps and signals, engine hours, odometer reading, cruise control, ABS fault status, ''intelligent vehicle systems,'' steering input, and tire pressure). We have carefully considered these recommendations. We emphasize this final rule standardizes and requires (Table I) the most important data elements that are essential to crash reconstruction, the analysis of safety equipment performance, and ACN. We have decided not to require the recording of these additional data elements. We believe that recording these additional data elements, which are currently of lesser value for our stated purposes, would not only result in significantly higher costs but would also risk overburdening the microprocessing and memory capabilities of EDRs and increase potential record times. This increases the risk of system failure. We may revisit the distribution of data elements between Table I and Table II as technology advances, costs decrease, and the ability to record these data elements become less risky. We may also consider expanding Table II in the future as manufacturers expand the capability of EDRs and add additional sensors to motor vehicles that could be beneficial to motor vehicle safety.

We have carefully considered comments from Mr. Kast, Injury Sciences, Public Citizen, and EPIC that we should include crash location, date/time stamp and VIN as data elements. We believe that the data elements related to crash location, date, time, and VIN are not essential to meet our goals of crash investigation and safety equipment performance. As we have stated earlier, we are currently standardizing only data elements that are important for composite analysis. We have a need to gather information about specific crashes only as it is related to general trends that we may discover with the information we gather. Therefore, we presently find it unnecessary to require manufacturers to collect or to standardize this type of data.

After considering Public Citizen's comments, we disagree with the argument that the final rule must include all elements listed in the IEEE 1616 MVEDR Standard report and the ''top ten'' items presented in the NHTSA-sponsored EDR working group report. The IEEE 1616 report, which lists 80 data elements, is a compilation of the data elements that are available/recordable at present, or expected to be in the future, for various vehicles. In other words, the data elements listed in the IEEE 1616 report are a compilation of all available data elements (i.e., a ''data dictionary''), and not a recommended set of data elements. We do not believe it would be appropriate at this time to require automobile manufacturers to record all of the data elements contained in the IEEE 1616 report. Doing so would substantially extend the number of standardized data elements, resulting in redundancy and the standardization of many data elements that are presently unrelated to the purposes of this rulemaking.

Public Citizen also contends that we have not included many of the data elements listed in the ''top ten'' list found in the NHTSA-sponsored EDR working group report. As we stated above, this group was sponsored by NHTSA; however, we have never adopted its findings as our own. However, we note that the final rule does include standardization protocols for many of the same data elements that are listed in the ''top ten'' list, including longitudinal/lateral acceleration, seat belt status, pre-crash data (e.g., steering wheel angle, brake use, vehicle speed), vehicle roll angle, ABS, stability control, and air bag data.

We have considered Delphi's recommendation that data elements not pertinent to restraint control and/or crash reconstruction should be moved to Table II. Our NPRM was based on this premise; that is, Table I contains the data elements critical to crash reconstruction, advanced restraint operation, and enabling ACN. We continue to support our approach for Table I data elements. However, we have modified Table I slightly by: (1) Moving the ''engine RPM'' data element to Table II, because it can generally be inferred from accelerator pedal position; (2) substituting delta-V-related crash severity measurements for acceleration measurements to reduce complication and cost of EDRs, and (3) dropping those data elements related to a third event, because we believe two events will capture most crashes with multiple, non-trivial events.

NTSB expressed its desire for recording accelerator/brake pedal positions in certain special crashes. The revised Table I retains both of these data elements.

We have also considered Public Citizen's arguments that several data elements currently listed in Table II could be moved to Table I (required) for minimal to no cost (e.g., safety belt status, front passenger). The costs associated with placing particular data elements in Table I is not the sole factor in determining whether to include that data element in the core set listed in Table I. To minimize the risk of data loss, we must also consider the current capabilities of microprocessors to process the information and the availability of memory storage capacity. The longer or larger the data file, the more complicated it is to record it successfully during a crash. We believe our Table I required list and our Table II (standard formats for data elements recorded by manufacturers) provide a reasonable balance of these concerns and priorities. We may reevaluate the number and types of data elements in the future as EDRs, memory, and microprocessing continue to develop. In the meantime, we believe that it is appropriate to keep ''safety belt status, right front passenger'' and other similar

data elements in Table II. We emphasize that our final rule requires a minimum set of data, and manufacturers may and most likely will exceed this minimum data set, incorporating data elements listed in Table II and event data elements we have not listed in this final rule.

We note that the data elements in Table II must be standardized if recorded. Therefore, we believe that manufacturers that are currently recording these data elements will be able to standardize at a minimal cost.

We have considered NTSB's comment encouraging uniformity in the number and types of data elements recorded for all EDRs. As noted above, we believe this final rule standardizes a core set of data elements that will be useful for crash reconstruction, the analysis of safety equipment performance, and the development of ACN. Table I does standardize a core set of data elements among all vehicles equipped with an EDR. However, we recognize that vehicle manufacturers are in different stages of technological development with their EDRs. Some manufacturers have made greater strides in the development of EDRs and the number of recorded data elements while others have been slower to evolve. We developed Table II to standardize data elements that are currently recorded by some manufacturers, but not others.

NTSB commented that they were concerned that our approach of a minimum data set (Table I) combined with an optional data set (Table II) would result in different vehicles recording different data elements. This regulation establishes a minimum data set for vehicles that are equipped with an EDR. Manufacturers are permitted to record other additional data elements, as they believe fit the needs of their vehicles and equipment installed on their vehicles. We have taken an approach that will: (1) Ensure that all vehicles equipped with an EDR will have a minimum set of data, (2) provide standardization for additional priority data elements, and (3) allow manufacturers to obtain other additional data as they deem appropriate to meet their needs. As EDRs evolve, NHTSA may reevaluate this approach in future rulemakings.

We also want to provide manufacturers with the flexibility to improve their EDR designs and record a diverse group of data elements so that we may continue to study the usefulness of various data elements in terms of safety. We view EDRs as a new technology that has not seen much maturation outside of its initial inception as part of the air bag module. This rulemaking, we believe, is a positive step toward guiding the development of EDR technology for vehicle safety purposes by both requiring a standardized set of data elements that we believe will be useful while at the same time providing manufacturers with the ability to continue to evolve the EDR.

Likewise, we do not agree with IIHS that the number of data elements we have chosen to standardize will provide incentive for manufacturers to delay or eliminate safety features. Our cost estimates indicate that our standardization requirements, as revised in this final rule, will not result in significant costs to manufacturers. As stated above, we have narrowed the recording requirements for EDRs. Also, we believe that our decision to standardize a core set of data elements and requiring standardization of data elements ''if recorded'' will allow flexibility for manufacturers to research and develop EDRs.

We have considered Hyundai's and Kia's argument that we should limit the recording of data to events that trigger air bag deployment. We do not believe that limiting our data to events that trigger air bag deployment would be sufficient for our purposes. We want to know about events that should have deployed air bags, but did not do so, indicating the possible existence of a defect. Further, we seek to gather data not only to analyze the performance of air bags, but also to analyze the performance of other safety equipment, such as seat belts. We also seek to gather data helpful for crash reconstruction. We believe that this data can be standardized and recorded without significant cost. Further, we anticipate that development of e-911 and ACN systems may lead vehicle manufacturers to incorporate additional elements besides air bag deployment; such elements may provide information to EMS regarding other crash modes, such as side impact and rollover, as sensor technologies advance and their costs decline.

We do not agree with AIAM that our final rule will require a complete redesign of vehicle electrical architecture if we do not reduce the minimum data set to the eight elements it proposes. As discussed in the costs section, we anticipate negligible redesign to the electrical architecture of vehicles as a result of our final rule. Additionally, we note that our new Table II is similar to AIAM's recommendation. Our Table II includes ABS engaged/not engaged and right front passenger belt use.

Nissan requested clarification about the ''complete file recorded'' data element, asking whether the ''yes'' value indicates that the EDR functioned the whole time or whether the data set is complete. A complete record is a record that ends normally, regardless of the amount of data. An incomplete record is one that ends abnormally. For example, a complete value with ''yes'' indication would include a scenario where all data elements were captured successfully and recorded to memory or where some elements were not captured because of device failure but the full record was recorded to memory. Examples of when there is an incomplete record is where all data was captured successfully, but the record function interrupted and the file is incomplete, or in the case of a power or system failure, there is no data captured, so there is no value.

TRW commented that the data element ''ABS Activity'' does not adequately indicate the status of the ABS system. In the NPRM, we intended the word ''status'' to mean that the ABS was actively controlling the brake forces, not whether the system status was operational. We would expect ''on'' to mean that the vehicle's ABS was actively controlling the vehicle brakes. Conversely, we would expect ''off'' to be used at all other times. For example, if a person is stopping and presses the brakes moderately in normal driving conditions, then we would expect the service brake operation to indicate ''on.'' If driver uses hard braking, activating the ABS, then the ABS activity would indicate ''on'' for that time period. The ''service brake'' data element would continue to read ''on'' during periods of ABS activity.

TRW also commented that the data attributes for stability control systems should be modified because they do not clearly indicate the status. We proposed three states for stability control: ''on,'' ''off,'' and ''engaged.'' ''On'' and ''off'' are intended to be status of the vehicle's stability control on/off switch. We intend ''engaged'' to be used when the stability control is actively controlling the vehicle. Some vehicles do not have on/off switches for stability control, and the systems remains ''on.'' In such a case, the indicator would read, depending on the circumstances, either ''yes'' or ''engaged.''

We also made a modification to the ''condition or requirement'' provision for most of the data elements in Table II. In the NPRM, we used the phrase ''if equipped.'' We proposed the phrase ''if equipped'' because we envisioned requiring manufacturers to record the data elements in Table II if the vehicle is equipped with the relevant safety

system or sensing capability. In the final rule, the condition or requirement for most data elements in Table II will be ''if recorded.'' By using ''if recorded'' we mean that manufacturers are required to comply with Table II if the data element is recorded in non-volatile memory for the purpose of subsequent downloading. We made this modification so that the final rule better reflects current industry practices. Some data elements may only be recorded in volatile memory (for applications such as air bag deployment) and not non-volatile memory for the purpose of subsequent downloading. Our proposal would have required manufacturers to record in non-volatile memory certain data elements, such as acceleration.

We also believe that the change effectuates our goal of providing standardization for the data elements listed in Table II without substantial cost or risking EDR malfunction. We agree with the commenters that recording these data elements, such as acceleration, at the frequency and intervals we proposed, would require additional memory—adding to the cost of implementation. Recording these data elements in non-volatile memory would have also increased the risk of not capturing a complete crash record. A more complete discussion of the risks associated with recording large crash records is discussed below.

b. The ''Acceleration'' and ''Delta-V'' Data Elements

In the NPRM, we proposed that Table I (the minimum data set) include the crash severity data elements ''longitudinal acceleration'' and ''maximum delta-V.'' We selected longitudinal acceleration to provide crash severity information. Longitudinal acceleration is a common data element collected in engineering studies and crash tests to determine crash severity and the shape of the crash pulse in frontal and rear crashes. It also provides information regarding the maximum acceleration level. Therefore, we believed that it was appropriate to standardize longitudinal acceleration.

We also proposed to include maximum delta-V in the minimum data set. We proposed to include maximum delta-V in the minimum data set because it quantifies the severity of the crash in the vehicle's memory. We had proposed that the absolute value of maximum delta-V be used, if the vehicle experienced a second crash, to determine whether the data in the EDR's memory should be replaced with the subsequent (or second) crash information. We proposed that only subsequent crashes with higher maximum delta-V must be recorded in the vehicle's memory.

GM, Daimler Chrysler, Ford, Honda, and Toyota specifically requested that we replace the longitudinal acceleration and lateral acceleration data elements, as proposed in the NPRM, with longitudinal/lateral delta-V elements. All suggested that delta-V is a better indicator of crash severity than acceleration. They stated that while longitudinal/lateral acceleration is currently recorded by some manufacturers, acceleration data is not currently used or needed for safety-related crash analysis and reconstruction purposes. The data is intended for internal use, specifically to understand deployment algorithms. DaimlerChrysler explained that because of this very specific use of acceleration data, the time duration recorded was never intended to capture a complete crash and is usually too volatile for use in crash investigation. GM made a similar comment, stating that delta-V is preferred over acceleration in analyzing crash reconstruction because acceleration data, even after filtering, is typically too sporadic.[33] Accordingly, the manufacturers stated that accident reconstructionists usually use delta-V instead of acceleration data.

Honda also recommended replacing the proposed elements for longitudinal, lateral, and normal accelerations with delta-V, coupled with the angle or direction of delta-V, to improve the overall understanding of a crash event.[34]

Hyundai and Kia suggested that the ''lateral acceleration'' and ''normal acceleration'' data elements should not be required even if the vehicle is equipped with sensors. Hyundai and Kia stated that their tests have shown that the data acquired may be misleading due to external noise transmitted from body structure damage.

After reviewing the comments, we have decided to adopt modified requirements for the collection and standardization of data associated with the acceleration and delta-V data elements. In the final rule, the acceleration data elements (longitudinal, lateral, and normal) will appear in Table II. In other words, the final rule will standardize acceleration data elements if manufacturers are recording the acceleration data elements. In lieu of longitudinal acceleration, the final rule focuses on recording delta-V as the crash severity measure.

We have modified data elements relating to delta-V. In the final rule, Table I includes the data element ''delta-V, longitudinal,'' ''maximum delta-V, longitudinal,'' and ''time, maximum delta-V.'' Delta-V longitudinal will provide for the tracking of longitudinal delta-V time series data, replacing our proposal to record the longitudinal acceleration time series. We are also adding a new data element to track the time associated with the maximum longitudinal delta-V.[35] We are focusing on delta-V, modifying the final rule to enhance the standardization of delta-V data elements while also providing for the standardization of acceleration data if manufacturers record acceleration (now in Table II). We believe that delta-V will be sufficient to meet our purposes of analyzing safety equipment performance, aiding in crash reconstruction, and enabling ACN, while remaining sensitive to costs, the risk of data loss associated with writing large amounts of data to memory, and the problems associated with external noise transmitted from body structure damage.

We believe that delta-V is sufficient for our objectives. NHTSA has used delta-V as a measure of crash severity for many years. Delta-V is considered an essential part of crash investigation. For several decades, NHTSA's crash investigation teams have gathered information to estimate delta-V using computer programs. The EDR data will assist these researchers because they will be able to obtain a direct measure of delta-V.

There are significant cost differences between delta-V and acceleration, notwithstanding that both of these time series measurements are typically based on accelerometer measurements. In current practice, acceleration time series data are collected every 2 milliseconds for some EDRs while delta-V time series data are collected every 10 milliseconds

[33] Recording intervals were suggested for the proposed delta-V recording element and are discussed below.

[34] Specifically, Honda recommended changing the definition of delta-V, replacing it with the following language:

Delta-V means, for vehicles with only longitudinal acceleration measurement capability, the change in velocity of the vehicle along the longitudinal axis, and for vehicles with longitudinal, lateral and/or normal acceleration measurement capability, the magnitude and direction of the change in velocity of the resultant of the longitudinal, lateral and/or normal vehicle velocity time-histories, within the time interval starting from the time zero and ending 500 ms after time zero.

[35] Our decision to record delta-V instead of acceleration resulted in the addition of five new definitions in the regulatory text: (1) Delta-V longitudinal, (2) maximum delta-V, longitudinal, (3) delta-V, lateral, (4) maximum delta-V lateral, and (5) time, maximum delta-V, lateral.

in others. Therefore, comparing these two practices, accelerometer data generates 5 times the volume of data. If we were to require, as proposed, longitudinal acceleration, it would be necessary to capture and record these data, increasing the cost. This increased cost is due to the increased size in the microprocessor, random access memory (RAM) and electrically erasable read only memory (EEROM) that would be needed to capture and record the volume of data produced by the longitudinal acceleration data element.

In addition to cost, we have considered the comments that address the risk of data loss associated with recording a larger file (i.e., more data elements or data elements producing larger volumes of data, such as longitudinal acceleration). In explaining the risk of data loss, we first explain how the EDR records data. An EDR must continuously capture pre-crash data, and it must also capture crash data to determine if the trigger threshold has been met. If we required acceleration data, EDRs would be required to capture up to 150 milliseconds of data, which equates to 76 data points. However, if we required delta-V data, EDRs would only need to collect about 26 data points, which would correspondingly reduce the amount of data to capture this element. Once the threshold has been met or exceeded, the remainder of the data set must be captured and then recorded. The actual recording operation takes place after the crash event. Severe crashes often interrupt (or destroy) the normal operation of the vehicle's electrical system. Interruption of the vehicle's electrical system may compromise the ability of the EDR to complete capturing and then record data. In the state of current technology, there is a much better chance of capturing and recording a complete file that is smaller rather than larger. Accordingly, we believe it is desirable to keep the file size (i.e., data elements/volume of data) to a minimum. As the state of technology improves and the cost of microprocessing and memory declines, we foresee the risk of data loss to pose less of a concern.

In deciding to include delta-V in the minimum data set (Table I), we also considered the location of accelerometers. If the accelerometer is located in an area that has some small local movements (often called ringing) as a result of the crash, its acceleration profile will not match that of a rigidly attached accelerometer, producing different maximum deceleration measurements that would not be usable to make assessments for a vehicle's frontal crash stiffness—one of the measurements we were considering when we proposed acceleration as a required element. Our research indicates that, while acceleration profiles are not in good agreement between the EDR's accelerometer and a reference accelerometer, the delta-V measurements in such conditions are reliable.[36]

We have considered the comments asking us to include all directions of acceleration (x, y, and z) in our minimum data set. We believe that such information would be informative; however, we must balance our need against the cost and increased complications with expanding the minimum data set, as discussed above.

The final rule does provide standardization protocols for the acceleration data elements if the manufacturer records them (Table II). Our decision to move longitudinal acceleration from Table I to Table II, as discussed above, rests on our belief that delta-V is sufficient for our present purposes, especially in light of the costs and risk of data loss that we face if we were to require the recording of longitudinal acceleration. We decided to retain lateral acceleration as a data element to be standardized if recorded in recognition that it is a data element that can provide useful information for crash reconstruction. We also expect lateral acceleration to become more useful as our proposed upgrade to FMVSS No. 214 evolves. Moreover, costs and the risk of data loss pose less of a concern on those manufacturers that have invested in their EDR programs to the point where they are recording longitudinal and lateral acceleration. We expect costs associated with merely standardizing the format of this data already recorded to be minimal.

c. Multiple-Event Crashes and the ''Multiple-Event'' Data Element

In the NPRM, we proposed that the number of crash events be recorded as a data element, which is listed in Table 1 of the NPRM as ''Multi-event, number of events (1, 2, 3).'' The proposed data element records the number of crash events (up to three events), with a maximum of 5 seconds as the proposed gap between connected events of a crash. Industry commenters disagreed with the NPRM's requirement to record up to three events—mostly because they believe such a requirement is technologically complex.

According to GM, NHTSA's proposal did not provide a comprehensive and objective regulatory requirement with respect to multiple-events. GM stated that the final rule should not require EDRs to record data for multiple-impact crashes, but instead should only focus on single-impact events. GM also argued that a regulatory requirement that focuses on recording single events would achieve NHTSA's regulatory objectives because most crashes involve single events. GM stated its belief that the multiple-event recording requirement is excessive in part because of the amount of buffering and data processing required to meet a regulatory requirement to record multiple-events could compromise the primary purpose of the module to properly deploy restraint systems and prevent crash injuries. GM urged modification of the NPRM's definition of ''event'' to reflect this change.

Honda commented that the final rule should clarify an inconsistency in the NPRM related to recording of events in multi-event crashes where the air bag deploys. Honda stated that the NPRM provides that in a situation where the time after a ''trigger threshold event'' is less than 500 ms, subsequent ''event'' data would not be captured and recorded in a multi-event crash, even if there is air bag deployment (see definitions in Sec. 563.5). According to Honda, this conflicts with the intent of the data capture provisions in Sec. 563.9(d) of the NPRM. Therefore, Honda recommended that the final rule require, regardless of the time and/or recording status of any ''trigger event'' as defined in Sec. 563.5, that when air bags deploy, the ''event'' data should be recorded. Honda's rationale is that such a requirement will help ensure that EDR data will provide a better understanding of the circumstances of crashes that are severe enough to deploy an air bag.

Nissan commented that the three-event requirement is unnecessary and would be expensive and technologically complex to implement. Nissan suggested that the elements related to the three-event requirement be dropped. However, if that requirement is retained, Nissan stated that NHTSA would need to clarify what constitutes a separate event and what combinations of events need to be recorded.

AIAM commented that the recording of three events in a multi-event crash is not current industry practice. Instead that organization suggested that all recording stop after an event resulting in an air bag deployment. According to AIAM, recording three events, as specified in the NPRM, would be ''a major task'' and would require

[36] ''Performance of Selected Event Data Recorders,'' Aloke Prasad, NHTSA 2001, available at *http://ww-nrd.nhtsa.dot.gov/pdf/nrd-10/EDR/EDR-round-robin-Report.pdf.*

additional memory and development of new software algorithms.

Hyundai and Kia expressed concern that the accuracy of acceleration data captured after the first event is uncertain (if a multi-event crash involves two or more events in the same direction) because of the technical limitations of acceleration sensors currently available in the market for air bag systems. Based on this uncertainty, Hyundai and Kia recommended that we not require accurate acceleration data from an event that occurs after the air bag is deployed if this event occurs in the same direction as the previous event. Additionally, Hyundai and Kia suggested that ''recording time of longitudinal acceleration * * * be reduced from '−0.1 to 0.5 seconds' to '−0.1 to 0.3' seconds,'' arguing that this change would prevent recording overlap with other events and would reduce the implementation cost and time.

Advocates supported the NPRM's proposal to record multi-event crashes, capturing up to three events, because of the high percentage of multiple-event crashes. However, Advocates asked us to reconsider whether a five second interval from the first triggering event would be sufficient to capture all or most of multi-event crashes.

In light of the comments submitted on the multiple-event recording data element, we have decided to reduce the number of events to be recorded in a crash from three to two. We also decided to change the logic for capturing up to 2 events by limiting the capture to a single event in the event of a crash where an inflatable restraint is deployed. As a result, we have modified the data element to reflect up to 2 events in a crash, dropped the data element that recorded the time associated with event 3, and retained the data element that records the time between event 1 and event 2.

We believe that reducing the multiple-event recording requirement to two events is appropriate considering the number of crashes that occur with two events or less. We believe the revision will also alleviate the additional cost and complications associated with recording up to 3 events. The following discussion explains our approach and rationale in further detail.

Because we have, in effect, redefined an ''event'' as a change in delta-V that equals or exceeds 8 km/h (5 mph) in a 150 ms period, we needed to update our analysis in terms of what events are considered to be non-trivial, as would justify capture and recording by the EDR (i.e., events meeting the trigger threshold). In the NPRM, we proposed that EDRs must be capable of recording up to three events. In light of these changes, the agency re-examined the issue of multi-event recording in developing this final rule.

NHTSA conducted an analysis using 2002 and 2003 National Automotive Sampling System/Crashworthiness Data System (NASS/CDS) data to determine the distribution of vehicles in multi-event crashes. This analysis provides a weighted annual estimate of the number of vehicles in crashes involving multiple events. The data from these two years reveal that approximately 3.2 million light vehicles in the United States were towed each year. Of these vehicles, about 2.25 million are involved in single-event crashes, and 0.85 million are involved in multi-event crashes. (The remaining 0.1 million had no event, suffered damage resulting strictly from rollover, or experienced some other non-collision event.)

Our analysis revealed that delta-V data are missing for at least one event for many of the 0.85 million vehicles involved in multi-event crashes. To avoid underestimating the frequency of vehicles involved in multi-event crashes, the analysis accounted for unknown delta-V data by adjusting the raw weighted estimate by the ratio of the number of relevant crashes to the number of crashes without any missing delta-V data. We assumed that the vehicles in multi-event crashes with unknown delta-V event data have crash severities similar to those in known delta-V crash events. Of the 0.85 million vehicles in multi-event crashes annually, 175,000 vehicles have delta-V data for all events, while the remaining 684,000 vehicles have at least one event with missing delta-V data. The total annual estimate of vehicles in multi-event crashes where at least two of the events have non-trivial delta-Vs is 587,000. The other 2.61 million vehicles were involved in crashes that had no more than one non-trivial impact.

We have further estimated the distribution of vehicles experiencing exactly two non-trivial events, as compared to those experiencing three or more non-trivial events. (Again, this analysis uses the distributions established from the vehicles with known delta-V data to forecast the annual estimate.) Our analysis indicates that approximately 580,000 vehicles per year are involved in multi-event crashes with exactly two non-trivial events. The annual estimate of vehicles involved in crashes with three or more events is 6,000.

In the final rule, we have also made a change in the data capture and recording strategy, and further allowed an exception to the multiple-event requirement. For each crash that has an event that exceeds the trigger threshold, the EDR records data, replacing data from the previously recorded event(s), up to two events. Typically, up to two events will be recorded. In those crashes where an air bag is deployed during one of the two events of the crash, only the event associated with the air bag deployment must be recorded. This exception is intended to ensure that a vehicle's microprocessors do not become overburdened during the critical period when the vehicle is deciding whether to deploy the air bag. (We note that while not required to do so, an EDR may capture multi-event data during a crash that involves an air bag deployment.)

This exception in the capture/recording strategy may reduce the number of multi-event recordings (i.e., by the number associated with air bag deployments). Our analysis indicates that about 58 percent of the time when a vehicle is involved in exactly two non-trivial events, the air bags are not involved. (The ratio is about the same for vehicles experiencing one non-trivial event, and it is somewhat lower for vehicles experiencing three or more non-trivial events.) This estimate is based on frontal air bag deployment data. Factoring in these vehicles, the annual estimate of vehicles involved in crashes with two or more non-trivial events for which the EDR would need to capture and record data is reduced under the final rule, taking into account the air bag deployment crashes. We estimate that annually, about 340,000 vehicles would be involved in recordable non-air bag-deployment crashes with two or more non-trivial events.

For these reasons, NHTSA has decided to maintain the multi-event recording requirement in the final rule, but to reduce the number of events from three to two.

Our modification from recording three events to two events will significantly reduce the amount of memory required, thereby addressing commenters concerns about memory and the multiple-event recording requirement. With regard to Hyundai's and Kia's concerns about the accuracy of acceleration and recording time, we believe that this issue is no longer relevant since we are no longer including acceleration in the minimum set of required data elements.

In response to the comments asking us to clarify the multiple-event requirements, we will briefly discuss multiple-event recording. An event is defined as an impact or other physical

occurrence that meets the trigger threshold—5 mph (8 kph) delta-V within a 0.150-second period. When this occurs, the pre-crash data are frozen and the crash data are collected from time zero to 0.3 seconds.

If the first event is the deployment of an inflatable restraint, these data are recorded to memory and the file is locked. No further analyses (*i.e.*, looking for subsequent triggers) or recording occurs. If there is no inflatable restraint deployment during the first event, the data are captured and stored in a similar manner. There are several possibilities that could occur after this event

First, no subsequent event occurs. In this case, the first event ends at 300 ms after time zero.

Second, a subsequent event occurs without an air bag deployment. In this case, the first event ends at 300 ms and within 5 seconds of time zero (event 1) another event is detected. These data are then captured and recorded in a separate file, resulting in a two-event recording.

Third, a subsequent event occurs where the second trigger is detected during the first event, that is, during the 300 ms data collection period of the first event. It is possible that a second impact in a multi-impact crash could occur while the first event is still being captured and recorded. In this case, the time between events could be less than 300 ms. This could occur in cases where the first event triggered quickly, such that the delta-V threshold (5 mph) was exceeded in just a few milliseconds, but it is also possible that it could occur anytime a subsequent time zero is detected before the end of the first event. In these cases, the second event would start the detection of the second trigger. It is the agency's intent that, in these cases, the EDR capture separate events and not different portions of a single event. Therefore, a method is needed to establish the end of the first event, so the agency has turned to SAE J1698–1, *Vehicle Event Data Interface—Output Data Definition* (March 2005), in resolving this issue. SAE 1698–1 defines the end of an event as the moment at which the cumulative delta-V within a 20 ms time period drops to 0.8 km/h (0.5 mph) or less. Thus, in this special case, the EDR would not start looking for a new trigger threshold until the first event has ended. The pre-crash data could be the same for both events.

Fourth, a subsequent event occurs with air bag deployment in cases where there is a pre-event (meets trigger threshold of delta-V greater than 5 mph) without an air bag deployment. The file associated with the air bag must be recorded and locked. The pre-air bag event may be recorded, but it is not necessary. We do not want the pre-crash event to affect the decision-making of the microprocessor, which has the primary function of analyzing the crash and properly deploying the air bags.

d. Sampling Rates and Recording Intervals for Required Data Elements

The NPRM specified sampling rates and recording intervals for data elements in order to standardize EDR data across the entire spectrum of new makes and models of light vehicles. NHTSA received comments ranging from general concerns about the frequency of the rates and intervals to detailed comments concerning sampling rates and recording intervals.

GM, Ford, DaimlerChrysler, and Toyota commented that the sampling rates and durations proposed in the NPRM are excessive in that the large number of data elements and prolonged recording time at a very high frequency rate will require memory storage capacity 5–10 times greater than the current memory capacity provided by manufacturers that have installed EDRs. These manufacturers further commented that recording data in the manner specified in the NPRM will increase the workload for the processor, which would most likely require an upgrade for the microprocessor. These system upgrades would add to the cost of complying with the data requirements.[37]

To address the memory storage capacity and microprocessor issues, GM, Ford, DaimlerChrysler, and Toyota recommended deleting several elements, as mentioned above, and provided alternative recording intervals/times and sample rates for specific data elements. In some instances, the alternative recording intervals/times and sample rates were suggested because their field experience shows no benefit to an accident reconstructionist for the additional recording time.[38]

Other commenters suggested technical changes to the recording times/intervals and sample rates for other reasons. Hyundai and Kia requested that NHTSA perform a cost/benefit analysis for the data elements with recording intervals from 150 ms to 500 ms after an event. They see little degradation in the quality of data captured with the shorter time period while the costs of implementation would be considerably higher with the 500 ms requirement.

Delphi recommended that NHTSA change the recording period for all acceleration data from 500 ms after an event to only 200 ms after an event. Delphi recommended that NHTSA make the other related changes necessary to reflect this change in recording period (e.g., allowing the recorder to retrigger after 200 ms instead of after 500 ms).

Honda recommended changing the ''vehicle roll angle'' measurement time interval from ''−1.0 to 6.0 sec'' to ''−1.0 to 0.5 sec.'' Honda's rationale is that because the proposed 563.9(a) specified that the EDR must collect data for an event starting at time zero and ending 500 ms later, the interval for vehicle roll angle must be adjusted to the required measurement time of 0.5 sec of a multi-crash event. Honda also stated that the time of air bag deployment should be recorded during 0 to 500 ms to adjust to the acceleration measurement time. Honda commented that an air bag deployment event cannot be recorded separately while the acceleration after a trigger event is being recorded.

While many automakers advocated for reducing the period of post-crash recording, some advocacy groups, including Public Citizen, suggested the opposite. Public Citizen stated that NHTSA should require a longer period of post-crash recording once the trigger threshold is met. Public Citizen's rationale is that the NPRM's current time limit (0.5 second) would not record most data from rollover crashes (which typically last several seconds) or important post-crash information for non-rollover crashes. That organization also urged NHTSA to modify the ''safety belt status'' data element to record from one second prior to an event to one second after an event. Public Citizen reasoned that this timing would allow crash investigators to determine whether the belt failed during a crash or whether the occupant intentionally unbuckled it after a crash.

Advocates offered no specific technical comments for the EDR recording times and sampling rates. However, Advocates commented that the time durations must be sufficient to record the full event and provide adequate data, especially in rollover crashes. Advocates did acknowledge that there may be technological impediments or prohibitive costs to capturing data for the entire duration of full crash events. On the other hand,

[37] The commenters did not provide a specific cost estimate.

[38] These elements include ''speed, vehicle indicated,'' ''engine throttle, % full,'' and ''service brake''. For these elements, Ford, DaimlerChrysler, and Toyota recommended reducing the recording interval/time by three seconds from ''(−) 8 to 0 sec'' (as proposed in the NPRM) to ''(−5) to 0 sec.'' GM proposed ''−2.5 to 0. 5 sec.'' All four commenters recommended reducing the sample rate per second from ''2'' (as proposed in the NPRM) to ''1'' for these data elements.

IIHS indicated manufacturers may choose to forego or delay installing EDR features because of the significant costs that may be involved in recording extensive information on rollover angle, antilock brake activity, and stability control status. IIHS, for example, questioned the value of recording vehicle roll angle every 100 ms for one second before a crash.

After carefully considering the comments, we have modified the recording intervals for a number of data elements. We made three basic modifications: (1) for the delta-V and acceleration data elements, we have changed the recording time from −0.1 to 500 ms, as proposed, to 0 to 250 ms; (2) we changed the recording time from −8.0 to 0 sec, as proposed, to −5.0 to 0 sec for the following data elements: ''speed, vehicle indicated,'' ''engine throttle, % full,'' ''service brake, on/off,'' ''engine, rpm,'' ''ABS activity,'' ''stability control,'' and ''steering input'; (3) we changed the recording time for ''vehicle roll angle'' from −1.0 to 6 sec, as proposed, to −1.0 to 0.5 sec. Data sample rates in the final rule are unchanged from our proposal.

Regarding the first modification, we changed the recording time for the delta-V and acceleration elements based on the comments. We agree with the commenters that recording these data elements for 500 ms challenges the microprocessing system, raising the risk of losing a complete crash record. We also believe that a lesser recording time would still be sufficient for our purposes. Further research conducted after our proposal indicates that the maximum delta-V will be reported 95% percent of the time with a recording time of 250 ms.[39] Our research also reveals that a 150 ms recording duration would not be sufficient.[40] Based upon this information, we believe that a 250 ms recording time is sufficient for our purposes and also reduces the risk of losing EDR data because of a system malfunction.

We also reduced the recording time for several data elements from −8.0 to 0 seconds to −5.0 to 0 seconds. We believe that this modification will further lessen the amount of data written to memory by the EDR and reduce the workload for the microprocessor. We do not believe that, for our purposes, the quality of data will significantly be reduced by changing the recording time.

We have considered the comments concerning the recording interval for ''vehicle roll angle.'' In the NPRM, we proposed a recording interval from −1.0 to 6.0 seconds to allow for sufficient time to monitor the vehicle's roll angle after the crash event. We reasoned that recording up to 6 seconds after the crash event could be necessary because in cases where a frontal crash occurs, the vehicle might continue along some path for a second or more before it veers off the road and possibly overturns. We also considered SAE J1698–1, which classifies vehicle roll angle to be a high frequency data type with a recording interval from −300 ms up to 750 ms, and IEEE P1616, which specifies that ''roll rate'' and ''rollover'' data elements should be collected between −8 to 5 seconds.

After carefully considering the comments concerning ''vehicle roll angle,'' we have modified the final rule by removing the specified recording interval for ''vehicle roll angle.'' We encourage vehicle manufacturers to use SAE J1698–1 and IEEE P1616 as a guideline for recording this data element. However, we have not included a specific recording interval in the final rule. We are providing flexibility to the automobile manufacturers that choose to record this data element. If we required a longer recording interval, it is possible that the costs would discourage automobile manufacturers from recording the data element. On the other hand, if we specified a shorter recording interval, we may not be provided with sufficient data for many crashes with subsequent overturns.

3. EDR Data Standardization (Format) Requirements

The NPRM included a proposed section 563.8, which would require that the data elements listed in Tables I and II of the NPRM, be recorded in ''accordance with the range, accuracy, precision [41], and filter class specified in Table III.'' GM, DaimlerChrysler, Ford, and Toyota submitted comments stating that these specifications (i.e., Table III of the NPRM) should not be included in the final rule. Other commenters suggested that the final rule should require data standardization and provided suggestions. Finally, GM, Ford, DaimlerChrysler, Toyota, Honda, and Delphi also made specific comments regarding the range, accuracy, and precision of acceleration data.

GM believes that these parameters are beyond what is currently utilized in state-of-the-art EDRs to detect crashes, make deployment decisions, and record crash severity data, and GM argued that such provisions are not necessary to achieve the rule's safety benefits. DaimlerChrysler, Ford and Toyota provided different reasoning to reach the same conclusion as GM. They stated that NHTSA intended to use present design and performance capabilities of existing sensors, rather than to set new design and performance requirements. However, the current specification in paragraph 563.8 would run counter to that intent. Thus, DaimlerChrysler, Ford, and Toyota recommended that the range, accuracy, precision, and filter class be determined by the manufacturer for optimal restraint system performance, rather than EDR performance.

Nissan, Mitsubishi, and ATA suggested that the final rule use the SAE J1698 resolution attribute instead of requiring specific levels of accuracy and precision. Nissan submitted a comment similar to other automakers, stating that the accuracy and precision standards do not correspond with current industry practice. If these accuracy and precision standards are retained, Nissan suggested that NHTSA should revise these standards to reflect present sensor performance specifications of each system feeding the EDR. In addition to Nissan, Mitsubishi requested that NHTSA consider SAE J1698 for the common output format for event data. Mitsubishi stated that many automobile manufacturers participated in creation of this standard to specify optimal standard output formats. Similarly, the ATA commented that it supports the use of standards developed by the SAE. As for filtering, Nissan questioned the rationale for requiring data to be filtered in accordance with SAE J211–1 before recording, instead of permitting filtering after data retrieval.

Mr. Kast commented that, based on his studies of EDR data, some of the data elements are not recorded at the necessary resolution, accuracy, or duration to be of use (i.e., brake lights, acceleration, change of speed (computed delta-V), speed-vehicle indicated). He included a technical discussion of each element and the parameters necessary to acquire useful data.

The ATA commented that data reliability must be assured. Specifically, ATA is concerned that inaccurate or erroneous data could result in incorrect assessments of the causes of accidents and of liability. ATA indicated that NHTSA should validate the technological ability to meet the

[39] Niehoff, Peter, *et al.*, Evaluation of Event Data Recorders in Full Systems Crash Tests, ESV Paper No. 05–0271 (2005).

[40] *Id.*

[41] This term was changed to ''resolution'' in the final rule. This change is technical, not substantive.

requirements as defined in Table III prior to any rulemaking. ATA questioned whether the data elements would be part of a certification process for a specified useful life or warranty period and whether service schedules would include the EDR.

Several automobile manufacturers stated that the NPRM's required range and precision for accelerometers exceeds industry standards and are not currently commercially available. GM stated that the NPRM's requirements would have the effect of doubling the range and that increasing the accuracy would add significant costs not comprehended in the agency's cost estimates. GM currently utilizes ±50 G accelerometers with an 8% accuracy. Ford, DaimlerChrysler, and Toyota also stated that accelerometers, as proposed, are not the industry norm, are not commercially available, and would increase the cost of compliance.

Honda stated that the accuracy of mass-produced accelerometers used in motor vehicles can be near ±10%. Honda requested that the final rule permit use of current G-sensors, which have ranges of 30 G to 50 G instead of 100 G. Honda argued that the NPRM had suggested these types of added costs were to be avoided. Honda also sought clarification as to whether '' * * * it is correct to say that the accuracy in Table III means only the *recording* error between the output value of each sensor to the recording unit and the input value to the retrieval tools?''

Delphi made similar comments, stating that the NPRM's range and precision parameters for the longitudinal and lateral acceleration data elements are ''substantially different than [those] typically chosen for most crash sensing systems today.'' It stated that it would require manufacturers to change existing systems, potentially resulting in ''sub-optimized system performance,'' to add separate sensors, resulting in increased costs, or require manufacturers to choose not to install an EDR. Delphi recommended that the normal acceleration element should not have fixed parameters for range, accuracy, precision, and sample rate. Instead, Delphi suggested that the value of those parameters should be reported as elements of the data record.

Delphi commented that the accuracy requirements for accelerometers should allow a margin for sources of error attributable to other factors other than the accelerometers (e.g., alignment tolerances between the axes of the accelerometer and the vehicle). Delphi recommended that the accuracy requirement for longitudinal and lateral acceleration should be no less than +/−6 percent. Delphi recommended minimum limits of +/−50 G and 1 G be placed on the range and precision parameters for the longitudinal and lateral acceleration data elements, respectively and that the available range and precision of the sensors be reported as data elements.

After carefully considering the comments, we have made a number of modifications to the range and accuracy requirements for the acceleration data elements. For these data elements, we proposed a range of ''100 G to +100 G and an accuracy of +/−1 G. In the final rule, the range and accuracy for the acceleration data elements is ''50 G to +50 G with an accuracy of +/−5 percent. Based on our research [42] and the comments, we believe that the new range and accuracy requirements are more realistic based upon what we now understand to be commercially available for vehicle production. Our research also leads us to believe that EDRs with accelerometers designed to meet these requirements will be sufficient to analyze safety equipment performance, a primary objective of this final rule.

We have considered the recommendation off Mitsubishi and ATA that the final rule should use the SAE J1698 resolution attribute instead of requiring specific levels of accuracy and precision. After evaluating SAE J1698, we have concluded that the values in our proposal are nearly identical to or are less stringent than those found in SAE J1698. Thus, if an original equipment manufacturer were to use the SAE J1698 data resolution guidelines, they would be in compliance with the requirements of Table III.

4. EDR Data Retrieval and Whether To Require a Standardized Data Retrieval Tool/Universal Interface

In the NPRM, we proposed requirements for EDR data retrieval (i.e., post-crash access to stored data). Under the NPRM's regulatory text (Sec. 563.12), the manufacturer of a motor vehicle equipped with an EDR would be required to furnish non-proprietary technical specifications at a level of detail sufficient to permit companies that manufacture diagnostic tools to develop and build a device capable of accessing, retrieving, interpreting, and converting the data stored in the EDR. The language would have required a manufacturer to submit the non-proprietary technical specifications to NHTSA. We also requested comments on alternative approaches.

Some commenters asked NHTSA to require standardization of data retrieval methods, arguing that a standardized data retrieval protocol will assist first responders and/or reduce cost. Other commenters suggested that we consider another approach, other than furnishing non-proprietary technical specifications to NHTSA, to achieve the goal of making EDR retrieval tools available to crash investigators.

SISC, ATA, SEMA, Advocates, and AAA recommended standardized retrieval methods so that emergency and first responder personnel can have quick and easy access to EDR data. SISC requested a standardized interface. SISC also believes that that retrieval of crash data in rural areas would be facilitated by the lower costs and easier access resulting from a single interface. For example, SISC suggested the U.S. Environmental Protection Agency (EPA) standards for onboard diagnostics of emission system performance. SEMA argued for a standardized retrieval method but indicated that the data should not be vehicle-specific.

AAA encouraged first responder access to data, but through ACN. AAA commented that transferal of accurate location coordinates, speed estimates, air bag deployment and other medically relevant information to EMTs should be encouraged through ACN. To that end, AAA commented that it supports NHTSA's proposal requiring manufacturers ''to provide sufficient technical detail to companies that manufacture commercial crash data retrieval systems.''

Commenters offered other arguments for standardizing EDR data retrieval, including minimizing the ''tool-up'' costs and the inconvenience of having different types of data retrieval methods for each automaker. Three commenters referenced the On-Board Diagnostics (OBD) systems, requesting or opposing similar protocols for the EDR rule.

PCIAA stated that the regulatory objective should be to avoid making EDR information access/retrieval more expensive and inconvenient than necessary. PCIAA commented that the failure to require standardization of the data retrieval method may preclude or diminish the opportunity for broader applications of the technology by the public and private sector. PCIAA further commented that NHTSA should adopt a standard in its final rule that minimizes new tool-up and licensing costs for the service and repair sectors. Because dealership service centers and independent automotive repair businesses have made significant

[42] Niehoff, Peter, *et al.,* Evaluation of Event Data Recorders in Full Systems Crash Tests, ESV Paper No. 05–0271 (2005).

investments in recent years in scanner equipment to download or read data from the OBD electronic interface point, PCIAA urged NHTSA to consider requiring data retrieval through the OBD.

NADA and SEMA made similar comments, asking NHTSA to consider setting standards for data retrieval communications protocols, connectors, and tools, similar to those of OBD systems. Additionally, SEMA argued that data access must include all data stored in the EDR, not just NHTSA-mandated data. That organization argued that the vehicle owner should be able to access all data stored in the EDR.

On the other hand, Injury Sciences is opposed to relying on OBD protocols. Injury Sciences is opposed to relying on the connector as a means of retrieval because it asserts that data collection via the OBD works only if the electrical systems are intact. It argues that NHTSA should articulate retrieval requirements in the numerous instances when electrical systems are compromised and the extraction of data can only be accomplished from connecting directly to the device storing the information.

Simplifying retrieval methods and minimizing costs were two common reasons suggested by commenters for standardizing EDR data retrieval, with some commenters providing technical suggestions for EDR data standardization. Public Citizen stated that NHTSA should standardize extraction protocols, technology, and interface location to ensure that data can be easily and quickly retrieved. Public Citizen believes that these steps would reduce overall costs. Advocates commented that the rule should require a uniform architecture for data retrieval. Advocates supported standardizing the retrieval method, citing higher costs for those retrieving data.

Garthe Associates commented that the rule should require a uniform, non-contact retrieval method to rapidly and reliably download data. Garthe Associates suggested the use of radio frequency identification (RFID) or infrared (IR) for data retrieval. Garthe Associates also suggested specifications for the retrieval technology. Garthe Associates indicated numerous benefits of these technologies, including rapid access to crash data by EMS personnel. According to Garthe Associates, the estimated cost would be about $1/car.

Mr. Fink stated that the rule should require standard software for downloading EDR data. He also commented that the same software and hardware should be able to access data from vehicle EDRs and commercial vehicle engine control modules. EPIC commented that the rule should address real-time data collection, which will become widely prevalent well before the proposed effective date for the rule.

GM asked NHTSA to alter its proposal for data retrieval. In the NPRM, NHTSA proposed that each vehicle manufacturer must furnish non-proprietary technical specifications at a level of detail sufficient to permit companies that manufacture diagnostic tools to develop and build a device capable of accessing, retrieving, interpreting, and converting the data stored in the EDR. GM recommended that we instead allow manufacturers to enter into a licensing agreement or provide other means for the tool(s) required for retrieving the EDR data. GM argued that aspects of EDR designs are often refined up to, and sometimes after, the start of vehicle production. GM argues that the provision would (1) potentially facilitate tampering with EDR data, (2) be impractical to accomplish at 90 days before the start of production, (3) result in a significant paperwork burden, (4) be unnecessary to satisfy a limited market for EDR download devices, and (5) require manufacturers to disclose proprietary information.

Comments provided by DaimlerChrysler, Ford and Toyota were nearly identical to those of GM, except that they recommended that each manufacturer be required to certify to NHTSA that it has licensed the development of a download tool for each applicable vehicle. This is in contrast to GM, which was also open to other means of ensuring that a retrieval tool is available.

SEMA commented that NHTSA should require manufacturers to provide information necessary for third parties to design and develop data access tools and should require the manufacturer to make the tools available to the public for a reasonable price and in a timely fashion.

Ford stated that NHTSA should promulgate requirements that effectively prohibit tampering with EDRs and EDR data, because the value of EDRs is predicated upon the integrity of the data they contain.

Honda commented that the NPRM's proposal to require the submission of data retrieval information no later than 90 days prior to the start of production of EDR-equipped vehicles is problematic. Honda argues that the modification or addition of information may become necessary near the start of production due to the detection of an inaccuracy or technical issue. Honda argued that under NHTSA's current proposal, a manufacturer would have to provide NHTSA with updated information and wait 90 days before it could start production with the modified EDR. Honda would like to be able to change the EDR specifications as soon as possible, and to produce vehicles equipped with the modified EDR as soon as possible. Therefore, Honda recommended that the final rule permit the submission of updated retrieval information as soon as it can be provided and for production of vehicles with the modified EDR to occur as soon as possible thereafter.

ATA commented that specifications for the EDR interface should be provided to NHTSA but should not be part of the public domain. The ATA commented that a mandated, standard interface would threaten privacy rights. However, retrieval of data should be brief and should not impede the continued utilization, maintenance or repair of the subject vehicle.

More than one commenter recommended changing the phrase in the ''scope'' section of the regulatory text from ''it [the NPRM] also specifies requirements for vehicle manufacturers *to make publicly available information that would* enable crash investigators and researchers to retrieve data from EDRs' to ''it also specifies requirements for vehicle manufacturers to make *commercially available tools and/or methods that* enable crash investigators and researchers to retrieve data from EDRs.'' This change refers to the above comments that automobile manufacturers should be only required to make retrieval tools commercially available instead of having to furnish non-proprietary technical specifications of the retrieval tools to the agency, as proposed in the NPRM.

We have carefully considered the comments and recommended alternatives on this issue, and determined that an alternative approach will better meet the goal of ensuring that crash investigators are able to retrieve data from EDRs. We believe that requiring manufacturers to ensure by licensing agreement or other means that retrieval tools are commercially available will be sufficient for the purposes of this final rule. We believe that this revised approach will resolve concerns about the release of proprietary information. It will also result in less paperwork costs for the manufacturers.

Under our revised approach, we are no longer following the NPRM's proposed requirement for vehicle manufacturers to submit information to the public docket to allow third parties to manufacture a retrieval tool for EDR data. Instead, the final rule requires

manufacturers and/or their licensees to make these tools commercially available. We expect that these retrieval tools will be accessible (i.e., for sale) for a reasonable period of time. That is, we anticipate that: (1) Retrieval tools will be available for several years after the vehicle whose EDR data it is designed to read has been sold, or (2) the capability to read EDR data for such vehicles will be integrated into a newer version of the tool, thereby making the new retrieval tool ''backward-compatible.'' (We note that current download tools designed for reading vehicle emissions-related data or engine-control data have been designed to be backward-compatible, as has the Vetronix Crash Data Retrieval (CDR) tool for reading EDR data.) We anticipate that the movement toward backward-compatibility will continue and that there will be no issues associated with downloading EDR data from older vehicles covered by the EDR regulation set forth in this final rule. If this trend does not continue, the agency will consider appropriate action, as necessary.

We are requiring the tool(s) to be commercially available not later than 90 days after the first sale of the motor vehicle for purposes other than resale. This addresses the timing concerns raised by commenters. Given that the retrieval tools will be commercially available, we do not believe it will be difficult to obtain information about how to obtain them.

We have considered the comments asking us to require a standardized retrieval tool (or standardized retrieval software and hardware). In consideration of this issue, we assessed the comments concerning whether we should require a retrieval system similar to or utilizing the EPA/OBD protocols (68 FR 38427, June 27, 2003). However, such a requirement is beyond the scope of this rulemaking, since we did not propose to require a uniform retrieval tool in the NPRM. We do not believe that a uniform retrieval tool is necessary to achieve the purposes of this rulemaking. We believe that intended users will be able to access EDR data by our requiring manufacturers to ensure that retrieval tools are commercially available.

We recognize, however, that there are potential benefits to standardizing the means of downloading EDR data. This could facilitate the future use of EDRs by first responders and possibly result in lower costs. This is an area that could potentially be addressed by voluntary organizations such as SAE and IEEE.

We have considered NADA's and SEMA's comments that we should require access to all data stored in the EDR. However, we believe that it would not be appropriate to mandate the processing and storage for data that we currently have determined are not necessary for our goals of analyzing the performance of safety equipment, improving crash reconstruction, and enabling ACN.

Additionally, we did not propose to require that vehicle owners have the ability of directly accessing EDR data. However, the requirement that vehicle manufacturers ensure that retrieval tools are commercially available should make it easier for vehicle owners to indirectly access stored EDR data.

We considered the comments by Garthe and Siemens regarding a standardized, non-contact retrieval method. However, we did not propose the implementation of such technology in the NPRM, and will not include it in this final rule. Requiring automobile manufacturers to install a non-contact retrieval method is not necessary to achieve our stated purposes for this rulemaking.

We have considered ATA's comments regarding access to EDR data, and we address this issue in our section on ''Privacy Issues.'' With regard to ATA's comments on mandating for brief retrieval we presently have not gathered sufficient information to mandate the brevity with which EDR data can be retrieved.

We have considered the comments recommending that we address potential tampering with EDRs. We currently do not have information that leads us to believe that tampering with EDRs is a problem that necessitates us to develop requirements in this area. We may revisit this issue if we find that EDR tampering becomes a problem. However, we do believe one aspect of EDR design will discourage tampering. We are requiring that the captured file be locked for crashes that involve air bags. The locked file will be preserved and the file cannot be overwritten.

5. EDR Survivability and Crash Test Performance Requirements

In the NPRM, we stated that if EDRs are to provide useful information, they must function properly during a crash, and that data must survive the crash. Accordingly, we proposed to require that EDRs meet specified requirements during and after the crash tests in FMVSS Nos. 208, 214, and 301. We also proposed that the data must be retrievable for not less than 30 days after the test and without external power. We chose not to propose more extensive survivability requirements, such as requiring EDRs to survive extreme crashes, fire, or fluid immersion.

GM, DaimlerChrysler, Ford, Toyota, Nissan, and AIAM argued that in order to test for EDR survivability, as proposed in the NPRM, vehicles would have to be tested with engines running and various vehicle systems activated, presenting a danger to test personnel. Such tests also risk damaging test facilities, instrumentation, and photographic equipment resulting from fuel, oil, and/or battery fluid spillage.

To solve this perceived problem, GM, DaimlerChrysler, Ford, and Toyota proposed an alternative approach to EDR crash survivability (i.e., a simulated laboratory test to verify EDR recording function and certification by engineering analysis to ensure sufficient energy reserve).[43] According to the four commenters, the NPRM's current dynamic testing requirements for EDRs would greatly increase testing costs. GM, DaimlerChrysler, Ford, and Toyota also argued that the crash test provisions would not fulfill their intended purpose and that the provisions are unnecessary since the EDR function is typically co-located in the restraint control module.

Nissan stated that the NPRM's proposed regulatory text needs to be amended to reflect that engine RPM and throttle information will not be available in crash tests, which are performed without fuel. AIAM recommended clarifying the rule to indicate that EDR performance does not require the engine to be running and that, as a result, some data elements may not be recorded.

[43] Specifically, GM recommended replacing the proposed language in paragraph 563.10, *Crash Test Performance and Survivability,* with the following language:

The data elements required by sec. 563.7 must be recorded so that they can be downloaded in the format specified by sec. 563.8; exist at the completion of the simulated test, and be retrievable by the methodology specified by the vehicle manufacturer under sec. 563.12 for not less than 30 days after the simulated test, and the ''complete data recorded'' element must read ''yes'' after the test. A simulated test for the purposes of this subsection consists of laboratory methods to provide data bus input representative of FMVSS [Nos.] 208 and 214 crash tests to the vehicle data bus, so that the EDR recording function can be verified. For those data elements not specified by FMVSS [Nos.] 208 and 214 (i.e., throttle angle, braking input, etc.), manufacturers will furnish simulated signals. In addition, manufacturers must certify through engineering analysis or other means that sufficient energy reserve exists in the subject module to ensure that all design-intended functions, including the deployment of restraint system components and the complete recording of EDR data elements as specified by this regulation, are fully supported in the event of power loss to the module from the vehicle's battery supply at any point following time zero, as defined by this regulation.

GM, DaimlerChrysler, Ford, Toyota commented that storing crashed vehicles for 30 days following a test to ensure retrievability of data is impractical and unnecessary. These commenters stated that it is unreasonable to require data to be retrievable without external battery supply for 30 days, because current EDRs use external battery supplies to retrieve post-crash data. According to the commenters, the NPRM's requirements would necessitate adding a battery to the module, which would add significant cost and risk damage to the module circuitry due to electrolyte leakage. They also argued that this requirement for 30-day retrievability is unnecessary to meet the safety purposes of furnishing additional data to aid in crash investigations.

AIAM commented that the proposed regulatory text is not clear as to whether data must be retrievable without external power for up to 30 days. AIAM suggested that the final rule should be clarified to require the EDR to store data without external power for up to 30 days but to permit an external power source for data retrieval.

Nissan sought clarification for two issues related to survivability: (1) Whether an alternate power source would be required to ensure that the EDR is able to record up to 11 seconds of post-crash data; and (2) whether sensors would be expected to survive crashes to ensure delivery of data to the EDR. Mitsubishi stated that the final rule should not require data survivability in cases where there is a cut-off in the power supply or destruction of the electronic control unit. Mitsubishi argued that it is not technically feasible to require data recording if power is no longer directly supplied to the ECU.

EPIC and the ATA made general comments regarding the survivability of EDRs. EPIC commented that EDR reliability is essential, ensuring that proper functioning of EDR systems becomes more critical as third parties (e.g., insurance companies and prosecutors) are provided access to EDR data. EPIC expressed concern that the level of survivability called for in the NPRM may not be sufficient to ensure reliable data. EPIC suggested text for the owner's manual encouraging owners to have the EDR inspected after a crash. ATA commented that EDRs must function properly during and after the specified crash tests.

Several commenters gave specific suggestions for crash survivability. NADA commented that the rule should take into account EDR reparability and restoration. Advocates commented that the rule should require the EDR to be located in the passenger compartment in order to increase survivability. Hyundai and Kia commented that the rule should not require repositioning air bag control units to achieve crash survivability unless the repositioning would not adversely affect performance of the systems.

Public Citizen and NTSB commented that the NPRM does not include requirements to ensure that the EDR will survive fire, fluid immersion, and severe crashes. To remedy this perceived deficiency, Public Citizen suggested that EDRs should be subjected to a rollover crash test or that they should meet survivability tests similar to those for airliner and locomotive ''black boxes.'' Public Citizen stated it is important that EDR data from severe crashes not be lost since such crashes may result in fatalities.

We have carefully considered the comments regarding our testing requirements, and the commenters' position that requiring dynamic testing, as proposed, would be impracticable. After reviewing the comments from the manufacturers, we disagree that it is impracticable to require basic EDR crash survivability. However, we agree that certain proposed data elements cannot be recorded unless the crash tests are conducted with the engine running and vehicle systems activated. Those data elements are: ''Engine RPM'' and ''Engine Throttle % Full.'' At present, FMVSS Nos. 208 and 214 tests are not conducted with the engine running; compliance crash tests are only conducted with battery connected and vehicle systems activated. It was not our intention to propose any testing requirements beyond FMVSS Nos. 208, 214, and 301. Testing with the engine running could create hazardous conditions for the test engineers. Therefore, we agree that ''Engine RPM'' and ''Engine Throttle % Full'' cannot be recorded in current crash tests. We have modified the final rule to account for these concerns.

As a result of our analysis of this issue, we have also realized that the braking input data element ''service brake on/off'' is not specified in FMVSS crash tests. Accordingly, there is no practical way to require manufacturers to test the survivability of this data element in the FMVSS Nos. 208 and 214 tests. Because there is no current way to test for these there elements, we have modified the final rule accordingly.

After reviewing the comments, we believe that our proposal to require that data elements be retrievable for not less than 30 days after the test and without external power confused some commenters. We intended the proposed requirement that data be retrievable within 30 days without external power to simply mean that the EDR data must be stored and saved in the system for at least 30 days without external power. This was not intended to mean that 30 days after the date of the crash, a crash investigator must be able to download the stored data with a download tool without an external power supply. We have modified the rule to clarify our original intentions.

The final rule also modifies the number of days we will require EDR data to be retrievable after the crash test. Manufacturers have indicated that it usually takes three to seven days to complete the task of crash test data analysis and validation. Based upon this information, we believe that requiring that EDR data be retrievable up to 10 days better reflects the manufacturer's time frame of crash testing. We agree with manufacturers, based on this information, that a 30-day requirement would require additional vehicle storage. Accordingly, we have modified the final rule.

We have also considered the comments regarding EDR survivability in severe crashes or crashes involving fire or fluid immersion; however, we have not changed our position on requiring EDR survivability in these extreme cases. In the NPRM, we stated that EDR data from such crashes would be useful, but we do not have sufficient information to propose survivability requirements that would address such crashes. We also stated that countermeasures that would ensure the survivability of EDR data in fires might be costly. We have not engaged in research to promulgate survivability requirements for EDR data in these extreme cases. Moreover, we reiterate that the most important benefits of EDR data comes from enabling ACN and composite analysis, and we believe that this final rule will allow researchers to gather sufficient EDR data of statistical significance. We believe that we can meet the objectives of this rulemaking without requiring EDR survivability in extreme crashes.

The comments of Ford, GM, Daimler Chrysler, and Toyota on EDR survivability also recommended deleting subsections (a)–(c) of the proposed regulatory text in Sec. 563.10. These commenters proposed an alternative testing protocol, as discussed above. The manufacturers recommended that a simulated test for data bus input of FMVSS Nos. 208 and 214 be performed at room temperature and that the EDR data be stored at room temperature for 30 days after the tests.

We believe that testing requirements, as proposed by the manufacturers, would not be sufficient to meet our basic survivability requirements. These basic survivability requirements in the final rule, which will include the crash tests in FMVSS Nos. 208 and 214, are critical to verifying the performance and accuracy of EDRs because they reflect a controlled crash environment. The simulated tests recommended by the manufacturers for EDR crash survivability do not expose the EDR to a real crash environment. After carefully considering the comments, we believe that ensuring basic EDR survivability by requiring that EDRs meet specified requirements in accordance with FMVSS Nos. 208 and 214 tests remains the best approach to ensure EDR survivability.

We have, however, modified our crash test requirements in light of the comments we have received and in consideration of further information we have obtained. We have deleted the test associated with FMVSS No. 301. We believe that since most EDRs and other vehicle electrical systems are located in the front part of the vehicle, there is little chance that crash forces to the rear of the vehicle will affect EDR operation. Also, in the FMVSS No. 301 test, no air bags are deployed, so elements related to air bag deployment, that make up the vast majority the data collected by the EDR, are not collected.

Also, we have decided not to require EDRs to meet requirements during crash tests listed under S13 of § 571.208, as we proposed in the NPRM. The tests specified in S13 of § 571.208 are currently subject to be gradually phased-out. After further consideration, we believe that the tests in FMVSS Nos. 208 and 214 will be sufficient to determine EDR survivability.

The agency notes that in some FMVSS No. 214 tests (i.e., for vehicles equipped with only longitudinal delta-V sensors), the longitudinal trigger threshold may not be met because there may not be sufficient delta-V in that direction. For tests conducted pursuant to FMVSS No. 214, we would not expect the vehicle's EDR to record data unless the manufacturer records delta-V, lateral or any air bag (frontal, side, other) deploys.

Our final rule represents tests that we believe will be sufficient to ensure basic EDR survivability. Furthermore, we would like to emphasize that this rule is not requiring any additional crash tests than what is currently required by existing FMVSSs. Tests for EDR crash survivability simply piggyback on test requirements for existing FMVSSs.

6. Compliance Date

In the NPRM, we proposed an effective date of September 1, 2008 for the EDR regulation. We proposed this date with the intention of providing manufacturers adequate lead time to make design changes to their EDRs as part of their regular production cycle, minimizing costs. Almost all of the commenters on this issue believed that the proposed lead time was insufficient and/or would result in unnecessarily high costs, with most suggesting a phase-in beginning in 2008.

GM, Ford, DaimlerChrysler, and Toyota stated if NHTSA issued a final rule for EDRs by September 1, 2005, that is consistent with their recommendations, they could support a four year phase-in beginning September 1, 2008 (10% of vehicle production at year 1, 25% at year 2, 60% at year 3, and 100% at year 4). GM added that if the rule is appreciably different from its recommendations, it might need additional lead time to achieve compliance. GM reasoned that its recommended four-year phase-in would be an ''aggressive'' schedule because manufacturers would need to redesign, revalidate, and retool virtually every restraint control module, add greater power capability to those modules, and, in many cases, redesign the entire electrical architecture of the vehicle. Ford, DaimlerChrysler, and Toyota commented that their vehicle electrical/electronic architecture designs, which influence EDR feasibility, are presently being committed and cannot be readily changed for vehicles in model years before 2008. Hyundai and Kia commented that a four year phase-in period after the September 1, 2008 start date will be necessary to implement the design changes needed to meet the rule as proposed.

Honda and Mitsubishi recommended that the effective date of the regulation should be no sooner than September 1st of the third year after publication of a final rule, with a phase-in period starting on that date. Honda's rationale is that it would be very difficult for all manufacturers to simultaneously develop and install compliant EDRs on all models by September 1, 2008.

Subaru commented that the NPRM underestimates the time necessary for implementation. Because Subaru would have to acquire new memory devices, develop backup power sources, and possibly redesign its air bag system, Subaru requested additional lead time and a phase-in schedule for recording certain data elements. Subaru commented that its most state-of-the-art EDR technology is still not mature enough to meet all the proposed requirements. For example, its current air bag sensors do not meet the range and accuracy requirements. Subaru stated that it would probably remove all data recording rather than risk noncompliance if the rule were implemented as proposed.

NADA commented that the rule should adopt a phased-in approach with multiple effective dates requiring that certain data recording capabilities be implemented in the near term, with additional data collection capabilities considered for the longer term. AIAM also commented that additional lead time would be necessary to meet the accuracy and precision requirements as proposed in the NPRM, due to the complexity of the required changes. AIAM suggested that the regulation should take effect with a pared down data set no sooner than the September 1st, three years after publication of the final rule and that the regulation should allow for a substantial phase-in period. If the final rule includes the complete set of proposed data elements, a longer lead time would be necessary. SISC commented we should provide sufficient lead time so that manufacturers can transition to multi-axis accelerometers (to ensure collection of lateral acceleration).

We have considered the comments regarding our proposed effective date. Based upon the comments, we have decided to require covered vehicles manufactured on our after September 1, 2010 to comply with the requirements of this final rule. We believe that a lead time in excess of four years, particularly given the revised technical requirements, should prove adequate for all vehicle manufacturers and all vehicle lines, without the need for a phase-in. Vehicle manufacturers may voluntarily comply with the final rule prior to this date.

7. Privacy Issues

The NPRM acknowledged that the recording of information by EDRs raises a number of potential privacy issues. These include the question of who owns the information that has been recorded, the circumstances under which other persons may obtain that information, and the purposes for which those other persons may use that information.

In the NPRM, we stated that our rulemaking would not create any privacy problems. We explained that NHTSA would first obtain permission from the vehicle's owner before using the data. Furthermore, we believe that our objectives can be met by using a very brief snapshot of EDR data surrounding a crash. A broader use of

EDR data is not necessary for us to gather information or use EDR data.

Many issues raised by commenters concerning privacy arise from the misconception that EDRs record data for prolonged intervals and personal information to study driver behavior. We noted in the NPRM that we were not proposing to require personal or location identification information. We also explained that we were proposing to standardize EDR data recording for an extremely short duration (i.e., a few seconds immediately before and after a crash). We did not propose to require data for prolonged recording intervals (i.e., several minutes) or audio/visual data that the public may associate with event data recorders in other modes of transportation, such as flight data recorders or locomotive event recorders. However, we note that another DOT agency, the Federal Motor Carrier Safety Administration (FMCSA), is currently engaged in rulemaking that would facilitate the use a different type of device, known as electronic on-board recorders (EOBRs), for documenting the hours of service of commercial drivers.

In the NPRM, we expressed our sensitivity to privacy concerns, especially in relation to how we handle EDR data. We explained that NHTSA would first obtain a verbal release from the vehicle owner before using the data and fully comply with federal privacy law in its use of the information. Access to EDR data would not be affected by this rulemaking and would continue to be provided in limited situations. Furthermore, the design would most likely preclude public access to the EDR data because the interfaces will likely be located in the vehicle's passenger compartment.

Some commenters argued that public safety outweighs any potential privacy issue or argued that privacy concerns were adequately addressed in the NPRM. Several individuals commented that the government and others will use EDRs to invade privacy. Still others identified privacy issues, but took differing positions on how to and who should address privacy concerns.

GM, Ford, DaimlerChrysler, and Toyota commented that a FMVSS requiring EDR installation would permit the life-saving benefits of EDRs to be properly balanced, at the national level, with societal interests involving privacy and disclosure. These four commenters argued that unless there is Federal leadership, individual States will continue to regulate in the area of EDR privacy (e.g., through disclosure requirements). According to these automakers, unless this issue is dealt with comprehensively at the Federal level, the result could be a patchwork of State laws that would leave manufacturers in the untenable position of providing unique EDR systems and complying with disclosure language provisions on a State-by-State basis.

EPIC commented that the NPRM inadequately protects the privacy of vehicle owners. According to EPIC, NHTSA has the responsibility to provide basic privacy protections and to clearly communicate to the public how EDR technology will be used. EPIC predicted that failure to do this would expose the rule to legal and political challenges. EPIC suggested that the rule should explicitly recognize the vehicle owner as the owner of EDR data. Moreover, EPIC expressed concern that many EDR systems currently record the complete VIN, including the serial number portion that can be used as a personal identifier.

Several individuals commented on privacy and EDRs. Mr. Crutchfield, whose comments were representative of such commenters, expressed concern regarding the collection and use of EDR data. He argued that EDRs have no safety purpose and will be used to increase government revenues from fines, to increase rates or deny coverage by insurance companies, to justify seizure of private property, and to discriminate against individuals based on race, gender, age, regional origin, and socio-economic status.

Mr. Leggett, an individual, commented on the collection and use of EDR data. He suggested that EDRs should be designed so that vehicle owners can remove them and that there should be no legal penalty for doing so. He also requested that the rule prohibit the use of EDR data in criminal and civil actions or by insurance companies. Mr. Leggett stated that the rule should specifically state that insurance companies may not require the use of EDRs, to ensure that the use of EDRs remains voluntary.

Mr. King, an individual, commented that the rule should either provide protections for the vehicle owner (the presumptive data owner) or should be delayed until the passage of legislation addressing the issue. Mr. Lashway, along with fifty-two other individuals, commented that EDRs will be used to intrude into the privacy of individuals.

Several commenters indicated that the ability to turn off or disable recording would resolve their concerns. Several also indicated that requiring written consent to acquire the data would be an acceptable solution. Some individuals commented that the EDR data are not reliable enough, thereby creating a danger to individuals confronted with countering the data in court. Commenters also suggested that vehicle purchasers should be provided with adequate notice about EDRs and EDR data at the time of first sale.

SEMA commented that NHTSA should recognize that EDR data is the sole property of the vehicle owner. According to SEMA, a court order or consent of the vehicle owner should be required before EDR data may be released to insurance companies or before vehicle-specific data could be released to law enforcement. SEMA stated that an owner's consent could be provided prospectively via a form at the time of purchase (similar to current contracts for OnStar® subscriptions).

Gelco commented that EDR data may contain personal information and may be easily accessible in the passenger compartment. Therefore, Gelco requested that the final rule explicitly or implicitly limit the access of the owner, lessor, or lessee to the data.

The ATA commented that NHTSA should address privacy issues or coordinate with other appropriate Federal agencies to ensure that such issues are addressed. The ATA stated that it supports the practice of obtaining consent from the vehicle owner and commented that the data should be exempt from the Freedom of Information Act (FOIA). The ATA also expressed concern that a standard interface would make access to EDR data too easily accessible.

Canada Safety Council commented that ownership of EDR data is unclear and that the issue needs to be resolved by legislators in the near future. The Council also commented that under the NPRM, emergency medical service personnel would not have easy access to crash severity data.

Wyle Laboratories commented that NHTSA should consider certification of independent laboratories for EDR data management. Wyle's rationale is that such certification would facilitate data retrieval, validation, and distribution and would help protect the rights of each party with an interest in the data (e.g., manufacturer, owner, insurance carrier, regulator, and law enforcement agency).

The ATA commented that, in contrast to what the NPRM states, much of the data is proprietary to the motor carrier or commercial vehicle operator. The ATA predicted that the volume of data that will be produced would: (1) Increase the likelihood that unskilled or untrained personnel would be involved in data analysis; (2) result in a misunderstanding or incorrect interpretation of data; (3) result in a use of erroneous data; and (4) lead to

obtaining and using data for purposes other than to improve vehicle, driver, and highway safety. Accordingly, the ATA suggested an appropriate level of training should be required to access, collect, and protect EDR data, especially considering the types and numbers of events that might warrant event data collection.

AAA commented that law enforcement should have access to the data where a crash results in serious injury or fatality. AAA also commented that rules or laws need to be adopted to prohibit access to EDR data without a court order or permission from the owner. However, AAA did comment that EDR data that cannot be tied to a specific vehicle should be generally available for research purposes.

National Motorists Association commented that it is inappropriate for EDR data to be used for criminal prosecutions and by insurance companies. The Association also expressed concern that EDR data is unreliable, which exacerbates the danger of its use for those purposes.

Advocates commented that resolution of privacy issues should be left to the courts.

Injury Sciences and Public Citizen did not view privacy concerns as an impediment to the EDR rule. Injury Sciences stated that it believes the NPRM provides adequate consideration and protection for the privacy of the individual. While acknowledging the importance of ensuring privacy, Public Citizen also did not see the EDR rule as raising a significant privacy concern. Public Citizen's comments suggested that ''public health'' data provided by EDRs outweighs these privacy concerns. Public Citizen's rationale is that NHTSA already collects and uses EDR data, so the rule does not raise new privacy issues. Furthermore, Public Citizen stated that the NPRM addresses some existing privacy concerns by requiring a statement in the owner's manual to inform consumers as to the presence and role of the EDR in their vehicle.

We have reviewed all of the comments regarding privacy and EDRs. As to comments concerning our planned use of EDR data, we hope that our continued efforts to educate and inform the public will help to correct any public misconceptions about the type of data that EDRs record and how that information is used.

We stated in the NPRM that we are careful to protect privacy in our own use of EDR data. We obtain consent from the vehicle owner to gain access to EDR data. Furthermore, we assure the owner that all personally identifiable information will be held confidential. In handling this information, the agency does not make public any information contained in these records which has the potential to either directly or indirectly identify individuals, except as specifically required by law. Furthermore, prior to the release of information from databases containing EDR data (usually aggregated reports), the agency strips out the last six characters of the VIN (i.e., the portion that would allow identification of a specific vehicle and, potentially by indirect means, the identity of the vehicle's current owner). Therefore, we believe that the agency has taken adequate steps to ensure individual privacy vis-a-vis its use of EDR data.

We understand that EDRs can generate concerns related to how EDR data are currently used or will be used by entities other than NHTSA. As we stated in the NPRM, our role in protecting privacy is a limited one. While we remain sensitive to the public debate about EDRs and the use of EDR data, we do not have statutory authority to address many privacy issues, which are generally matters of State and Federal law that we do not administer. These privacy issues were not created by this rulemaking (e.g., whether the vehicle owner owns the EDR data, how EDR data can be used/discovered in criminal/civil litigation, whether EDR data may be obtained by the police). EDRs have existed since the 1970s, and our rulemaking on EDRs standardizes technology that has existed, in some cases, for decades.

Other issues beyond the scope of this rulemaking include access to EDR data (including by law enforcement) and training of individuals to handle EDR data. As to Wylie Lab's comments, we did not propose certifying independent labs to handle downloaded EDR data for NHTSA, and we do not have a present need for such analysis.

As noted earlier, we are not requiring or prohibiting on/off switches. Given that we are not requiring EDRs, we do not believe it would be appropriate to prohibit on/off switches. However, such switches could reduce the benefits from EDRs. Therefore, we believe it would be inappropriate to require such switches.

We considered Mr. Leggett's comment concerning the reliability of EDRs in trials and other adjudicatory proceedings; however, we note that disputes about these issues are most appropriately resolved in individualized adjudications as needed.[44] We are presently concerned with the reliability of EDR data only as it relates to our stated purposes of the analysis of safety equipment performance, reconstructing crashes, and fostering the development of ACN. We believe that the range, resolution, and accuracy standardization requirements are representative of current industry standards that are generally accepted in the industry, which we discussed in further detail above.

EDR technology continues to evolve, and public discussion about EDRs will continue. We hope to help address these concerns and foster continued acceptance of EDRs by requiring manufacturers of vehicles equipped with EDRs to include a standardized statement in the owner's manual, as discussed below. We also hope to establish an internet public education program to correct perceived public misunderstanding related to EDRs.

8. Owner's Manual Disclosure Statement

In the NPRM, we proposed to require the following disclosure statement to be included in the owner's manual of vehicles that have an EDR:

> This vehicle is equipped with an event data recorder. In the event of a crash, this device records data related to vehicle dynamics and safety systems for a short period of time, typically 30 seconds or less. These data can help provide a better understanding of the circumstances in which crashes and injuries occur and lead to the designing of safer vehicles. This device does not collect or store personal information.

We proposed this disclosure statement in an effort to educate the public about EDRs, i.e., to inform consumers about the circumstances under which EDRs record data and the reasons why EDR data is collected.

All commenters on this issue generally supported our proposal to require an EDR disclosure statement for consumers. We received several suggestions regarding the text and placement of that disclosure statement. Some thought that the language in the NPRM needed augmentation (or a complete rewrite) to address issues such as privacy, preemption, and ownership of and access to EDR data. We also received comments with proposed text to address telematic features, such as ACN, and specifically OnStar®.

GM expressed support for requiring a standardized EDR disclosure statement in the owner's manual. However, GM recommended expanding the statement to more fully inform consumers (e.g., by

[44] *See, e.g., Bachman* v. *General Motors Corp.,* 776 N.E.2d 262 (Ill. App. Ct. 2002); *Matos* v. *State,* No. 4D03–2043 (Fla. Cir. Ct., Mar. 30, 2005); *People* v. *Hopkins,* No. 2004–0338 (N.Y. Co. Ct., Aug. 30, 2004); Kevin Schlosser, ''*Black Box*'' *Evidence,* 231 N.Y. L. J. (Jan. 25, 2005).

providing examples of the type of information recorded, explanation that no recording occurs under normal driving conditions, and an explanation of download protocols) and to respond to issues currently being addressed at the State level (e.g., access to EDR data). In light of the above, GM also suggested that the disclosure statement should inform consumers if their vehicle is equipped with a telematic system that may collect personal and/or vehicle information. GM recommended the following disclosure statement:

This vehicle is equipped with an event data recorder (EDR). The main purpose of an EDR is to record, in certain crash or near crash-like situations, such as an air bag deployment or hard braking, data that will assist in understanding how a vehicle's systems performed. The EDR is designed to record data related to vehicle dynamics and safety systems for a short period of time, typically 30 seconds or less. The EDR in this vehicle is designed to record such data as:

- How various systems in your vehicle were operating;
- Whether or not the driver and passenger safety belts where buckled/fastened;
- How far (if at all) the driver was depressing the accelerator and/or brake pedal; and,
- How fast the vehicle was traveling.

These data can help provide a better understanding of the circumstances in which crashes and injuries occur. NOTE: EDR data are recorded by your vehicle only if a crash or near crash situation occurs; no data are recorded by the EDR under normal driving conditions.

To read data recorded by an EDR, special equipment is required and access to the vehicle or the EDR is required. In addition to the vehicle manufacturer, other parties, such as law enforcement, that have the special equipment, can read the information if they have access to the vehicle or the EDR.

[If the vehicle is equipped with telematic system(s), the following statement must also be included in the owner's manual.]

Your vehicle may be equipped with onboard telematics that provide safety and convenience services such as GPS-based navigation or cellular wireless connectivity, and your vehicle may collect personal or vehicle information to provide such services. Please check the service's subscription agreement or manual for information about its data collection.

According to GM, the NPRM's owner's manual language may not be sufficient to obviate or to preempt current or future State disclosure requirements. GM's recommended disclosure statement also omits reference to ''personal information,'' as we proposed in the NPRM, because GM believes that phrase is potentially ambiguous.

Comments from DaimlerChrysler, Ford, and Toyota were similar to GM's comments, although they differed in two areas. Each recommended that the EDR rule permit vehicle manufacturers to supplement the required language with additional information that the manufacturers deem appropriate for their respective vehicle designs. Each also omitted the language GM included related to telematic systems.

SEMA, Advocates, and Mr. Bruce Funderberg commented that customers should be notified if a vehicle is equipped with an EDR prior to purchasing the vehicle. SEMA stated that vehicle dealers should be required to notify consumers about EDRs, consistent with State and local laws and that subscription services (e.g., OnStar®) should be required to notify purchasers of the types of EDR information that may be transmitted and to whom the data would be provided.[45] According to Advocates, NHTSA should require dealers to provide a copy of the statement to purchasers at the time of sale along with a brochure written in both English and Spanish. Advocates also supported the use of additional methods to educate the public about EDRs, such as public service announcements, agency publications, and NHTSA's Web site. Mr. Funderburg, an individual, commented on vehicle owners' lack of knowledge about EDRs, suggesting that manufacturers need to provide better notice to purchasers about EDRs. He also recommended that the EDR should be optional equipment that purchasers may decline.

EPIC commented that the notice to owners should be more specific about the ownership of and access to EDR data. EPIC also commented that ACN systems present unique privacy issues, stating ''for EDRs that use communications systems—such as OnStar®, which uses wireless phone networks—the EDR should not initiate communication unless an accident is detected or if the driver uses a manual feature to initiate communications for purposes of transmitting driving data.'' [46] EPIC commented:

Consent of the vehicle owner should be required for the disclosure of EDR driving data to the NHTSA or any other government or commercial organization, including automotive insurance companies. Such consent should be fully consensual, meaning for example that automotive insurance contracts should not be conditioned upon access to EDR data.[47]

In addition, EPIC commented that the vehicle owner should be instructed to have the EDR inspected if the vehicle has been involved in an accident, flooding, or fire.[48]

The National Motorists Association, Advocates, AAA, and ATA all made comments that the proposed disclosure statement is inadequate to address an array of consumer concerns, and some suggested alternative language. PCIAA commented that the required, specific disclosure statement proposed in the NPRM is inadequate because the statement could become obsolete quickly and because vehicle owners rarely refer to or use their owner's manual. Advocates commented that the required statement in the owner's manual is necessary but not sufficient to educate the public about EDRs and address privacy concerns. AAA commented that there is insufficient consumer notification about access to

[45] SEMA suggested the following disclosure language:

This recorded data may not be retrieved or downloaded by anyone other than the owner of the vehicle except in certain specific circumstances: (1) With the consent of the owner; (2) by court order; (3) by an authorized person for purposes related to improving vehicle safety provided the identity of the registered owner or driver is not disclosed and the information is of a non-vehicle specific nature; or (4) the data is retrieved for the purpose of determining the need or facilitation of emergency medical response.

In cases where vehicles are equipped with a recording device as part of a subscription service, the fact that information may be recorded or transmitted must be disclosed in the subscription service agreement.

[46] EPIC proposed the following additional text for the statement in the owner's manual for vehicles that contain ACN or an EDR connected to a communications network:

The event data recorder is connected to a communication system capable of automatically contacting emergency services when it detects an accident. The event data recorder will only initiate communication in the event of an accident or if the driver uses the manual feature to initiate communication with either emergency services or the communications provider (*e.g.*, for a service that provides driving directions from an operator).

[47] EPIC proposed the following additional text for the statement in the owner's manual for vehicles that contain ACN or EDR connected to a communications network:

Your consent is required for the data to be disclosed to the National Highway Traffic Safety Administration—a federal agency that gathers information about traffic accidents to improve vehicle and road safety—or any other government or private organization, including automotive insurance companies.

EPIC also commented that if a partial VIN is included in EDR, the following text should be added to the owner's manual:

Only the part of your vehicle identification number (VIN) that includes information about the make and model of your vehicle will be collected by the event data recorder. The unique serial number portion of the VIN will not be collected.

[48] EPIC proposed the following additional text for the statement in the owner's manual:

If your vehicle has been involved in a serious accident or has been subject to flooding or fire, your event data recorder may have been damaged. If it was involved in one of these situations, please have your event data recorder inspected by an authorized dealer.

EDR data, stating that manufacturers should disclose in the owner's manual whether any outside parties that have access to the data and under what circumstances the data are shared. ATA commented that the statement in the owner's manual should disclose that an EDR is present and that the EDR does not collect or store personal information. The ATA also stated that additional public information would be desirable.

After considering the public comments, we have decided to adopt a more detailed disclosure statement, along the lines recommended by GM, DaimlerChrysler, Ford, and Toyota. We believe that the more detailed statement will provide consumers with a fuller understanding of the EDR installed in their vehicles.

However, we are not adopting the recommended language in GM's comments related to telematic systems, because such systems are not directly the subject of this rulemaking. We note that the comments of DaimlerChrysler, Ford, and Toyota did not include language related to telematic systems, although the balance of their recommended disclosure statements were virtually identical to that of GM. The capabilities of telematic systems and the level of integration between such systems and the EDR may also vary depending upon the given technology. For these reasons, we have decided not to require language in the specified disclosure statement on telematic systems. However, vehicle manufacturers may include a discussion of applicable telematic systems in the vehicle owner's manual, if they choose to do so.

In addition, we note that we are permitting vehicle manufacturers to supplement the required owner's manual statement on EDRs with additional information, if they choose to do so. Vehicle manufacturers will have specific knowledge about their EDRs, and in some situations, vehicle owners may benefit from such additional information.

In response to SEMA's comment that vehicle dealers should also be required to notify consumers about EDRs and Advocates comment requesting an additional brochure, we believe that such requirements would be largely redundant of the information required in the owner's manual, and hence unnecessary.

In addition, we have decided not to adopt SEMA's recommendation for a requirement for subscription services, such as OnStar®, to disclose information about the types of data that may be transmitted and to whom they may be transmitted, for the following reasons. First, the regulation of such services is outside the scope of this rulemaking, and second, consumers are generally made aware of such services up-front, particularly where they must pay a fee for the continuation of service. To the extent that consumers are concerned about the data gathered or reported by these services, they are free to pose such questions to the provider.

Regarding Mr. Funderburg's comments that EDRs should be optional equipment that purchasers may decline, we note that making EDRs an option could add unnecessary production costs. Moreover, there are no benefits associated with not having an EDR. Furthermore, taking such a position would run counter to our safety goals of securing more and better EDR data and enabling ACN.

For the reasons discussed more fully under section IV.B.7 of this document, we do not believe that EDRs raise meritorious privacy concerns, because they do not collect individual identifier information. We believe that the disclosure statement we have adopted provides a clear picture of the types of data collected by EDRs and the intended uses of that data.

We have decided not to adopt EPIC's recommended language warning the consumer to have the EDR inspected after the vehicle is in a crash or is subject to fire or flooding. We do not believe that such language is necessary, because in such cases, the vehicle owner will normally have the vehicle examined by both an insurance adjuster and an automotive repair expert, professionals who will diagnose resulting problems with all vehicle systems, including the EDR.

In response to commenters who argued that our proposed owner's manual disclosure statement is inadequate because it is too limited, we note that under the final rule, we are requiring an expanded disclosure statement. We believe that our specified owner's manual disclosure statement provides adequate notice as to the presence and function of the EDR.

We have considered the comments arguing that our proposed owner's manual statement could become quickly obsolete. NHTSA intends to closely follow the development of EDR technology. If we determine that these devices have evolved in such a way as to render our disclosure statement inadequate, we would consider how to amend the required language. In addition, as stated above, we are permitting vehicle manufacturers to augment the required disclosure statement with additional information based upon the specifics of the EDRs installed on the vehicle. For these reasons, we believe that the EDR-related information provided to consumers will be sufficient for most consumers.

9. Preemption

GM, DaimlerChrysler, Ford, Toyota, AIAM, and NADA recommend that the final rule for EDRs should explicitly state that it preempts inconsistent State and local regulations. GM is concerned that without a clear statement of the preemptive effect of the final rule, manufacturers could be faced with a patchwork of State and local requirements. AIAM expressed concern that the failure to preempt inconsistent State and local regulations could result in manufacturers being required to provide limited, circumscribed, or deactivated EDR systems and inconsistent disclosure/owner's manual language on a State-by-State basis. AIAM argued that the consistency across the nation would aid in the public acceptance of EDRs and would help keep costs down. NADA commented that the rule should expressly reference the degree to which inconsistent State or local regulations are preempted.

We have considered the comments concerning the preemption of conflicting State regulations and agree that a patchwork of State laws is not desirable. We expect that general principles of preemption law would operate so as to displace any conflicting State law or regulations.

It is our view that any State laws or regulations that would require or prohibit the types of EDRs addressed by our regulation, or that would affect their design or operation, would create a conflict and therefore be preempted. Specifically, this would include State EDR technical requirements, such as ones requiring EDRs in motor vehicles (except for State-owned vehicles), requiring that EDRs record specific data elements, and/or requiring EDRs to meet specific technical performance or survivability requirements.

Further, it is our view that any State laws or regulations that imposed, for the types of EDRs addressed by our regulation, additional disclosure requirements on vehicle manufacturers or dealers would likewise create a conflict and therefore be preempted. We have devised an appropriate statement for the owner's manual to make the operator aware of the presence, function, and capabilities of the EDR. Inconsistent or additional State disclosure requirements would frustrate the purposes of our regulation by potentially creating confusion or

information overload, thereby reducing the benefit of the required statement. The need to meet different disclosure requirements for different States would also increase costs, making it less likely that manufacturers would provide EDRs.

It is our intent to provide one consistent set of requirements, including a specified statement in the owner's manual, for vehicle manufacturers that choose to install EDRs. We believe that this approach will enhance the quality of EDR data by standardizing the content, format, and accuracy of such data, thereby increasing its comparability and overall usefulness; we further believe that the standardized data will be of greater benefit for safety equipment analysis and crash reconstruction. We also believe that this minimum data set provides key elements in a standardized format that will foster the development of ACN and other telematic systems.

We believe that State laws inconsistent with this final rule would frustrate the final rule's purposes. For example, additional State requirements would increase the costs of EDRs and make it less likely that manufacturers would voluntarily provide them. Additional State requirements could also hamper the development of future EDRs by pushing their development in ways that are not optimal for safety. Among other things, given limitations in data processing capabilities, requirements for additional data elements could make EDRs less effective in real world crashes in recording the data elements NHTSA has determined to be most important. (As discussed in section IV.B.2 of this notice, we believe that recording of additional data elements, which are currently of lesser value for our stated purposes, would not only result in significantly higher costs but would also risk overburdening the microprocessing and memory capabilities of EDRs. This could increase data recording times, and it could also increase the risk of system failure, potentially resulting in the loss of all EDR data.)

In addressing the issue of preemption, we note that the effective date for our EDR regulation is 60 days after publication of this rule, and that the compliance date is September 1, 2010. It is our view that our regulation has preemptive effect between the effective date and September 1, 2010, as well as after that latter date. In *New Jersey State Chamber of Commerce* v. *State of New Jersey,*[49] the Court held that a delay in the start-up date of certain provisions of the Occupational Safety and Health Administration's (OSHA's) Revised Asbestos Standards did not affect the effective date of preemption, in that case upon publication in the **Federal Register** (*holding* that preemption arises before the regulation becomes operative, in cases where an agency provides additional time for regulated entities to take steps to prepare for compliance). The same principle applies here, and we have a substantive reason for structuring the effective date and compliance date in the manner we have done. Once the EDR regulation is effective, a conflict with an inconsistent State law would arise immediately and impact achievement of our ultimate objectives for compliance in 2010.

Specifically, we selected this compliance date to provide sufficient lead time to enable manufacturers to incorporate necessary changes as part of their routine production schedules. Thus, we expect that, in order to meet the requirements of our regulation, between now and September 1, 2010, vehicle manufacturers will be gradually redesigning their EDRs, modifying vehicle systems and components that feed into EDRs, and integrating EDRs into numerous models of vehicles. Furthermore, a vehicle manufacturer may begin complying with the EDR regulation once it becomes effective. Thus, any State laws or regulations that would require or prohibit the types of EDRs addressed by our regulation, or that would affect their design, or that would establish a compliance date earlier than September 1, 2010, would conflict with and frustrate the purposes of our regulation. Among other things, such laws or regulations would interfere with the process of manufacturers gradually redesigning their EDRs, modifying related vehicle systems and components, and integrating EDRs into vehicles in order to meet our requirements during that timeframe.

The agency is aware of ten States that have passed laws relating to EDRs in the fields preempted by this final rule.[50] Most of these States require that the vehicle purchaser be notified that the motor vehicle is equipped with an EDR. Three States, Arkansas, Colorado, and North Dakota, require additional information. Of those three States, Arkansas and North Dakota have the broadest disclosure requirements. Arkansas requires disclosure of the presence of the EDR, the type of EDR, and the type of data that is recorded, stored, or transmitted.[51] North Dakota requires disclosure of the presence, capacity, and capabilities of the EDR.[52]

We believe that the statements meeting our disclosure requirement in the final rule would satisfy even the broadest of the existing State disclosure requirements. Further, it does not appear that any of the existing State requirements regarding disclosure would conflict with the final rule.

This rule does not address certain other issues generally within the realm of State law, such as whether the vehicle owner owns the EDR data, how EDR data can be used/discovered in civil litigation, how EDR data may be used in criminal proceedings, whether EDR data may be obtained by the police without a warrant, whether EDR data may be developed into a driver-monitoring tool, and the nature and extent that private parties (including insurance companies, car rental companies, and automobile manufacturers) will have or may contract for access to EDR data. These issues are instead being addressed by State legislatures.

10. Applicability of the EDR Rule to Multi-Stage Vehicles

In the NPRM, we stated that our proposed EDR rule would apply to the same vehicles that are required by statute and by FMVSS No. 208 to be equipped with frontal air bags (i.e., passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg or less and an unloaded vehicle weight of 2,495 kg or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service). This covers most light vehicles, including multi-stage vehicles. We believe applying this rule to all vehicles that are currently subject to FMVSS No. 208 is appropriate since most EDRs are closely associated with frontal air bags and all of these vehicles must meet the advanced air bag requirements of FMVSS No. 208, which will be completely phased in by manufacturers before compliance with this final rule is required.

Several commenters suggested changing our proposal to provide an exception for multi-stage vehicles and incomplete, intermediate, and final stage manufacturers. GM, DaimlerChrysler, Ford, and Toyota expressed support for either excluding incomplete, intermediate, and final

[49] 653 F.Supp. 1453, 1462 (D. N.J. 1987).

[50] Arkansas, California, Colorado, Maine, New Hampshire, New York, Nevada, North Dakota, Texas, and Virginia.

[51] Arkansas Code, Title 27, Chapter 37, Subchapter 1, Section 103.

[52] North Dakota Century Code, Title 51 Sales and Exchanges, 51–07–28.

stage manufacturers from the requirements of the rule by specifically excluding these manufacturers in the regulatory text or by requiring those manufacturers to certify compliance one year after the last applicable date for manufacturer certification of compliance provided under the final rule. GM's point is that the proposed EDR rule would result in a significant burden on incomplete, intermediate, and final stage manufacturers. GM argues that the integration of EDR functions into a vehicle is a complex task requiring advanced communications and data processing technologies that may be beyond the capabilities of many small businesses.

ATA asserted NHTSA has not involved final stage vehicle manufacturers or accessory installers in an appropriate dialog. ATA encouraged NHTSA to conclude that there is no possibility that EDR performance could be affected during any type of completion or conversion or accessory installation. On the issue of the effect of the EDR requirements on altered vehicles, NADA commented that NHTSA should ''consider the complexities that may be involved for light-duty vehicles manufactured in two or more stages or which are altered prior to first sale.''

We have considered the comments that we provide an exception or otherwise delay the effective date of this rulemaking for incomplete, intermediate, and final stage manufacturers (i.e., multi-stage vehicles). Since the NPRM was published, NHTSA has issued a final rule pertaining to certification requirements for vehicles built in two or more stages and altered vehicles (*see* 70 FR 7414 (February 14, 2005)). The amendments made in that final rule become effective September 1, 2006. In relevant part, the multi-stage certification final rule amended 49 CFR 571.8, *Effective Date,* and it added a new subparagraph (b) providing as follows:

(b) *Vehicles built in two or more stages vehicles and altered vehicles.* Unless Congress directs or the agency expressly determines that this paragraph does not apply, the date for manufacturer certification of compliance with any standard, or amendment to a standard, that is issued on or after September 1, 2006 is, insofar as its application to intermediate and final-stage manufacturers and alterers is concerned, one year after the last applicable date for manufacturer certification of compliance. Nothing in this provision shall be construed as prohibiting earlier compliance with the standard or amendment or as precluding NHTSA from extending a compliance effective date for intermediate and final-stage manufacturers and alterers by more than one year.

In light of the agency's policy on multi-stage manufacturer certification, as expressed in the February 14, 2005 final rule, we have decided to apply that principle to the compliance date for final-stage manufacturers and alterers. Thus, final-stage manufacturers and alterers must comply with this rule for vehicles manufactured on or after September 1, 2011. However, final-stage manufacturers and alterers may voluntarily certify compliance with the standard prior to this date.

11. Applicability of the EDR Rule to Heavy Vehicles and Buses

In addition to multi-stage vehicles, Public Citizen and Advocates commented that NHTSA should extend the rule's applicability to include other vehicles, such as heavier trucks and 15-passenger vans. Public Citizen commented that all new vehicles, including large trucks, should be required to be equipped with EDRs, and the organization encouraged NHTSA to undertake a separate rulemaking to require EDRs in large trucks. Public Citizen stated that the benefit realized by EDRs is directly proportional to the number of vehicles equipped with these devices and that full fleet penetration is critical to the accuracy and utility of EDR data. Public Citizen further commented that an EDR requirement for large trucks could help improve industry practices and driver behavior. Similarly, Advocates commented that the rule should include 15 passenger vans and heavier light trucks because those vehicles have relatively high rollover rates, high risk of injury to multiple occupants, and are exempt from other safety regulations (e.g., side impact and roof crush resistance).

While EDR requirements for heavier vehicles are outside the scope of this rulemaking, we note that many 15-passenger vans are within the applicable weight range for this final rule, and thus, are required to comply with the EDR regulation. Further, we note that some original equipment manufacturers, such as GM, are installing EDRs in their medium trucks equipped with air bags.

As noted in the NPRM, we are not addressing in this document what future role the agency may take related to the continued development and installation of EDRs in heavy vehicles. We will consider that topic separately, after consultation with the Federal Motor Carrier Safety Administration. As noted previously, FMCSA is currently engaged in rulemaking that would facilitate the use of Electronic On-Board Recorders for recording and documenting the hours of service of commercial drivers.

We believe that deferring consideration of requirements for EDRs installed on heavy trucks is appropriate for the following reasons.

First, it would provide the agency with time to build experience in terms of standardization of EDR data in light vehicles. This experience could then be applied to our consideration of heavy trucks.

Second, because the relevant data to be gathered by EDRs installed in heavy trucks are not identical to that of light vehicles, we believe any such requirements should come in a separate regulation.

Third, because EDRs in light vehicles rely heavily upon sensors and diagnostic equipment associated with the vehicle's air bag system, the agency must carefully assess the costs, benefits, and lead time necessary for EDR requirements for heavy trucks, which may not have systems with all the necessary hardware. We understand that heavy truck manufacturers, suppliers, and others are engaged in EDR-related efforts with SAE, which will result in recommended practices for these devices. NHTSA is closely monitoring these efforts by the SAE working group. NHTSA is also closely following activities in other governmental agencies, including FMCSA and NTSB.

Finally, separate consideration of EDR requirements for heavy trucks will expedite promulgation of this final rule for EDRs in light vehicles, thereby encouraging further positive developments based upon standardized EDR data.

12. Automatic Crash Notification and E–911

The NPRM stated that the purpose of this rulemaking is to help ensure that EDRs record, in a readily usable manner, data necessary for effective crash investigations, analysis of safety equipment performance, and automatic crash notification systems. It is NHTSA's position that this data will help provide a better understanding of the circumstances in which crashes and injuries occur and will lead to the designing of safer vehicles.

Including ACN as a stated purpose of the EDR rule drew comments. Commenters recommended additional clarifying language or deleting relevant portions of the proposed regulatory text so that the rule cannot be construed as a limitation on manufacturers' ability to offer telematics features, such as ACN. GM, Ford, and Toyota recommended that the final rule expressly state that it does not limit manufacturers' ability to

offer ACN and other telematics features. Likewise, PCIAA commented the rule should not ''preclude EDRs and similar vehicle technology (i.e., intelligent vehicle systems-telematics) from being fully leveraged by the public and private sectors.''

GM argued that because ACN is not being proposed in this rulemaking, the language referencing ACN should be dropped from the regulatory text. GM further argued that the proposed EDR rule makes no provision for the software, hardware, and infrastructure required to make use of ACN-related data. DaimlerChrysler made a similar comment, adding that ACN infrastructure was last estimated to cover only 25% of the United States, principally in urban areas. DaimlerChrysler stated that benefits of ACN, other than those related to better crash data, are speculative and out-of-scope.

We acknowledge that this final rule does not regulate or require ACN systems. Nonetheless, we are retaining ACN as a stated reason to require EDR data standardization because we believe that the final rule would have ancillary benefits, such as facilitating ACN development. However, our other stated purposes fully justify the rule. We emphasize that this final rule does not limit the ability of manufacturers to offer ACN or other telematics devices.

To reiterate our earlier reasoning, we note that the NPRM provides a detailed explanation of the relationship between EDRs and ACN systems. In addition, the ENHANCE 9–1–1 Act of 2004 requires the Department of Transportation to help coordinate and to speed the deployment of Wireless Enhanced 9–1–1. ACN has the potential for interfacing with nation-wide Wireless Enhanced 9–1–1 deployment by providing immediate and accurate crash location information to Public Safety Answering Points. This will expedite the dispatch of emergency services to the crash scene, help ensure that EMS personnel can locate the crash, and speed the provision of lifesaving emergency medical services to traffic crash victims. The prompt provision of emergency medical care to traffic crash victims will reduce morbidity and mortality.

We believe ACN systems have great potential for reducing deaths and injuries caused by motor vehicle accidents. This potential arises from the ability of the EDR and ACN, working in tandem, to determine (prior to responding to the accident scene) the likely nature and severity of the injuries, the proper allocation of resources to respond to those injuries, and the location of the crash. We fully expect ACN systems to evolve, and our rulemaking today, which standardizes EDR data, will play a role in realizing the safety benefits of ACN.

13. Definitions

a. ''Trigger Threshold''

''Trigger threshold'' indicates the point at which a recordable event is recognized by the EDR as suitable for further analysis. Our proposal defined ''trigger threshold'' as ''a change in vehicle velocity, in the longitudinal direction for vehicles with only longitudinal acceleration measurements or in the horizontal plane for vehicles with both longitudinal and lateral measurements, that equals or exceeds 0.8 km/h within a 20 ms interval.'' In proposing a value for the EDR trigger threshold, we turned to SAE J1698 for guidance.

GM commented that, as proposed, the trigger threshold for EDR recording was set too low and would result in an excessive number of recordings and re-recordings. GM argued that the defined threshold would create a risk of memory degradation in the electronic control module over the life of the vehicle. Accordingly, GM, along with DaimlerChrysler, Ford, and Toyota, recommended revising the definition of ''trigger threshold'' to read: ''equals or exceeds 5 mph (8 km/h) within a 0.15 second interval.'' GM stated that its recommended value is consistent with the FMVSS bumper standard threshold.

Similarly, Hyundai, Kia, and Delphi stated that the trigger threshold specified in the NPRM is set too low and would result in data being rewritten many times as a result of potholes and curb hits. According to the commenters, this frequent overwriting of the EDR data could result in computer memory failure, thereby leaving the EDR unavailable in the event of an actual crash. Delphi recommended that the trigger threshold ''corresponds to an average acceleration in excess of 1.5 G with a total velocity change of at least 5 km/hr.''

As an alternative to the proposed language, TRW Automotive suggested that the trigger threshold should be determined by the air bag system, which would notify the other systems to begin recording. TRW argued that, currently, each individual system records its own data so minimal changes would be needed to implement the rule. TRW's rationale is that implementation of the rule would be less expensive and less complex if the rule permitted each system to record its own data.

TRW Automotive also commented that there should be ''an acceptable tolerance of plus or minus ''one data sample period'' for the data points corresponding to ''trigger threshold'' detection, and a sampling rate tolerance of plus or minus three percent for data before and after the point of ''trigger threshold'' detection.''

Advocates stated that it had no opinion on the exact specification for the trigger threshold but expressed concern about setting the trigger at a level where recording would occur only in the event of a crash. Advocates suggested that NHTSA should consider the collection of near-miss data in a future EDR rulemaking. Advocates also questioned whether an electrical or engine fire would be a triggering event and suggested that NHTSA should revise the rule to require the EDR to be sensitive to fire-based events.

After considering these comments, we have decided to modify the trigger threshold value to 8 km/h within a 150 ms interval, as requested by the commenters, such that the final rule's definition of ''trigger threshold'' reads: ''a change in velocity, in the longitudinal direction, that equals or exceeds 8 km/h within a 150 ms interval. For vehicles that record ''delta-V, lateral,'' trigger threshold means a change in vehicle velocity, in either the longitudinal or lateral direction that equals or exceeds 8 km/h within a 150 ms interval.'' We believe that this change is appropriate for the following reasons.

While we agree that the threshold proposed in the NPRM routinely could be exceeded by strong bumper-to-bumper contact in a parking lot or minor impact with a road obstacle, we only required the data to be recorded if the cumulative delta-V of the current event/crash exceeded the delta-V of the previously-recorded data. We do not agree that the non-volatile memory would have been over-burdened, because the delta-V of the event in non-volatile memory would have rapidly reached a sufficient magnitude to disregard minor impacts, such as bumper-to-bumper events. We believe that the revised criterion effectively addresses the concerns raised by the commenters and reduces the complications of decisionmaking regarding EDR data recording, while maintaining the ability to obtain data from most significant crashes (i.e., those that are non-trivial).

We have decided not to adopt TRW's recommendation to tie the trigger threshold to air bag deployment. We are interested in collecting data on high delta-V crashes that do not deploy the air bag systems. While air bag systems may be operating properly in these

cases, we are nonetheless interested in these situations, and EDR data captured in these situations would be helpful for safety equipment analysis. We are also interested in collecting data in non-air bag deployment crashes. Finally, one of our stated reasons for this rulemaking is to standardize EDRs. We believe that using a set delta-V will better facilitate this purpose, whereas using air bag triggers could result in different thresholds, depending on manufacturer deployment strategies and vehicle platforms. For these reasons, we have decided not to narrow our definition of ''trigger threshold'' by tying it to air bag deployment.

Regarding Advocates'' comments recommending capture of near-miss data, we have decided that this rulemaking should target crash event data. While the agency believes valuable information for crash avoidance can be obtained from studying near-miss data, we do not believe that current EDRs are best suited for this function. Typically, near-miss data are not associated with a strong physical occurrence, hence increasing the difficulty of defining a trigger threshold to key recording. If the trigger threshold were set very low, it would cause the generation of a large volume of files that would need to be captured and recorded, or alternatively, it would force EDRs to continuously record information. Either of these data logging processes would make EDRs much more expensive. At this time, the agency believes these issues can be addressed best through our research programs, such as the recently completed 100-car study, in which naturalistic driving characteristics were captured.[53] Furthermore, near-miss situations are not expected to generate data applicable to the data elements selected as non-trivial events in this final rule (e.g., no delta-V or safety restraint data).

As with near-miss data, NHTSA does not believe that a trigger related to fire would be a cost-effective or practicable approach. Non-crash fires are typically associated with fuel leaks, and as with the near-miss data, current event'driven EDRs would not capture much data, even if the EDR were triggered.

b. ''Event''

In addition to ''trigger threshold,'' the definition of ''event'' is important to understanding what constitutes a recordable event for an EDR. In the NPRM, we defined ''event'' as ''a crash or other physical occurrence that causes the trigger threshold to be met or exceeded after the end of the 500 ms period for recording data regarding the immediately previous event.''

GM urged modification of the NPRM's definition of ''event,'' arguing that the proposed sampling rates and durations are excessive. In order to address these concerns, GM provided a revised definition of ''event'' and suggested a new definition of ''crash event,'' which also sought to clarify the distinction between an event that triggers data capture in volatile memory and an event that triggers the recording of data in non-volatile memory. DaimlerChrysler, Ford and Toyota offered nearly identical comments to those of GM, except that in their definition of ''crash event,'' the longitudinal or lateral trigger threshold was 5 mph delta-V in 150 ms, as opposed to 5 mph delta-V in 250 ms for GM.

Nissan suggested that the rule should permit two alternatives for determining the beginning of an event, as provided in SAE J1698. SAE J1698 and SAE J1698–1 include two methods of establishing time zero. One method calculates time zero as the occurrence of a delta-V of over 0.8 km/h (0.5 mph) in 20 ms. The other method of calculating delta-V is to define time zero as the point at which the EDR algorithm is activated, also known as ''wake-up.'' The first method was the basis for our proposal in this area. GM, Ford, DaimlerChrysler, and Toyota commented that we should first define an ''event'' and then define ''time zero'' as the beginning of the event, recommending a definition of ''event'' as a delta-V of over 8 km/h (5 mph) or more within 150 ms, instead delta-V of over 0.8 km/h (0.5 mph) in 20 ms.

After considering the comments we received on this definition, we have slightly modified the definition of ''event'' in the final rule to read as: ''a crash or other physical occurrence that causes the trigger threshold to be met or exceeded.'' We believe this change is consistent with vehicle manufacturers' comments. Under the new trigger threshold definition, an event is a physical occurrence that produces sufficient delta-V to exceed the trigger threshold. Those occurrences that do not meet the threshold are not classified as ''events.''

As discussed below, we have modified the way in which the start of an event and end of an event are determined, consistent with SAE J1698.

c. ''Event Data Recorder''

The NPRM defined ''event data recorder'' as ''a device or function in a vehicle that records any vehicle or occupant-based data just prior to or during a crash, such that the data can be retrieved after the crash. For purposes of this definition, vehicle or occupant-based data include any of the data elements listed in Table I of this part.''

GM, Ford and Toyota recommended revising the NPRM's definition of ''event data recorder'' in order to narrow the definition and make it more precise.[54] GM argued that its recommended definition of ''event recorder'' would prevent confusion and possible misinterpretation. DaimlerChrysler recommended a similar definition for ''event data recorder,'' except that DaimlerChrysler's comments omitted the specific time references indicated by GM.

Injury Sciences suggested expanding the definition of EDR to include vehicles that record and store any form of speed or collision information, without regard to the storage location or purpose. According to Injury Sciences, this would prevent manufacturers from circumventing the rule by not storing or using the data in their air bag modules.

Gelco commented that the definition of ''event data recorder'' in the **SUPPLEMENTARY INFORMATION** section of the NPRM is narrower than the definition in Sec. 563.5 of the proposed regulatory text. Gelco argued that the definition in Sec. 563.5 would include devices that are designed to capture data at lower resolution on an ongoing basis (as distinguished from devices that capture detailed data at the time of a crash event.) Gelco stated that such devices have valid purposes for both owners and users of vehicles, and that encompassing these devices within the definition of EDR would unnecessarily restrain their development. Gelco recommended narrowing the scope of the rule by adopting a definition for ''event data recorder'' that differentiates between devices that capture data on an ongoing basis and EDRs.[55]

[53] Naturalistic Driving Study; Virginia Tech Transportation Institute (VTTI); *see http://www-nrd.nhtsa.dot.gov/departments/nrd-13/driver-distraction/PDF/100CarMain.pdf.*

[54] GM offered the following definition of ''event data recorder'':

Event data recorder (EDR) means a device or function in a vehicle that captures the data elements identified in Table I of this standard for up to 5 seconds before time zero and up to 250 ms after time zero, and that records the data when it has been determined that a crash event has occurred so that it can be retrieved after the crash.

[55] Gelco recommended the following definition of event data recorder, in order to clarify the scope of existing recorders covered by the rule:

Event data recorder (EDR) means a device or function installed in a vehicle as part of its original equipment that records any vehicle or occupant-based data just prior to or during a crash, such that the data can be retrieved after the crash. For purposes of this definition, vehicle or occupant-based data include any of the data elements listed

Continued

AAM stated that the definition of ''event data recorder'' is too broad in that it includes components that are not designed primarily for recording crash data. For example, some current recording systems only record restraint system deployment decisions and timing data. As a result, AAM argued that the rule acts as a mandate forcing manufacturers to record a great deal more data than their systems are currently designed to record. On the same issue, the Alliance offered to help NHTSA draft a specification that more clearly delineates the devices that they believe should fall within the ambit of the final rule.

After carefully consideration of the comments, we have decided to revise the definition of ''event data recorder'' in order to avoid possible misinterpretation. As proposed in the NPRM, the definition would have covered all devices that record static freeze-frame air bag data elements (e.g., ''frontal air bag warning lamp-on/off''), which commenters argued would have inadvertently resulted in a mandatory rule. Therefore, we have revised the definition to exclude static freeze-frame data elements, and by doing so, we avoid a mandatory rule. However, our revised definition retains critical data elements necessary for restraint performance evaluation, crash reconstruction, and better delta-V estimation.

The final rule defines ''event data recorder'' as ''a device or function in a vehicle that records the vehicle's dynamic, time-series data during the time period just prior to a crash event (e.g., vehicle speed vs. time) or during a crash event (e.g., delta-V vs. time), intended for retrieval after the crash event. For the purposes of this definition, the event data do not include audio and video data.''

14. Utilization of SAE and IEEE Standards

Under Section 563.4, the NPRM proposed to incorporate by reference SAE Recommended Practice J211–1, March 1995, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation'' (SAE J211–1). GM commented that the proposed section which would have incorporated SAE J211–1 should be deleted, arguing that high-speed acceleration data is not needed for accident reconstruction purposes (delta-V is sufficient) and that manufacturers should have the flexibility to work with their suppliers to match data acquisition hardware and software for their systems. On the other hand, IEEE–VTS commented that NHTSA should include in Section 563.4 several provisions of its consensus Motor Vehicle Electronic Data Recorder (MVEDR) standard on a broad range of topics.[56]

We have considered GM's comment that Section 563.4 should be deleted, which is premised upon replacement of the proposed acceleration data element with a delta-V data element. As indicated above, manufacturers who prefer to record acceleration may continue to do so under this final rule. However, for those manufacturers that prefer to record acceleration data instead of delta-V, the acceleration data must be filtered and converted to delta-V either during the recording period or in the data downloading process. Accordingly, the incorporation by reference provision, as it appeared in the NPRM, remains relevant, and we see no reason to remove it. We note that the incorporated SAE standard is not relevant to manufacturers that decide to record delta-V instead of acceleration.

We have also considered IEEE–VTS's request to incorporate its IEEE 1616 standard. We note that although incorporation by reference is a common practice in our rulemaking, we only utilize it when we believe the standards are appropriate and the standards are too complex and onerous to be copied into the regulation. In the present case, we believe that the provisions of the IEEE standard that do not already appear in our proposed EDR rulemaking are not necessary for data standardization. For many of the other IEEE provisions that do appear in the EDR regulatory text, we do not believe that these standards are too complex and onerous to be copied into the regulation. We believe that many of the definitions that we have provided in the regulatory text are easy to understand and follow. In fact, we believe that it would be easier for the reader to understand if all the items were articulated in the regulation itself, rather than by incorporation. Accordingly, we have we have decided not to incorporate by reference the IEEE 1616 standard, as recommended by IEEE–VTS.

15. Costs

The NPRM estimated that the added cost to manufacturers for implementing the requirements of the EDR proposal would be $0.50 per vehicle. Several commenters (GM, DaimlerChrysler, Ford, Toyota, Nissan, Subaru, ATA, and AIAM) argued that the NPRM's cost estimate is understated. These commenters argued that implementation of the proposal would result in significantly higher costs related to microprocessing and memory upgrades, computer reprogramming, the proposed range, accuracy, and precision requirements, the dynamic testing requirements, and air bag sensor upgrades. Several commenters provided suggestions on ways to reduce costs, while others discussed the effect of costs on installation of EDRs.

GM commented that additional memory and processing capacity required to meet the requirements outlined in the NPRM would greatly increase the cost of complying with the proposed rule. According to GM, memory storage capacity would need to be expanded beyond that provided for current EDRs, and memory cannot be added incrementally, as implied in NHTSA's cost estimates (i.e., computer memory is normally available in blocks, so the next step up from 64K may be 128K). GM further stated that microprocessors available to handle larger amounts of memory are usually packaged with other system capabilities (e.g., increased input/output/pins) that would further increase system costs. According to GM, this is true for both volatile and non-volatile memory.

We infer from GM's comments that it believes that, if adopted, our proposal would entail unavoidable increases in processor costs. Specifically, unless the processor has sufficient memory capacity, the ability of the restraint system modules to perform their primary task (i.e., deploying the air bags in a timely and appropriate manner) could be compromised. GM stated that two microprocessors may be necessary to perform these two functions.

DaimlerChrysler, Ford, and Toyota provided nearly identical comments to those of GM on the cost issues associated with memory capacity and microprocessing. However, they

in Table I of this part. For purposes of this definition, devices or functions which may record one or more of the data elements listed in Table I of this part just prior to or during a crash but which are not designed for the purpose of collecting and storing motor vehicle crash event data or to record vehicle or occupant-based data at the recording intervals/times listed in Table I of this part shall not be event data recorders.

[56] IEEE–VTS requested incorporation of the following sections of their consensus MVEDR, IEEE 1616 standards: Data Privacy and Security Recommendations (Clause 1.3), Definitions (Clause 3.1), International Use of MVEDR Data (Clause 4.2), Emergency Response Community (i.e. Data Accessibility & Extraction) (Clause 4.3.4), Electronic Equipment Operating Environment (Clause 4.6.1), Battery/Reserve Power (Clause 4.6.2), Crashworthiness (Clause 4.7), Vehicle Crash Modes (Clause 5.1), Minimum Outputs (Clause 6.1), Ability to Access Nonvolatile Memory (Clause 6.6.), Use of Proprietary Connectors (Clause 6.8), MVEDR Telltake (Clause 6.12), Data Capture (Clause 7.7), MVEDR Data Dictionary (Clause 8), and Recommended Data Elements for Light Vehicles Under 4,500 kg (Clause 8.2).

estimated that the NPRM's proposed requirements would necessitate EDR storage capacity 5–10 times greater than that found in current EDRs and that the overall cost per vehicle would be 2–3 orders of magnitude greater than the NPRM's current estimate (i.e., $50–$500). DaimlerChrysler and Toyota also argued that costs for RAM memory are typically more expensive than ROM memory.

DaimlerChrysler, Ford, and Toyota commented that the Preliminary Regulatory Evaluation's projection of $10,000 per manufacturer for software algorithm reprogramming costs is an underestimate, although no alternative figure was provided. These manufacturers asserted that such efforts would require engineering-level specification development, algorithm development, and algorithm validation for each vehicle development program.

GM and AIAM commented that the proposed range, accuracy, and precision requirements in Table III of the NPRM underestimate certain hardware costs. For example, GM stated that it currently uses ± 50 G accelerometers with an 8% accuracy. According to GM, doubling the range to ± 100 G and increasing the accuracy of those accelerometers would add significant costs, which are not reflected in the NPRM's cost estimates. GM added that in some cases, the new requirements are beyond the state-of-the-art and may not be feasible. AIAM commented that the NPRM specifies range, accuracy and precision standards in excess of current industry practice. According to these commenters, significant increases in cost would be required to modify systems to meet these proposed requirements.

Another cost issue, raised by GM, Ford, and Toyota, related to the proposed dynamic testing requirements for EDRs, which the commenters asserted would greatly increase testing costs. For example, GM argued that the NPRM would require storage of crashed vehicles for 30 days following a test to ensure retrievability of data. GM commented that such a requirement is impractical and unnecessary. Ford and Toyota challenged the Preliminary Regulatory Evaluation's assumption that the NPRM's proposed functionality and survivability requirements would not add any costs because existing EDRs are already capable of meeting the proposed standard. Ford stated that NHTSA has not fully accounted for the crash test performance and survivability provisions, so additional costs would be expected.

As discussed earlier, GM, DaimlerChrysler, and Ford all argued that the proposal would significantly increase testing costs, because they perceived that the testing would need to be conducted with running vehicles and activated systems. According to GM, the NPRM does not account for a significant additional cost for reserve or backup batteries, which it argued would be necessary to comply with the proposed requirement that EDR data be retrievable without external power for up to 30 days.

To remedy the above cost issues, GM recommended reducing the number of data elements to only those necessary to obtain safety-related data suitable for crash reconstruction purposes, which would presumably allow current EDRs to handle these tasks with minimal modifications and cost increases.

Nissan argued that the broad definition of an ''event data recorder,'' as proposed, encompasses many current air bag systems that do not record the types of information included in Table I. According to Nissan's calculations, the NPRM underestimates the cost of implementation by a factor of 10. Nissan argued that its air bag systems would need major architectural changes to meet the proposed requirements. Subaru made a similar comment, arguing that the NPRM underestimates the costs of implementation because Subaru might be forced to develop an entirely new air bag electronic control unit. AIAM commented that some EDR systems that currently only record air bag information may need a complete redesign.

DaimlerChrysler, Ford and Toyota stated that sensors that could meet the requirements of the NPRM are currently considered ''laboratory grade,'' which raises issues related both to cost and availability.

Delphi and Mr. Funderburg expressed concern that the cost of implementation would deter manufacturers from installing EDRs or take away resources from NHTSA's other projects. Delphi commented that the cost of implementation might vary significantly depending on the existing system architecture and that because of potentially high costs, many manufacturers may choose to freeze their level of EDR fleet penetration or even remove EDRs from certain models. Commenters argued that manufacturers of vehicles with components that are not sufficiently interconnected either would remove (or not implement) EDRs or would be required to make significant changes to the existing electrical architecture. Mr. Funderburg expressed concern regarding the costs of data analysis and the potential for diverting NHTSA's resources away from more important projects.

AAA recommended adoption of a smaller data set to help reduce the costs of implementation. In contrast, Public Citizen asserted that requiring installation of EDRs with an appropriately large number of data elements would be more cost-effective for both manufacturers and consumers. Public Citizen stated that mandated safety features costs consumers as little as a quarter of the cost of such features in the absence of an agency requirement. However, Public Citizen did not provide any data to substantiate this point.

We have considered the comments on costs, and we have addressed the concerns of the commenters in the Final Regulatory Evaluation (FRE), which may be found under the same docket number as this final rule. However, the following summarizes the conclusions presented in the FEA.

The total cost for the estimated 9.8 million vehicles that already have an EDR function to comply with the regulation will range up to $1.7 million. If manufacturers were to provide EDRs in all 15.5 million light vehicles, the estimated total cost will range up to $10.9 million. These potential costs include technology costs, administrative costs, and compliance costs (although the latter two sets of costs are expected to be negligible).

16. Other Issues

a. Scope and Purpose

The NPRM's regulatory text defined the purpose and scope of this rulemaking as specifying uniform, national requirements for vehicles equipped with EDRs. Proposed section 563.1 also required vehicle manufacturers to make sufficient information publicly available to enable crash investigators and researchers to retrieve data from EDRs.

Two vehicle manufacturers commented on the proposed scope provision. GM commented that the NPRM's statement of scope is overly broad and somewhat ambiguous. GM argued that the current text of Sec. 563.1 should be revised to clarify the intended scope of the regulation, and GM further argued that NHTSA should mandate installation of EDRs. Toyota also commented that the scope of the rule is overly broad and ambiguous and recommended language nearly identical to GM's, but without advocating a mandatory EDR requirement.

PCIAA commented that the proposed rule focuses too much on restraint systems and not enough on systems to help the driver avoid collisions.

We have carefully considered the comments pertaining to the scope

provision. We disagree with the commenters who stated that our scope provision is overbroad and ambiguous. To reiterate our earlier explanation, we intend to collect EDR data in order to gather information related to crash reconstruction, to the analysis of safety equipment performance, and which may be useful for ACN. We believe that the regulatory text, when read in its totality (including sections on scope, purpose, and definitions), provides the public with a clear understanding of the objectives of our final rule.

We also disagree with commenters' recommendations to change the scope of the final rule to adopt a mandatory EDR requirement. As noted above, we did not propose a mandatory requirement for vehicle manufacturers to install EDRs, and for the reasons previously discussed, we have decided not to adopt such an approach at this time. We will continue to monitor EDR installation, and may reconsider this issue in the future if circumstances warrant. We agree that it is desirable for EDRs to gain wider usage and acceptance.

We have considered PCIAA's comment that the rulemaking should acknowledge other uses of EDR data (other than those specified in the NPRM) so that data elements offer sufficient flexibility and the correct incentives to avoid discouraging innovations that go beyond the goals of research and vehicle safety. However, we do not believe that this rule will deter EDR innovations beyond NHTSA's stated purposes, nor inhibit the ability to use EDRs for other purposes. Furthermore, we do not believe it is appropriate to incorporate into this rule other uses of EDR data that we currently have no reason to standardize, and doing so would require the agency to significantly alter the scope and purpose of this rule.

We have, however, revised the regulatory text of the scope provision to make it consistent with the revisions made to the data retrieval section. As stated above, in the final rule we have revised the portion of our proposal that would have required manufacturers make publicly available through the NHTSA docket such non-proprietary information that would permit companies that manufacture diagnostic tools to develop and build a device capable of accessing, retrieving, interpreting, and converting data stored in the EDR. Consistent with our new approach arising out of public comments, the scope provision now indicates that manufacturers are required under this final rule to make such information commercially available.

DaimlerChrysler recommended adding a time element to the ''purpose'' section of the regulatory text, stating that EDR recording will include ''five seconds of specified pre-crash data elements and 250 milliseconds of specified crash data elements * * *.'' We have considered DaimlerChrysler's recommendation; however, we generally do not provide such specific language in the purpose section. Instead, we believe that such time element is sufficiently and clearly addressed in the regulatory text under the ''data capture'' section.

b. Technical Changes to Definitions and New Definitions

In response to recommendations provided in the comments, we have decided to modify several definitions in the regulatory text. These modifications to the regulatory text provide clarification and address technical or minor issues.

''Capture''

The NPRM defined ''capture'' as ''the process of saving recorded data.'' GM, DaimlerChrysler, and Ford commented that this definition should be clarified. According to GM, the industry defines ''capture'' as the process of buffering data in a temporary, volatile storage medium where it is continuously updated. GM stated that data captured in volatile memory is unstable, insofar as it is continuously overwritten with new data as long as power is supplied to the module and is lost the moment power is discontinued. We have revised the definition of ''capture'' in light of these comments. Accordingly, the final rule defines ''capture'' as ''the process of buffering EDR data in a temporary, volatile storage medium where it is continuously updated at regular time intervals.'' We believe that, as modified, the definition of ''capture'' better reflects the industry's understanding and uses of that term.

''Record''

The NPRM defined ''record'' as ''the process of storing data into volatile memory for later use.'' GM, DaimlerChrysler, Ford, and Toyota recommended changing the definition of ''record'' to ''the process of saving captured EDR data into a non-volatile memory storage device for subsequent retrieval.'' GM stated that the industry generally uses the term ''record'' to mean saving captured data into a non-volatile memory storage device that is permanent and stable, even if power is lost to the storage module. We agree with these comments and have modified the definition of the term ''record'' accordingly. The definition of ''record'' now reads: ''the process of saving captured EDR data into a non-volatile device for subsequent retrieval.''

''Engine Throttle, Percent Full'' and ''Service Brake, On and Off''

The NPRM defined ''engine throttle, percent full'' as ''for vehicles powered by internal combustion engines, the percent of the engine throttle opening compared to the full open position of the engine throttle opening, and for vehicles not powered by internal combustion engines, the percent of vehicle accelerator depression compared to the fully depressed position.'' The NPRM defined ''service brake, on, off'' as ''the vehicle's service brake is being applied or not being applied.''

GM, DaimlerChrysler, Ford, Toyota, and AIAM recommended revising the definition of ''engine throttle, percent full'' to clarify that it is the driver input that is recorded, rather than the electrical or mechanical output that resulted. The commenters recommended the same type of change for the definition of ''service brake, on, off.'' GM's rationale is that, while the input and output signals will generally correspond, the former is more relevant for safety-related crash analyses. AIAM commented that the ''engine throttle, percent full'' data element should be redefined to allow the recording of the throttle pedal input angle as an alternative means of capturing driver behavior.

After consideration of these comments, we have determined that both definitions should be clarified, as suggested, to reflect that it is the driver input that is to be recorded. As stated above in our discussion regarding the ''engine RPM'' data element, we believe that driver input is more useful for studying crash reconstruction. Therefore, the definition of ''engine throttle, percent full'' has been clarified and now reads: ''the driver requested acceleration as measured by the throttle position sensor on the accelerator pedal compared to the fully depressed position.''

In the final rule, we have also applied this rationale to the definition of ''service brake, on/off'' as suggested by the public comments, clarifying that it is the driver input that is recorded. The new definition reads, ''the status of the device that is installed in, or connected to, the brake pedal system to detect whether the pedal was pressed. The device can include the brake pedal switch or other driver-operated service brake control.'' We believe that this definition is more suitable for the stated purposes of this rulemaking.

''Frontal Air Bag''

The NPRM defined ''frontal air bag'' as ''the primary inflatable occupant restraint device that is designed to deploy in a frontal crash to protect the front seat occupants.'' GM, DaimlerChrysler, Ford, and Toyota recommended revising the NPRM's definition of ''frontal air bag'' to make it more closely align to the language of FMVSS No. 208.[57] We agree with the commenters and have made this modification in the final rule.

''Ignition Cycle, Crash'' and ''Ignition Cycle, Download''

In defining the terms ''ignition cycle, crash'' and ''ignition cycle, download,'' the NPRM used the phrase ''ignition key applications.'' GM, DaimlerChrysler, Ford, and Toyota recommended revising these definitions to reflect that in the future, technological changes may obviate the need for a conventional ignition key.

Based upon these comments, we have modified the relevant definitions in the final rule as follows: ''ignition cycle, crash'' means ''the number of power cycles applied to the recording device up to and including the time when the crash event occurred since the first use of the EDR.'' ''Ignition cycle, download'' means ''the number of power cycles applied to the recording device at the time when the data was downloaded since the first use of the EDR.''

''Normal Acceleration''

The NPRM defined ''normal acceleration'' as ''the component of the vector acceleration of a point in the vehicle in the z-direction. The normal acceleration is positive in a downward direction.'' Delphi recommended that NHTSA provide greater specificity in the definition of 0 G normal acceleration, because the term 0 G is used inconsistently within the industry (e.g., 0 G is sometimes normalized for the ''1 G bias due to gravity). We agree with Delphi's comments and have revised the definition. Since the acceleration data are used to compute velocity and motion relative to the other vehicle/barrier in our laboratory tests, 0 G vertical is defined with the gravity term not removed, hence 0 G vertical would be observed when the vertical accelerometer is as rest.

[57] Specifically, GM recommended the following definition:

Frontal air bag means any inflatable restraint system that requires no action by vehicle occupants and is used to meet the applicable frontal crash protection requirements of S5.1.2(b) of FMVSS No. 208.

''Pretensioner''

The NPRM defined ''pretensioner'' as ''a device that is activated by a vehicle's crash sensing system and removes slack from a vehicle belt system.'' GM, DaimlerChrysler, Ford, and Toyota requested a minor change in the definition of the term ''pretensioner'' to clarify that vehicle belt system means vehicle *safety* belt system. We agree that the addition of the word ''safety'' provides clarity, and we have revised the term.

''Safety Belt Status''

The NPRM defined ''safety belt status'' as ''an occupant's safety belt is buckled or not buckled.'' GM, DaimlerChrysler, Ford, and Toyota recommended modifying the term to read: ''safety belt status means the feedback, as recorded by the EDR function, from the safety system that is used to determine that the safety belt is fastened.'' The commenters' rationale is that some safety belt technologies provide safety belt status feedback without evaluation of the buckle status. We agree and have modified the definition in accordance with the recommendations. The definitions for both driver and right front passenger ''safety belt status'' now read: ''the feedback from the safety system that is used to determine that an occupant's safety belt is fastened or not fastened.''

''Side Air Bag'' and ''Side Curtain/Tube Air Bag''

The NPRM defined ''side air bag'' as ''any inflatable occupant restraint device that is mounted to the seat or side structure of the vehicle interior at or below the window sill, and that is designed to deploy and protect the occupants in a side impact crash.'' The proposal defined ''side curtain/tube air bag'' as ''any inflatable occupant restraint device that is mounted to the side structure of the vehicle interior above the window sill, and that is designed to deploy and protect the occupants in a side impact crash or rollover.''

GM and DaimlerChrysler recommended revising the NPRM's definitions of ''side air bag'' and ''side curtain/tube air bag'' to simplify the locational references in these definitions. GM's recommended definitions would also drop the phrase ''and that is designed to deploy and protect the occupants in a side impact crash,'' as it appears in the NPRM. GM's rationale is that the agency's current definitions do not fully comprehend evolving technology that may permit side curtains in a variety of locations. Ford provided a nearly identical comment. However, Ford recommended adding that these devices are ''designed to help mitigate occupant injury and/or ejection.''

After considering the comments by GM, DaimlerChrysler, and Ford, we have modified our definitions of ''side air bag'' and ''side curtain/tube air bag'' to provide more flexibility for evolving technology. However, we do believe that consumers need to know the conditions under which side air bags will deploy. To that end, we have deleted the specific mounting location references (i.e., above the window sill) from the definitions and accepted Ford's recommendation, but retained the language that the devices will deploy ''in a side impact'' crash event.

In the final rule, the definition of ''side air bag'' now reads as ''any inflatable occupant restraint device that is mounted to the seat or side structure of the vehicle interior, and that is designed to deploy in a side impact crash to help mitigate occupant injury and/or ejection.'' The final rule defines ''side curtain/tube air bag'' as ''any inflatable occupant restraint device that is mounted to the side structure of the vehicle interior, and that is designed to deploy in a side impact crash or rollover and to help mitigate occupant injury and/or ejection.''

''Speed, Vehicle Indicated''

In the NPRM, we proposed to define ''speed, vehicle indicated'' as ''the speed indicated on the vehicle's speedometer.'' GM, DaimlerChrysler, Ford, and Toyota recommended what they believe is a more technically correct definition of the ''speed, vehicle indicated,'' to read as follows: ''the speed indicated by a manufacturer-designated subsystem designed to indicate the vehicle's ground travel speed during vehicle operation, as recorded by the EDR.'' GM's rationale is that there are no data on the vehicle databus that indicate the speed actually being displayed to the driver via the speedometer. According to GM, vehicle speed should be reported as determined by the appropriate vehicle subsystem(s), which vary among manufacturers (e.g., wheel speed sensors, driveline shaft sensors, differential sensors, or transmission sensors). Nissan commented that manufacturers should have the option of recording the vehicle speed from a variety of systems (e.g., ABS) instead of the instrument panel speed. AIAM provided a similar comment.

We agree that the definition of ''speed, vehicle indicated'' in the final rule should be modified in a matter

consistent with these recommendations. Accordingly, the definition of ''speed, vehicle indicated'' now reads: ''the speed indicated by a manufacturer-designated subsystem designed to indicate the vehicle's ground travel speed during vehicle operation.''

Timing Issues

GM, DaimlerChrysler, Ford, and Toyota recommended revising the NPRM's definitions for ''time to deploy,'' ''time to first stage,'' and ''time to n^{th} stage'' to clarify that the elapsed time is in milliseconds and that those times are to be measured from time zero to the time of the air bag deployment command (rather than to the time of air bag inflation or air bag firing).

We agree with the commenters' suggestions for clarification of the time data elements for the air bag systems and other commanded systems, such as pretensioners. Accordingly, we have revised all relevant definitions, including ''time to deploy, pretensioner,'' to reflect that these elements are measured to the time of the deployment command signal that is generated within the control unit.

''Time Zero'' and ''End of Event Time''

The NPRM defined ''time zero'' as the ''beginning of the first 20 ms interval in which the trigger threshold is met during an event.'' GM, DaimlerChrysler, Ford, and Toyota recommended revising the definition for ''time zero'' in order to better standardize a common reference point for all EDR data, thereby facilitating comparisons among data sets from different vehicles. GM proposed new language for that definition.

We have reviewed this definition of ''time zero'' in conjunction with our newly adopted definition of ''trigger threshold,'' and we have taken into account the different types of EDR system algorithms (e.g., ones with continuously running algorithms, as opposed to ones using an algorithm ''wake-up'' strategy). As discussed above, we have revised the definition of ''trigger threshold'' to mean ''8 km/h within a 150 ms interval.'' This defines the crash level that will be captured and recorded in the EDR. We acknowledge that OEMs use different operational strategies to sense a crash in their air bag control modules. For example, some manufacturers use a continuously operating system that is always on and sensing acceleration and analyzing the signal(s) to make an air bag command decision. In contrast, other manufacturers utilize systems that ''wake up'' when a crash occurs.

We agree that ''time zero'' needs to be defined so as to ensure that each of these strategies will result in similar crash data time reporting in the EDR record. To accomplish this, NHTSA has turned to SAE J1698 for additional guidance. SAE, working with members from companies that employ the two operating strategies, has worked out these issues, so we have adopted this approach, as discussed below.

For systems that wake up, ''time zero'' is defined as the time the control algorithm is activated. When a crash occurs, the system wakes up almost instantly, and it starts processing the crash data. Thus, ''time zero'' is established at or very close to the time the crash starts. ''Wake up'' is typically determined by the accelerometer exceeding a pre-defined threshold for a pre-defined time period, such as 2 G for 1 ms. The data are captured, and if the delta-V exceeds 8 km/h with in a 150 ms interval, the data are recorded.

For systems with continuously running algorithms, the ''time zero'' determination is more complicated. In such systems, the CPU (central processing unit) is continuously processing accelerometer data in order to make air bag command decisions. SAE decided, for these systems, that the start of an event should be defined by a change in velocity. Thus, we have adopted the same strategy. For systems that run continuously, we are defining ''time zero'' as the first time point where a longitudinal, cumulative delta-V of over 0.8 km/h (0.5 mph) is reached within a 20 ms time period. Since acceleration rises quickly in a major crash, we anticipate that this strategy should work well, resulting in time zeros in good agreement with the ''wake up'' systems. Thus, for continuously-running systems, the CPU monitors the vehicle's deceleration signal(s). If the total delta-V exceeds 8.0 km/h within a 150 ms period, an event is detected and the captured data are recorded.

In lateral crashes, the longitudinal trigger may not be triggered, and in those cases, there would be no data recorded in the EDR. For vehicles that choose to record ''delta-V, lateral,'' we are extending the trigger threshold and time zero definition so that in those vehicles, EDR data is recorded. We have turned to SAE J1698–1 for the time zero definition, selecting time zero as the first point in the interval where the cumulative, lateral delta-V equals or exceeds 0.8 km/h (0.5 mph) within a 5 ms interval.

To facilitate detection of a second event in a multi-event crash, we have added a new definition to automate the detection of the end of an event. After once again consulting SAE J1698–1, we have defined ''end of event time'' as the moment when the cumulative delta-V within a 20 ms time period becomes 0.8 km/h (0.5 mph) or less. This will allow manufacturers to develop methodologies to automatically detect the end of one event and start processing data to determine whether a second event occurs during the crash.

New Definitions

In reviewing our proposal and after making substantive modifications to other parts of the final rule based on the public comments, we have added a few terms to the ''definitions'' section of the final rule's regulatory text for clarification purposes. The new terms are: (1) ''Air bag warning lamp status,'' (2) ''deployment time, frontal air bag,'' (3) ''volatile memory buffer,'' (4) ''non-volatile memory buffer,'' (5) ''occupant position classification,'' and (6) ''end of event time.'' We also modified the definitions of ''occupant size classification'' and ''seat position'' to make them more flexible to account for developing technologies.

c. Data Capture

In the NPRM, we explained that once the trigger threshold has been met or exceeded, EDR data elements are captured in volatile memory. We further explained that the EDR continues to capture data for an additional 500 ms. The EDR makes a determination (by comparing the absolute values of the maximum delta-V captured with the data previously recorded) of whether to discard the EDR data captured in favor of a previously recorded data set. We proposed a specific hierarchy on how an EDR should capture and record data, including data in cases of multi-event crashes. This strategy was proposed so that the EDR would retain crash data associated with the higher maximum delta-V. We developed this method in the NPRM to ensure that the EDR does not overwrite an important file generated in a crash with a minor subsequent event, such as loading a crashed car on a wrecker.

GM, DaimlerChrysler, Ford, and Toyota recommended that NHSTA delete subparagraphs (a), (b), (c), (f) from our proposed regulatory text section on ''data capture.'' Those commenters also suggested that NHSTA replace subparagraphs (d) and (e), which discuss data capture requirements associated with air bag deployment, with the following language: ''a non-deployment event will overwrite a non-deployment event of lesser magnitude; deployment events must always overwrite non-deployment events; deployment events must lock the record and may not be overwritten.''

In their comments, GM, DaimlerChrysler, Ford, and Toyota stated that the NPRM's proposed data capture requirements are complex and ambiguous and do not accurately recognize the system architecture in restraint control modules. These four commenters also stated that the requirements do not take into consideration the limitations of current technology. They argued that it is impractical to simultaneously buffer data, to write data to nonvolatile memory, to analyze the severity of the impact(s), and to appropriately deploy restraints.

To reduce the risk of data loss, Nissan stated that an air bag deployment event should be written to memory and locked, and that all further recording should cease. Advocates questioned whether a 5-second window is sufficient to capture an entire post-crash event.

We have carefully considered the comments and have developed a modified strategy for making the data recording decision, based on the comments submitted by the manufacturers. We have adopted these commenters' suggestions for a new definition of ''trigger threshold,'' and based upon this new definition, all crashes captured and recorded will be of significant magnitude to be of interest. Thus, the comparative process, as proposed, is no longer necessary.

We also have decided that collecting data associated with an air bag event is our priority. Accordingly, in the final rule, we have specified a new capture logic that accounts for the comments, simplifies the EDR design, reduces the risk of losing important air bag data, and will likely reduce costs.

The new methodology requires the EDR to make two analytical decisions: one is related to an air bag crash event, and the other is related to a non-air bag crash event. In those crash events where an air bag is commanded to deploy, the EDR must delete the data previously recorded, and the data from the air bag crash event must be captured, recorded, and locked to prevent overwriting. In those crashes where air bags are not commanded to deploy, our logic deletes all previously captured and recorded data, for up to two events. If the second event turns out to be air bag related, the logic calls for a revision to the first condition. In these cases, collection of the first non-air bag related event is not necessary but is acceptable. We believe that this logic provides relief in terms of the need for increased CPU power that might otherwise be necessary for an EDR to analyze and capture EDR data during a time when it might complicate safety-critical decisions.

d. Miscellaneous Comments

SEMA urged NHTSA to refrain from adopting requirements that could ossify EDR technology, commenting that the EDR system needs to be adaptable to allow for future developments and to work with other vehicle systems. According to SEMA, the system should not preclude servicing, repair, or installation of aftermarket equipment. SEMA argued that manufacturers, distributors, dealers, and motor vehicle repair businesses must have sufficient information about the EDR system to be able to service the vehicle and to install new or replacement products without fear of taking vehicle equipment out of compliance with any applicable Federal motor vehicle safety standard. In response to SEMA's comments, we do not believe that these systems will be any more complicated than current air bag control systems. EDRs are not new to the marketplace, and no specific problem of this sort has been brought to NHTSA's attention.

NADA, EPIC, and Honda commented on the need for public education and awareness of EDRs. NADA stated that NHTSA should work to educate the public ''that, in addition to the potential for improving vehicle and roadway safety design effectiveness, appropriately utilized EDR system information will help to reduce accident-related investigation, medical, legal, and insurance costs.'' EPIC commented that currently, public awareness and understanding of EDRs is insufficient. EPIC urged NHTSA to create an EDR information website to educate the public about EDR technology and its uses, what types of users may gain access to EDR information and the circumstances under which it may be accessed, and privacy rights associated with EDR data.

NHTSA agrees with the value of a Web site dedicated to EDRs. About five years ago, NHTSA launched the first EDR Web site. The Web site contained historical information about EDR technology, research material regarding EDR uses, patent information and other resources. In late 2004, NHTSA commenced work on a full update to the Web site, which was completed in early 2005. It is accessible through NHTSA's Web site, *http://www.nhtsa.dot.gov*, and at *http://safercar.gov*.

Concurrent with the publication of this final rule, we are posting a consumer-directed set of ''questions and answers'' on our Web site to provide educational materials and to raise awareness about the presence and functionality of EDRs. Topics include common privacy concerns and NHTSA's protocol for requesting EDR data during crash investigations. In developing these materials, we will consider NADA's recommendations to inform consumers that EDRs could lead to reductions in accident-related investigation, medical, legal, and insurance costs. Our plan is to keep these materials up to date, by adding new information as unique questions from the public are raised.

Honda suggested that NHTSA should conduct an EDR workshop so that all critical issues can be explored and discussed, thereby facilitating issuance of a final rule in an expedient fashion and minimizing the need for petitions for reconsideration. Although an EDR workshop, as recommended by Honda, would offer a means of gaining additional EDR-related input, we have decided that such a meeting is not necessary before proceeding to a final rule.

ATA stated that NHTSA should conduct additional human factors research to determine the effect of driver and employee awareness of EDRs on the number and severity of crashes. ATA's comment pertains to research, not to this final rule. We note, however, that we believe the issue of EDR awareness as related to the number and severity of crashes may be a valuable area for future research.

Public Citizen offered additional recommendations, including: (1) NHTSA should to fully integrate EDR data into all of its data collection systems and crash investigations; (2) police and municipal officials should be trained to enable them to collect accurate and complete EDR data for the Fatality Analyses Reporting System (FARS) database; and (3) NHTSA should create a new database solely for EDR data.

We agree with Public Citizen regarding the value of incorporating EDR data into our national databases. Starting in 2000, NHTSA began to routinely collect EDR data in our NASS/CDS, SCI, and Crash Injury Research and Engineering Network (CIREN) data systems. To date, we have colleted over 2,700 cases with EDR data. However, we are not collecting EDR data in FARS at this time. The agency is working with police officials to develop guidelines for training classes to ensure that EDR data are downloaded properly and that these officials are educated on the limitations of these devices.

The European Communities requested that the U.S. refrain from finalizing its EDR proposal until there has been an opportunity for further consultations both bilaterally and in international fora. The European Communities'

rationale is that EDRs have been identified as an item for bilateral research cooperation between NHTSA and the Directorate-General Enterprise of the European Commission. The European Communities also noted that the World Forum for Harmonization of Vehicle Regulations (WP.29), administered by the UN Economic Commission for Europe (ECE), has agreed to establish an informal working group on EDRs. The European Communities expressed hope that with U.S. participation, it would be possible to develop a global technical regulation for EDRs.

We have carefully considered the EC's comments. NHTSA has concluded that it needs to move forward at this time with a basic set of requirements, because EDR data can help the government and industry better understand crash events and safety system performance, thereby contributing to safer vehicle designs and more effective safety regulations. EDR data can also play a role in advancing developing networks for providing emergency medical services, such as ACN. The agency has sought to establish this foundation in a way that would encourage broad application of EDR technologies in motor vehicles and maximize the usefulness of EDR data for researchers, regulators, and the medical community, while avoiding the imposition of unnecessary burdens or hampering future improvements to EDRs.

NHTSA looks forward to continuing work on this issue with the European Communities, as well as with the international community under the auspices of the World Forum for the Harmonization of Vehicle Regulations administered by the United Nations. The action taken today in no way precludes achieving common understandings in the future.

Mr. Bretherton, an individual, commented that better coordination of Traffic Records Coordinating Committees (TRCCs) within States is needed to facilitate the use of crash data and that funding is needed to address technology needs, to make data uniform between States, and to ensure data collection by all States. He expressed concern that local governments may have increased liability as a result of crash data. He also stated that ''Fast FARS'' is not a good use of resources. Again, although these issues are worth considering at an appropriate time and in an appropriate forum, they are beyond the scope of the present rulemaking.

V. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. 322(a), the Secretary of Transportation (the ''Secretary'') has authority to prescribe regulations to carry out duties and power of the Secretary. One of the duties of the Secretary is to administer the National Traffic and Motor Vehicle Safety Act, as amended. The Secretary has delegated the responsibility for carrying out the National Traffic and Motor Vehicle Safety Act to NHTSA.[58]

We note that in 1994, the National Traffic and Motor Vehicle Safety Act, as amended, was repealed and simultaneously codified into 49 U.S.C. Chapter 301, *Motor Vehicle Safety*, by Pub. L. 103–272 (July 5, 1994). This involved moving these provisions from 15 U.S.C. Chapter 38 to 49 U.S.C. Chapter 301. Section 1(a) of Pub. L. 103–272 stated that the laws codified were so codified ''without substantive change.'' Prior to this codification, a specific provision in 15 U.S.C. 1407 provided, ''The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this subchapter.'' However, in the codification process, this provision was deleted as unnecessary, because, as specifically noted in the legislative history, the Secretary already had such powers pursuant to 49 U.S.C. 322(a).[59] Thus, the Secretary, and NHTSA, have general authority to issue such rules and regulations as deemed necessary to carry out Chapter 301 of Title 49, United States Code.

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 et seq.), the Secretary of Transportation, and, by delegation, NHTSA, is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[60] These motor vehicle safety standards set the minimum level of performance for a motor vehicle or motor vehicle equipment to be considered safe.[61] When prescribing such standards, NHTSA must consider all relevant, available motor vehicle safety information.[62] NHTSA also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[63]

Similar to our approach in the area of vehicle identification numbers, we decided to develop a general regulation for EDRs rather than a Federal motor vehicle safety standard. We did not believe it was appropriate to issue an FMVSS that would trigger the statute's recall and remedy provisions, because the benefits of EDRs are expected to be derivative from better crash-related information, rather than having a direct impact on the safety of the individual vehicle equipped with an EDR. A failure to meet the EDR requirements would, however, be subject to an enforcement action. While we have not issued the regulation as an FMVSS, however, we have generally followed the statutory requirements that apply to FMVSSs.

First, this final rule was preceded by an initial request for comments and an NPRM, which facilitated the efforts of the agency to obtain and consider relevant motor vehicle safety information, as well as public comments. Further, in preparing this document, the agency carefully evaluated available research, testing results, and other information related to various EDR technologies. We have also updated our economic estimates and analyses to account for new cost information provided by public commenters. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the EDR requirements are practicable, the agency considered the cost, availability, and suitability of requiring various EDR data elements, consistent with our safety objectives. We note that EDRs are already installed on most light vehicles, and because the data elements in the final rule are to a large extent already incorporated in EDRs, we believe that it will be practicable to standardize these data elements in light vehicles voluntarily equipped with EDRs and that such incremental changes will be minor. In light of the steady advances made in EDR technologies over the past few years, we believe that vehicle manufacturers will have a number of technological choices available for meeting the requirements of the final rule for EDRs. In sum, we believe that this final rule is practicable and will provide several benefits, including provision of better pre-crash and crash-related data that may be valuable for designing safer vehicles and for use by medical first responders.

[58] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

[59] H.R. Rep. No. 103–180, Table 2A, at 584 (1993).

[60] 49 U.S.C. 30111(a).

[61] 49 U.S.C. 30102(a)(9).

[62] 49 U.S.C. 30111(b).

[63] Id.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the regulation. Specifically, the final rule sets forth performance requirements for operation of the EDRs, including the type of data that the EDR must capture and record, the data's range/accuracy/resolution, and the data's retrievability.

The final rule also includes test requirements for the survivability of EDR data through reference to existing crash test requirements in other FMVSSs (i.e., Standard Nos. 208 and 214). This approach helps ensure that EDR data survive most crashes without establishing news kinds of vehicle tests. The test procedures under FMVSS Nos. 208 and 214 already carefully delineate how testing is conducted. Thus, the agency believes that these test procedures are sufficiently objective and will not result in any uncertainty as to whether a given vehicle satisfies the requirements of the EDR regulation.

Fourth, we believe that this final rule will meet the need for motor vehicle safety because the EDR regulation will help researchers better understand pre-crash and crash events. Standardization of EDR data should improve the consistency and comparability of these data. This information will be useful to NHTSA, vehicle manufacturers, and other interested stakeholders for a variety of purposes, including developing safety vehicle designs and more effective regulations. In addition, standardized EDR data may be useful for ACN and other systems for providing emergency medical services.

Finally, we believe that this final rule is reasonable and appropriate for motor vehicles subject to the applicable requirements (i.e., light vehicles voluntarily equipped with EDRs). As discussed elsewhere in this notice, the agency has sought to limit the minimum data set in this final rule to those elements necessary to achieve the agency's stated purposes and to minimize the burdens associated with the regulation. We believe that because most EDRs already possess many of these capabilities, any required adjustments should be minor. Accordingly, we believe that this final rule is appropriate for covered vehicles that are or would become subject to these provisions of the EDR regulation because it furthers the agency's objective of preventing deaths and serious injuries through better understanding of crash-related events that may lead to safer vehicle designs and more effective regulations.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''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.

This final rule has been determined to be significant, and the agency has prepared a separate document, a Final Regulatory Evaluation, addressing the benefits and costs for the rule. (A copy is available in the docket for this rulemaking.) As a significant notice, it was reviewed under Executive Order 12866. The rule is also significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures. While the potential cost impacts of the final rule are far below the level that would make this a significant rulemaking, the rulemaking addresses a topic of substantial public interest.

As discussed in that document and in the preceding sections of this final rule, the crash data that will be collected by EDRs under this rule will be valuable for the improvement of vehicle safety. We believe that the EDR data we collect will improve crash investigations, the evaluation of safety countermeasures, advanced restraint and safety countermeasure research and development, and advanced ACN. However, the improvement in vehicle safety will not occur directly from the collection of crash data by EDRs, but instead from the ways in which the data are used by researchers, vehicle manufacturers, ACN and EMS providers, government agencies, and other members of the safety community. Therefore, it is not presently practical to quantify the safety benefits.

We estimate that about 64 percent of new light vehicles are already equipped with EDRs. As discussed earlier, vehicle manufacturers have provided EDRs in their vehicles by adding EDR capability to their vehicles' air bag control systems. The costs of EDRs have been minimized, because they involve the capture into memory of data that is already being processed by the vehicle, and not the much higher costs of sensing much of that data in the first place.

The costs of the rule will be the incremental costs for vehicles equipped with EDRs to comply with the requirements. As discussed in the agency's separate document on benefits and costs, we estimate the total costs of the final rule will range up to $1.7 million. While the potential costs include technology costs, administrative costs, and compliance costs, the administrative and compliance costs are estimated to be negligible. The final rule will not require additional sensors to be installed in vehicles, and the primary technology cost will result from a need to upgrade EDR memory chips. The total cost for the estimated 9.8 million vehicles that already have an EDR function to comply with the regulation will range up to $1.7 million. If manufacturers were to provide EDRs in all 15.5 million light vehicles, the estimated total cost will range up to $10.9 million. A complete discussion of how NHTSA arrived at these costs may be found in the separate document on benefits and costs.

C. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) I certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule directly affects motor vehicle manufacturers, second stage or final manufacturers, and alterers. Business entities are defined as ''small businesses'' using the North American Industry Classification System (NAICS) code, for the purposes of receiving Small Business Administration assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm. Affected business categories include the following. To qualify as a small business in: (a) Automotive Manufacturing (NAICS 336111), the

firm must have fewer than 1,000 employees; (b) Light Truck and Utility Vehicle Manufacturing (NAICS 336112), the firm must have fewer than 1,000 employees; (c) Motor Vehicle Body Manufacturing (NAICS 336211), the firm must have fewer than 1,000 employees; (d) All Other Motor Vehicle Parts Manufacturing (NAICS 336399), the firm must have fewer than 750 employees; (e) Computer Storage Manufacturers (NAICS 334111), the firm must have fewer than 1,000 employees, and (f) Software Reproducing (NAICS 334611), the firm must have fewer than 500 employees.

Only four of the 18 motor vehicle manufacturers affected by this rule qualify as a small business. Most of the intermediate and final stage manufacturers of vehicles built in two or more stages and alterers have 1,000 or fewer employees. However, these small businesses adhere to original equipment manufacturers' instructions in manufacturing modified and altered vehicles. Based on our knowledge, original equipment manufacturers do not permit a final stage manufacturer or alterer to modify or alter sophisticated devices such as air bags or EDRs. Therefore, multistage manufacturers and alterers will be able to rely on the certification and information provided by the original equipment manufacturer. Accordingly, there will be no significant impact on small business, small organizations, or small governmental units by these amendments.

D. Executive Order 13132 (Federalism)

Executive Order 13132 sets forth principles of federalism and the related policies of the Federal government. As noted above, NHTSA expects that general principles of preemption law would operate so as to displace any conflicting State law or regulations (for further discussion of preemption, see section IV.B.9 above).

NHTSA sought comment from all stakeholders on the issue of preemption through publication of the proposed rule in the **Federal Register**. NHTSA received one comment on the proposed rule from State and local governmental entities.

Additionally, officials at NHTSA consulted with organizations representing the interests of state and local governments and officials about this rulemaking and the issue of preemption.

NHTSA has complied with Executive Order 13132 and has determined that this final rule is consistent with its provisions.

E. Executive Order 12988 (Civil Justice Reform)

Executive Order 12988 requires that agencies review proposed regulations and legislation and adhere to the following general requirements: (1) The agency's proposed legislation and regulations shall be reviewed by the agency to eliminate drafting errors and ambiguity; (2) The agency's proposed legislation and regulations shall be written to minimize litigation; and (3) The agency's proposed legislation and regulations shall provide a clear legal standard for affected conduct rather than a general standard, and shall promote simplification and burden reduction.

When promulgating a regulation, *Executive Order 12988,* specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

NHTSA has reviewed this final rule according to the general requirements and the specific requirements for regulations set forth in *Executive Order 12988.* The issue of the preemptive effect of this final rule was discussed in detail in the section on Executive Order 13132 (Federalism) immediately above, so rather than repeat those points here, we would refer readers to that section for a full discussion. A petition for reconsideration or other administrative proceeding is not required before parties may file suit in court.

F. Executive Order 13045 (Protection of Children From Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, 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 the agency 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 reasonable feasible alternatives considered by the agency.

Because the EDR final rule is not an economically significant regulatory action under Executive Order 12866 and does not involve decisions based upon health and safety risks that disproportionately affect children, no further analysis under Executive Order 13045 is necessary.

G. Paperwork Reduction Act

GM DaimlerChrysler, Ford, and Toyota commented that the agency's NPRM underestimated the paperwork burden associated with section 563.12's requirement for filing technical instructions for manufacturing download devices for each vehicle model. The NPRM estimated those paperwork costs as 20 hours per year per manufacturer. GM's rationale is that the proposed requirement to file this information 90 days prior to the start of production for each vehicle model would require a continuous stream of data filings for the multiple vehicle launches that full-line manufacturers have throughout the calendar year. According to GM, each filing would involve a compilation of the technical data, as well as technical and legal review, tasks which would require more than 20 hours of work for each vehicle model.

These concerns have been addressed because we have decided not to adopt the proposed provision, so deleting those reporting requirements eliminates the paperwork costs that had been associated with this rulemaking. Thus, there are not any information collection requirements associated with this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is 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, such as the Society of Automotive Engineers. The NTTAA

directs us to provide Congress (through OMB) with explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

There are several consensus standards related to EDRs, most notably those standards published by SAE and IEEE. NHTSA has carefully considered the consensus standards applicable to EDR data elements. Consensus standards for recording time/intervals, data sample rates, data retrieval, data reliability, data range, accuracy and precision, and EDR crash survivability were evaluated by NHTSA and adopted when practicable.

In this final rule, we have incorporated by reference SAE Recommended Practice J211–1, March 1995, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation.'' For those manufacturers that prefer to record acceleration data instead of or in addition to delta-V, SAE J211–1 provides a standard for filtering the acceleration data that are then converted to delta-V either during the recording period or in the data downloading process.

Previously in this notice, NHTSA has explained why other voluntary consensus standards were not adopted for certain technical standards set forth in this rule. For further analysis of the incorporation of consensus standards, please refer to section IV.B.14 above.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $ 100 million in any one year (adjusted for inflation with base year of 1995). Section 205 of the UMRA generally requires that, before promulgating a rule for which a written statement is needed, NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This rule does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. The rule does not result in the expenditure by State, local, or tribal governments, or the private sector, in the aggregate, or more than $118 million annually (2004 dollars). Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

K. Regulatory Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

Please note that 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://dms.dot.gov*.

List of Subjects in 49 CFR Part 563

Incorporation by reference, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, NHTSA hereby amends chapter V of title 49 of the Code of Federal Regulations by adding 49 CFR part 563 to read as follows:

PART 563—EVENT DATA RECORDERS

Sec.

563.1 Scope.
563.2 Purpose.
563.3 Application.
563.4 Incorporation by reference.
563.5 Definitions.
563.6 Requirements for vehicles.
563.7 Data elements.
563.8 Data format.
563.9 Data capture.
563.10 Crash test performance and survivability.
563.11 Information in owner's manual.
563.12 Data retrieval tools.

Authority: 49 U.S.C. 322, 30101, 30111, 30115, 30117, 30166, 30168; delegation of authority at 49 CFR 1.50.

§ 563.1 Scope.

This part specifies uniform, national requirements for vehicles equipped with event data recorders (EDRs) concerning the collection, storage, and retrievability of onboard motor vehicle crash event data. It also specifies requirements for vehicle manufacturers to make tools and/or methods commercially available so that crash investigators and researchers are able to retrieve data from EDRs.

§ 563.2 Purpose.

The purpose of this part is to help ensure that EDRs record, in a readily usable manner, data valuable for effective crash investigations and for analysis of safety equipment performance (e.g., advanced restraint systems). These data will help provide a better understanding of the circumstances in which crashes and injuries occur and will lead to safer vehicle designs.

§ 563.3 Application.

This part applies to the following vehicles manufactured on or after September 1, 2010, if they are equipped with an event data recorder: passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service. This part also applies to manufacturers of those vehicles. However, vehicles manufactured before September 1, 2011 that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having been previously certified to the Federal motor vehicle safety standards in accordance with Part 567 of this chapter need not meet the requirements of this part.

§ 563.4 Incorporation by reference.

The materials listed in this section are incorporated by reference in the corresponding sections as noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. Copies of these materials may be inspected at the National Highway Traffic Safety Administration, Technical Information

Services, 400 Seventh Street, SW., Plaza Level, Room 403, Washington, DC 20590, 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.*

(a) The following materials are available for purchase from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(1) Society of Automotive Engineers (SAE) Recommended Practice J211–1 rev. March 1995, ''Instrumentation For Impact Test—Part 1—Electronic Instrumentation'' SAE J211–1 (rev. March 1995) is incorporated by reference in Table 3 of § 563.8;

(2) [Reserved]

(b) [Reserved]

§ 563.5 Definitions.

(a) *Motor vehicle safety standard definitions.* Unless otherwise indicated, all terms that are used in this part and are defined in the Motor Vehicle Safety Standards, part 571 of this subchapter, are used as defined therein.

(b) *Other definitions.*

ABS activity means the anti-lock brake system (ABS) is actively controlling the vehicle's brakes.

Air bag warning lamp status means whether the warning lamp required by FMVSS No. 208 is on or off.

Capture means the process of buffering EDR data in a temporary, volatile storage medium where it is continuously updated at regular time intervals.

Delta-V, lateral means the cumulative change in velocity, as recorded by the EDR of the vehicle, along the lateral axis, starting from crash time zero and ending at 0.25 seconds, and recorded every 0.01 seconds.

Delta-V, longitudinal means the cumulative change in velocity, as recorded by the EDR of the vehicle, along the longitudinal axis, starting from crash time zero and ending at 0.25 seconds, recorded every 0.01 seconds.

Deployment time, frontal air bag means (for both driver and right front passenger) the elapsed time from crash time zero to the deployment command or for multi-staged air bag systems, the deployment command for the first stage.

Disposal means the deployment command of the second (or higher, if present) stage of a frontal air bag for the purpose of disposing the propellant from the air bag device.

End of event time means the moment at which the cumulative delta-V within a 20 ms time period becomes 0.8 km/h (0.5 mph) or less.

Engine RPM means, for vehicles powered by internal combustion engines, the number of revolutions per minute of the main crankshaft of the vehicle's engine, and for vehicles not powered by internal combustion engines, the number of revolutions per minute of the motor shaft at the point at which it enters the vehicle transmission gearbox.

Engine throttle, percent full means the driver requested acceleration as measured by the throttle position sensor on the accelerator pedal compared to the fully depressed position.

Event means a crash or other physical occurrence that causes the trigger threshold to be met or exceeded.

Event data recorder (EDR) means a device or function in a vehicle that records the vehicle's dynamic, time-series data during the time period just prior to a crash event (e.g., vehicle speed vs. time) or during a crash event (e.g., delta-V vs. time), intended for retrieval after the crash event. For the purposes of this definition, the event data do not include audio and video data.

Frontal air bag means an inflatable restraint system that requires no action by vehicle occupants and is used to meet the applicable frontal crash protection requirements of FMVSS No. 208.

Ignition cycle, crash means the number (count) of power cycles applied to the recording device at the time when the crash event occurred since the first use of the EDR.

Ignition cycle download means the number (count) of power cycles applied to the recording device at the time when the data was downloaded since the first use of the EDR.

Lateral acceleration means the component of the vector acceleration of a point in the vehicle in the y-direction. The lateral acceleration is positive from left to right, from the perspective of the driver when seated in the vehicle facing the direction of forward vehicle travel.

Longitudinal acceleration means the component of the vector acceleration of a point in the vehicle in the x-direction. The longitudinal acceleration is positive in the direction of forward vehicle travel.

Maximum delta-V, lateral means the maximum value of the cumulative change in velocity, as recorded by the EDR, of the vehicle along the lateral axis, starting from crash time zero and ending at 0.3 seconds.

Maximum delta-V, longitudinal means the maximum value of the cumulative change in velocity, as recorded by the EDR, of the vehicle along the longitudinal axis, starting from crash time zero and ending at 0.3 seconds.

Multi-event crash means the occurrence of 2 events, the first and last of which begin not more than 5 seconds apart.

Non-volatile memory means the memory reserved for maintaining recorded EDR data in a semi-permanent fashion. Data recorded in non-volatile memory is retained after a loss of power and can be retrieved with EDR data extraction tools and methods.

Normal acceleration means the component of the vector acceleration of a point in the vehicle in the z-direction. The normal acceleration is positive in a downward direction and is zero when the accelerometer is at rest.

Occupant position classification means the classification indicating that the seating posture of a front outboard occupant (both driver and right front passenger) is determined as being out-of-position.

Occupant size classification means, for right front passenger, the classification of an occupant as an adult and not a child, and for driver, the classification of the driver as not being of small stature.

Pretensioner means a device that is activated by a vehicle's crash sensing system and removes slack from a vehicle safety belt system.

Record means the process of saving captured EDR data into a non-volatile device for subsequent retrieval.

Safety belt status means the feedback from the safety system that is used to determine than an occupant's safety belt (for both driver and right front passenger) is fastened or not fastened.

Seat track position switch, foremost, status means the status of the switch that is installed to detect whether the seat is moved to a forward position.

Service brake, on and off means the status of the device that is installed in or connected to the brake pedal system to detect whether the pedal was pressed. The device can include the brake pedal switch or other driver-operated service brake control.

Side air bag means any inflatable occupant restraint device that is mounted to the seat or side structure of the vehicle interior, and that is designed to deploy in a side impact crash to help mitigate occupant injury and/or ejection.

Side curtain/tube air bag means any inflatable occupant restraint device that is mounted to the side structure of the vehicle interior, and that is designed to deploy in a side impact crash or rollover

and to help mitigate occupant injury and/or ejection.

Speed, vehicle indicated means the vehicle speed indicated by a manufacturer-designated subsystem designed to indicate the vehicle's ground travel speed during vehicle operation.

Stability control means any device that is not directly controlled by the operator (e.g., steering or brakes) and is intended to prevent loss of vehicle control by sensing, interpreting, and adjusting a vehicle's driving and handling characteristics, is controlling or assisting the driver in controlling the vehicle.

Steering wheel angle means the angular displacement of the steering wheel measured from the straight-ahead position (position corresponding to zero average steer angle of a pair of steered wheels).

Suppression switch status means the status of the switch indicating whether an air bag suppression system is on or off.

Time from event 1 to 2 means the elapsed time from time zero of the first event to time zero of the second event.

Time, maximum delta-V, longitudinal means the time from crash time zero to the point where the maximum value of the cumulative change in velocity is found, as recorded by the EDR, along the longitudinal axis.

Time to deploy, pretensioner means the elapsed time from crash time zero to the deployment command for the safety belt pretensioner (for both driver and right front passenger).

Time to deploy, side air bag/curtain means the elapsed time from crash time zero to the deployment command for a side air bag or a side curtain/tube air bag (for both driver and right front passenger).

Time to first stage means the elapsed time between time zero and the time when the first stage of a frontal air bag is commanded to fire.

Time to maximum delta-V, lateral means time from crash time zero to the point where the maximum value of the cumulative change in velocity is found, as recorded by the EDR, along the lateral axis.

*Time to n*th stage means the elapsed time from the crash time zero to the deployment command for the nth stage of a frontal air bag (for both driver and right front passenger).

Time zero means for systems with ''wake-up'' air bag control systems, the time occupant restraint control algorithm is activated; for continuously running algorithms, the first point in the interval where a longitudinal, cumulative delta-V of over 0.8 km/h (0.5 mph) is reached within a 20 ms time period; or for vehicles that record ''delta-V, lateral,'' the first point in the interval where a lateral, cumulative delta-V of over 0.8 km/h (0.5 mph) is reached within a 5 ms time period.

Trigger threshold means a change in vehicle velocity, in the longitudinal direction, that equals or exceeds 8 km/h within a 150 ms interval. For vehicles that record ''delta-V, lateral,'' trigger threshold means a change in vehicle velocity, in either the longitudinal or lateral direction that equals or exceeds 8 km/h within a 150 ms interval.

Vehicle roll angle means the angle between the vehicle y-axis and the ground plane.

Volatile memory means the memory reserved for buffering of captured EDR data. The memory is not capable of retaining data in a semi-permanent fashion. Data captured in a volatile memory is continuously overwritten and is not retained in the event of a power loss or retrievable with EDR data extraction tools.

X-direction means in the direction of the vehicle X-axis, which is parallel to the vehicle's longitudinal centerline. The X-direction is positive in the direction of forward vehicle travel.

Y-direction means in the direction of the vehicle Y-axis, which is perpendicular to its X-axis and in the same horizontal plane as that axis. The Y-direction is positive from left to right, from the perspective of the driver when seated in the vehicle facing the direction of forward vehicle travel.

Z-direction means in the direction of the vehicle Z-axis, which is perpendicular to the X- and Y-axes. The Z-direction is positive in a downward direction.

§ 563.6 Requirements for vehicles.

Each vehicle equipped with an EDR must meet the requirements specified in § 563.7 for data elements, § 563.8 for data format, § 563.9 for data capture, § 563.10 for crash test performance and survivability, and § 563.11 for information in owner's manual.

§ 563.7 Data elements.

(a) *Data elements required for all vehicles.* Each vehicle equipped with an EDR must record all of the data elements listed in Table I, during the interval/time and at the sample rate specified in that table.

TABLE I.—DATA ELEMENTS REQUIRED FOR ALL VEHICLES EQUIPPED WITH AN EDR

Data element	Recording interval/time [1] (relative to time zero)	Data sample rate samples per second
Delta-V, longitudinal	0 to 250 ms	100
Maximum delta-V, longitudinal	0–300 ms	N.A.
Time, maximum delta-V	0–300 ms	N.A.
Speed, vehicle indicated	−5.0 to 0 sec	2
Engine throttle, % full (or accelerator pedal, % full)	−5.0 to 0 sec	2
Service brake, on/off	−5.0 to 0 sec	2
Ignition cycle, crash	−1.0 sec	N.A.
Ignition cycle, download	At time of download	N.A.
Safety belt status, driver	−1.0 sec	N.A.
Frontal air bag warning lamp, on/off	−1.0 sec	N.A.
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, driver.	Event	N.A.
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, right front passenger.	Event	N.A.
Multi-event, number of events (1,2)	Event	N.A.
Time from event 1 to 2	As needed	N.A.
Complete file recorded (yes, no)	Following other data	N.A.

[1] Pre-crash data and crash data are asynchronous. The sample time accuracy requirement for pre-crash time is −0.1 to 1.0 sec (e.g., T = −1 would need to occur between −1.1 and 0 seconds.)

(b) *Data elements required for vehicles under specified conditions.* Each vehicle equipped with an EDR must record each of the data elements listed in column 1 of Table II for which the vehicle meets the condition specified in column 2 of that table, during the interval/time and at the sample rate specified in that table.

TABLE II.—DATA ELEMENTS REQUIRED FOR VEHICLES UNDER SPECIFIED CONDITIONS

Data element name	Condition for requirement	Recording interval/time [1] (relative to time zero)	Data sample rate (per second)
Lateral acceleration	If recorded [2]	0–250 ms	500
Longitudinal acceleration	If recorded	0–250 ms	500
Normal acceleration	If recorded	0–250 ms	500
Delta-V, lateral	If recorded	0–250 ms	100
Maximum delta-V, lateral	If recorded	0–300 ms	N.A.
Time maximum delta-V, lateral	If recorded	0–300 ms	N.A.
Time for maximum delta-V, resultant	If recorded	0–300 ms	N.A.
Engine rpm	If recorded	−5.0 to 0 sec	2
Vehicle roll angle	If recorded	−1.0 up to 5.0 sec [3]	10
ABS activity (engaged, non-engaged)	If recorded	−5.0 to 0 sec	2
Stability control (on, off, engaged)	If recorded	−5.0 to 0 sec	2
Steering input	If recorded	−5.0 to 0 sec	2
Safety belt status, right front passenger (buckled, not buckled)	If recorded	−1.0 sec	N.A.
Frontal air bag suppression switch status, right front passenger (on, off, or auto).	If recorded	−1.0 sec	N.A.
Frontal air bag deployment, time to n^{th} stage, driver [4]	If equipped with a driver's frontal air bag with a multi-stage inlator.	Event	N.A.
Frontal air bag deployment, time to n^{th} stage, right front passenger [4]	If equipped with a right front passenger's frontal air bag with a multi-stage inflator.	Event	N.A.
Frontal air bag deployment, n^{th} stage disposal, driver, Y/N (whether the n^{th} stage deployment was for occupant restraint or propellant disposal purposes).	If recorded	Event	N.A.
Frontal air bag deployment, n^{th} stage disposal, right front passenger, Y/N (whether the n^{th} stage deployment was for occupant restraint or propellant disposal purposes).	If recorded	Event	N.A.
Side air bag deployment, time to deploy, driver	If recorded	Event	N.A.
Side air bag deployment, time to deploy, right front passenger	If recorded	Event	N.A.
Side curtain/tube air bag deployment, time to deploy, driver side	If recorded	Event	N.A.
Side curtain/tube air bag deployment, time to deploy, right side	If recorded	Event	N.A.
Pretensioner deployment, time to fire, driver	If recorded	Event	N.A.
Pretensioner deployment, time to fire, right front passenger	If recorded	Event	N.A.
Seat track position switch, foremost, status, driver	If recorded	−1.0 sec	N.A.
Seat track position switch, foremost, status, right front passenger	If recorded	−1.0 sec	N.A.
Occupant size classification, driver	If recorded	−1.0 sec	N.A.
Occupant size classification, right front passenger	If recorded	−1.0 sec	N.A.
Occupant position classification, driver	If recorded	−1.0 sec	N.A.
Occupant position classification, right front passenger	If recorded	−1.0 sec	N.A.

[1] Pre-crash data and crash data are asynchronous. The sample time accuracy requirement for pre-crash time is −0.1 to 1.0 sec (e.g. T = −1 would need to occur between −1.1 and 0 seconds.)
[2] "If recorded" means if the data is recorded in non-volatile memory for the purpose of subsequent downloading.
[3] "Vehicle roll angle" may be recorded in any time duration, −1.0 sec to 5.0 sec is suggested.
[4] List this element n − 1 times, once for each stage of a multi-stage air bag system.

§ 563.8 Data format.

(a) The data elements listed in Tables I and II, as applicable, must be recorded in accordance with the range, accuracy, resolution, and filter class specified in Table III.

TABLE III.—RECORDED DATA ELEMENT FORMAT

Data element	Range	Accuracy	Resolution	Filter class
Lateral acceleration	−50 g to +50 g	±5%	0.01 g	SAE J211–1,[1] Class 60.
Longitudinal acceleration	−50 g to +50 g	±5%	0.01 g	SAE J211–1,[1] Class 60.
Normal Acceleration	−50 g to +50 g	±5%	0.01 g	SAE J211–1,[1] Class 60.
Longitudinal delta-V	−100 km/h +100 km/h	±5%	1 km/h	N.A.
Lateral delta-V	−100 km/h to +100 km/h.	±5%	1 km/h	N.A.
Maximum delta-V, longitudinal	+100 km/h +100 km/h	±5%	1 km/h	N.A.
Maximum delta-V, lateral	−100 km/h to +100 km/h.	±5%	1 km/h	N.A.

TABLE III.—RECORDED DATA ELEMENT FORMAT—Continued

Data element	Range	Accuracy	Resolution	Filter class
Time, maximum delta-V, longitudinal	0–300 ms	±3 ms	2.5 ms	N.A.
Time, maximum delta-V, lateral	0–300 ms	±3 ms	2.5 ms	N.A.
Time, maximum delta-V, resultant	0–300 ms	±3 ms	2.5 ms	N.A.
Vehicle Roll Angle	−1080 deg to +1080 deg.	±10 deg	10 deg	N.A.
Speed, vehicle indicated	0 km/h to 200 km/h	±1 km/h	1 km/h	N.A.
Engine throttle, percent full (accelerator pedal percent full).	0 to 100%	±5%	1%	N.A.
Engine rpm	0 to 10,000 rpm	±100 rpm	100 rpm	N.A.
Service brake, on, off	On and Off	N.A	On and Off	N.A.
ABS activity	On and Off	N.A	On and Off	N.A.
Stability control (on, off, engaged)	On, Off, Engaged	N.A	On, Off, Engaged	N.A.
Steering wheel angle	−250 deg CW to +250 deg CCW.	±5 deg	5 deg	N.A.
Ignition cycle, crash	0 to 60,000	±1 cycle	1 cycle	N.A.
Ignition cycle, download	0 to 60,000	±1 cycle	1 cycle	N.A.
Safety belt status, driver	On or Off	N.A	On or Off	N.A.
Safety belt status, right front passenger.	On or Off	N.A	On or Off	N.A.
Frontal air bag warning lamp (on, off)	On or Off	N.A	On or Off	N.A.
Frontal air bag suppression switch status.	On or Off	N.A	On or Off	N.A.
Frontal air bag deployment, time to deploy/first stage, driver.	0 to 250 ms	±2 ms	1 ms	N.A.
Frontal air bag deployment, time to deploy/first stage, right front passenger.	0 to 250 ms	±2 ms	1 ms	N.A.
Frontal air bag deployment, time to n^{th} stage, driver.	0 to 250 ms	±2 ms	1 ms	N.A.
Frontal air bag deployment, time to n^{th} stage, right front passenger.	0 to 250 ms	±2 ms	1 ms	N.A.
Frontal air bag deployment, n^{th} stage disposal, driver, y/n.	Yes/No	N.A	Yes/No	N.A.
Frontal air bag deployment, n^{th} stage disposal, right front passenger, y/n.	Yes/No	N.A.	Yes/No	N.A.
Side air bag deployment, time to deploy, driver.	0 to 250 ms	±2 ms	1 ms	N.A.
Side air bag deployment, time to deploy, right front passenger.	0 to 250 ms	±2 ms	1 ms	N.A.
Side curtain/tube air bag deployment, time to deploy, driver side.	0 to 250 ms	±2 ms	1 ms	N.A.
Side curtain/tube air bag deployment, time to deploy, right side.	0 to 250 ms	±2 ms	1 ms	N.A.
Pretensioner deployment, time to fire, driver.	0 to 250 ms	±2 ms	1 ms	N.A.
Pretensioner deployment, time to fire, right front passenger.	0 to 250 ms	±2 ms	1 ms	N.A.
Seat track position switch, foremost, status, driver.	Yes/No	N.A	Yes/No	N.A.
Seat track position switch, foremost, status, right front passenger.	Yes/No	N.A	Yes/No	N.A.
Occupant size driver occupant 5th female size y/n.	Yes/No	N.A	Yes/No	N.A.
Occupant size right front passenger child y/n.	Yes/No	N.A	Yes/No	N.A.
Occupant position classification, driver oop y/n.	Yes/No	N.A	Yes/No	N.A.
Occupant position classification, right front passenger oop y/n.	Yes/No	N.A	Yes/No	N.A.
Multi-event, number of events (1, 2)	1 or 2	N.A	1 or 2	N.A.
Time from event 1 to 2	0 to 5.0 sec	0.1 sec	0.1 sec	N.A.
Complete file recorded (yes/no)	Yes/No	N.A	Yes/No	N.A.

[1] Incorporated by reference, *see* § 563.4.

(b) Acceleration Time-History data and format: The longitudinal, lateral, and normal acceleration time-history data, as applicable, must be filtered in accordance with the filter class specified in Table III either during the recording phase or during the data downloading phase to include:

(1) The Time Step (TS) that is the inverse of the sampling frequency of the acceleration data and which has units of seconds;

(2) The number of the first point (NFP), which is an integer that when multiplied by the TS equals the time

relative to time zero of the first acceleration data point;

(3) The number of the last point (NLP), which is an integer that when multiplied by the TS equals the time relative to time zero of the last acceleration data point; and

(4) NLP − NFP+1 acceleration values sequentially beginning with the acceleration at time NFP*TS and continue sampling the acceleration at TS increments in time until the time NLP*TS is reached.

§ 563.9 Data capture.

The EDR must capture and record the data elements for events in accordance with the following conditions and circumstances:

(a) In an air bag deployment crash, the data recorded from any previous crash must be deleted (both events). The data related to the deployment must be captured and recorded. The memory must be locked to prevent any future overwriting of these data.

(b) In an air bag non-deployment crash that meets the trigger threshold, delete all previously recorded data in the EDR's memory. Capture and record the current data, up to two events. In the case of two events, detection of the second event starts after the End of Event Time for event 1.

§ 563.10 Crash test performance and survivability.

(a) Each vehicle subject to the requirements of S5, S14.5, S15, or S17 of 49 CFR 571.208, *Occupant crash protection,* must comply with the requirements in subpart (c) of this section when tested according to S8, S16, and S18 of 49 CFR 571.208.

(b) Each vehicle subject to the requirements of 49 CFR 571.214, *Side impact protection,* that meets a trigger threshold or has a frontal air bag deployment, must comply with the requirements of subpart (c) of this section when tested according to the conditions specified in 49 CFR 571.214 for a moving deformable barrier test.

(c) The data elements required by § 563.7, except for the ''Engine throttle, percent full,'' ''engine RPM,'' and ''service brake, on/off,'' must be recorded in the format specified by § 563.8, exist at the completion of the crash test, and be retrievable by the methodology specified by the vehicle manufacturer under § 563.12 for not less than 10 days after the test, and the complete data recorded element must read ''yes'' after the test.

§ 563.11 Information in owner's manual.

(a) The owner's manual in each vehicle covered under this regulation must provide the following statement in English:

This vehicle is equipped with an event data recorder (EDR). The main purpose of an EDR is to record, in certain crash or near crash-like situations, such as an air bag deployment or hitting a road obstacle, data that will assist in understanding how a vehicle's systems performed. The EDR is designed to record data related to vehicle dynamics and safety systems for a short period of time, typically 30 seconds or less. The EDR in this vehicle is designed to record such data as:

- How various systems in your vehicle were operating;
- Whether or not the driver and passenger safety belts were buckled/fastened;
- How far (if at all) the driver was depressing the accelerator and/or brake pedal; and,
- How fast the vehicle was traveling.

These data can help provide a better understanding of the circumstances in which crashes and injuries occur. NOTE: EDR data are recorded by your vehicle only if a non-trivial crash situation occurs; no data are recorded by the EDR under normal driving conditions and no personal data (e.g., name, gender, age, and crash location) are recorded. However, other parties, such as law enforcement, could combine the EDR data with the type of personally identifying data routinely acquired during a crash investigation.

To read data recorded by an EDR, special equipment is required, and access to the vehicle or the EDR is needed. In addition to the vehicle manufacturer, other parties, such as law enforcement, that have the special equipment, can read the information if they have access to the vehicle or the EDR.

(b) The owner's manual may include additional information about the form, function, and capabilities of the EDR, in supplement to the required statement in § 563.11(a).

§ 563.12 Data retrieval tools.

Each manufacturer of a motor vehicle equipped with an EDR shall ensure by licensing agreement or other means that a tool(s) is commercially available that is capable of accessing and retrieving the data stored in the EDR that are required by this part. The tool(s) shall be commercially available not later than 90 days after the first sale of the motor vehicle for purposes other than resale.

Issued on: August 18, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. 06–7094 Filed 8–21–06; 10:00 am]

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Federal Register

Monday,
August 28, 2006

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services
42 CFR Parts 431 and 457
Medicaid Program and State Children's Health Insurance Program (SCHIP) Payment Error Rate Measurement; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

[CMS–6026–IFC2]

RIN 0938–AN77

Medicaid Program and State Children's Health Insurance Program (SCHIP) Payment Error Rate Measurement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period sets forth the State requirements to provide information to us for purposes of estimating improper payments in Medicaid and SCHIP. The Improper Payments Information Act of 2002 (IPIA) requires heads of Federal agencies to estimate and report to the Congress annually these estimates of improper payments for the programs they oversee, and submit a report on actions the agency is taking to reduce erroneous payments.

This interim final rule with comment responds to the public comments on the October 5, 2005 interim final rule and sets forth State requirements for submitting claims and policies to the Federal contractor for purposes of conducting FFS and managed care reviews. This interim final rule also sets forth and invites further comments on the State requirements for conducting eligibility reviews and estimating payment error rates due to errors in eligibility determinations.

DATES: *Effective Date:* These regulations are effective on October 1, 2006.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 27, 2006.

ADDRESSES: In commenting, please refer to file code CMS–6026–IFC2. 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–6026–IFC2, P.O. Box 8013, Baltimore, MD 21244–8013.

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–6026–IFC2, 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: Janet E. Reichert, (410) 786–4580. Elizabeth Pham, (410) 786–7703.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on the State requirements for conducting eligibility reviews and estimating payment error rates due to errors in eligibility determinations. You can assist us by referencing the file code CMS–6026–IFC.

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 in a timely manner 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

A. The Improper Payments Information Act of 2002

The Improper Payments Information Act of 2002 (IPIA), Public Law 107–300, enacted on November 26, 2002, requires the heads of Federal agencies annually to review programs they oversee that are susceptible to significant erroneous payments, and to estimate the amount of improper payments, to report those estimates to the Congress, and to submit a report on actions the agency is taking to reduce erroneous expenditures. The IPIA directed the Office of Management and Budget (OMB) to provide guidance on implementation. OMB defines significant erroneous payments as annual erroneous payments in the program exceeding both 2.5 percent of program payments and $10 million (OMB M–03–13, May 21, 2003). For those programs with significant erroneous payments, Federal agencies must provide the estimated amount of improper payments and report on what actions the agency is taking to reduce them, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached.

According to OMB directives, Federal agencies must include in the report to the Congress: (1) The estimate of the

annual amount of erroneous payments; (2) a discussion of the causes of the errors and actions taken to correct those problems, including plans to increase agency accountability; (3) a discussion of the amount of actual erroneous payments the agency expects to recover; (4) limitations that prevent the agency from reducing the erroneous payment levels, that is, resources or legal barriers; and (5) a target for the program's future payment rate, if applicable.

The Medicaid and SCHIP programs were identified by OMB as programs at risk for significant erroneous payments. OMB directed the Department of Health and Human Services (DHHS) to report the estimated error rates for the Medicaid and SCHIP programs each year for inclusion in the Performance and Accountability Report (PAR).

Through the Payment Accuracy Measurement (PAM) and Payment Error Rate Measurement (PERM) pilot projects that CMS operated in Fiscal Years (FYs) 2002 through 2005, we developed a claims-based review methodology designed to estimate State-specific payment error rates for all adjudicated claims within 3 percent of the true population error rate with 95 percent confidence. An ''adjudicated claim'' is a claim for which either money was obligated to pay the claim (paid claims) or for which a decision was made to deny the claim (denied claims).

B. CMS Rulemaking

We published a proposed rule on August 27, 2004 (69 FR 52620) to comply with the requirements of the IPIA and the OMB guidance. Based on the methodology developed in the pilot projects, the proposed rule set forth provisions for all States annually to estimate improper payments in their Medicaid and SCHIP programs and to report the State-specific error rates for purposes of our computing the national improper payment estimates for these programs. The intended effects of the proposed rule were to have States measure improper payments based on fee-for-service (FFS), managed care, and eligibility reviews; to identify errors to target corrective actions; to reduce the rate of improper payments; and to produce a corresponding increase in program savings at both the State and Federal levels.

After extensive analysis of the issues related to having States measure improper payments in Medicaid and SCHIP, including public comments on the provisions in the proposed rule, we revised our approach. Our revised approach adopted the recommendation to engage Federal contractors to review State Medicaid and SCHIP FFS and managed care payments (we define the term ''claims'' to include both managed care capitation payments and FFS line items) and to calculate the State-specific and national error rates for Medicaid and SCHIP. (States will calculate the State-specific eligibility error rates. Based on these rates, the Federal contractor will calculate the national eligibility error rate for each program.) We also adopted the recommendation to sample a subset of States each year rather than to measure every State every year. We adopted these recommendations primarily in response to commenters' concerns with the cost and burden to implement the regulatory provisions that the proposed rule would have imposed on States.

Since our revised approach deviated significantly from the approach in the proposed rule, we published an interim final rule with comment period on October 5, 2005 (70 FR 58260). The October 5th interim final rule with comment period responded to the public comments on the proposed rule, and informed the public of our national contracting strategy and of our plan to measure improper payments in a subset of States. Our State selection will ensure that a State will be measured once, and only once, every 3 years in each program.

The October 5, 2005 interim final rule also set forth the types of information that States would submit to the Federal contractors for the purpose of estimating Medicaid and SCHIP FFS improper payments. The October 5, 2005 interim final rule invited further comments on methods for estimating eligibility and managed care improper payments. We received very few comments regarding managed care and a number of comments regarding eligibility. Based on the public comments, we developed an approach to measuring eligibility errors and, through this second interim final rule, invite further public comments on this eligibility methodology. Section 1102(a) of the Social Security Act (the Act) authorizes the Secretary to establish such rules and regulations as may be necessary for the efficient administration of the Medicaid and SCHIP programs. Medicaid statute at section 1902(a)(6) of the Act and SCHIP statute at section 2107(b)(1) of the Act require States to provide information that the Secretary finds necessary for the administration, evaluation, and verification of the State's program. Also, section 1902(a)(27) of the Act (and 42 CFR 457.950) requires providers to submit information regarding payments and claims as requested by the Secretary, State agency, or both.

Under the authority of these statutory provisions, this second interim final rule requires those States selected for review in any given year for the Medicaid or SCHIP improper payments measurement to provide the Federal contractors with information needed to conduct medical and data processing reviews on FFS claims and data processing reviews on managed care claims. (Managed care claims are not subject to medical review because managed care payments are based on capitated payments made per enrollee, not on the individual services provided.)

The States selected for PERM must provide:

(a) All adjudicated FFS and managed care claims information from the review year, on a quarterly basis, with FFS claims stratified by type of service;

(b) Upon request from the contractor, provider contact information that has been verified by the State as current;

(c) All medical and other related policies in effect and any quarterly policy updates;

(d) Current managed care contracts, rate information, and any quarterly updates to the contracts and rates for the review year for SCHIP and, as requested, for Medicaid;

(e) Data processing systems manuals;

(f) Repricing information for claims that are determined to have been improperly paid;

(g) Information on claims that were selected as part of the sample, but which changed in substance after selection, for example, successful provider appeals;

(h) Adjustments made within 60 days of the adjudication dates for the original claims or line items with sufficient information to indicate the nature of the adjustments and to match the adjustments to the original claims or line items;

(i) A corrective action report for purposes of reducing the payment error rate in the FFS, managed care and eligibility components of the program; and

(j) Other information that the Secretary determines is necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP.

C. IPIA Implementation

We expect to be compliant with IPIA requirements by 2008. We are measuring Medicaid FFS improper payments in FY 2006 and plan to have all components (FFS, managed care and eligibility) of Medicaid and SCHIP measured in FY 2007 and beyond. We delayed announcing a methodology for

measuring errors in managed care and eligibility in the October 5, 2005 interim final rule; and instead, we invited comments on methods for measuring these types of improper payments in both Medicaid and SCHIP. We determined that the Federal contractor would review managed care claims similar to the review process used in the PERM pilot. We published the information collection request for SCHIP and Medicaid managed care error measurements on February 3, 2006 (71 FR 5851) and again on April 14, 2006 (71 FR 19522) for public comment. We are describing the State information submission requirements in this interim final rule.

In the October 5, 2005 interim final rule, we stated that it was still possible that States sampled for review would be required to conduct eligibility reviews as described in our approach to the proposed rule. We also announced in the October 5, 2005 interim final rule our intentions to establish an eligibility workgroup to make recommendations on the best approach for reviewing Medicaid and SCHIP eligibility within the confines of current statute, with minimal impact on States and additional discretionary funding. We convened an eligibility workgroup comprised of DHHS [including CMS and, in an advisory capacity, the Office of the Inspector General (OIG)], OMB, and representatives from two States. We determined that States should conduct the eligibility measurement based on the workgroup's consideration of public comments and the examination of various approaches proposed in such comments. We also developed a review methodology, which we have outlined in this interim final rule with comment period and invite further public comment on these eligibility error measurement provisions.

Thus, in FY 2007 and beyond, we expect to have Federal contractors measure improper payments in the FFS and managed care components of Medicaid and SCHIP, and have States selected for these reviews in any given year measure the error rate in their respective determinations of program eligibility. These measurements will produce State-specific error rates for the three components—FFS, managed care and eligibility—as well as composite program error rates for the State's Medicaid and SCHIP programs. From the State-specific error rates, we will calculate national error rates for each of the components and for the Medicaid and SCHIP program.

ANNUAL PERM ERROR RATES PRODUCED

State-specific: Four error rates per selected program (for 17 states)	National: Eight error rates
1. FFS	1. Medicaid FFS.
2. Managed care	2. SCHIP FFS.
3. Eligibility	3. Medicaid managed care.
4. Medicaid/SCHIP Program Error Rate.	4. SCHIP managed care.
	5. Medicaid eligibility.
	6. SCHIP eligibility.
	7. Medicaid Program.
	8. SCHIP Program.

We expect State corrective actions to address the causes of error in each of the three program components. As a result, we expect States will reduce their error rates over the course of each measurement cycle which, in turn, should reduce the national error rates.

II. Provisions of the October 5, 2005 Interim Final Regulations

We published an interim final rule with comment period on October 5, 2005 that responded to comments on the August 27, 2004 proposed rule and informed the public that we will use a national contracting strategy to estimate improper payments in Medicaid and SCHIP FFS in a subset of States rather than every State every year. We adopted this approach based on public comments on the proposed rule.

A. Selecting States for Review

Medicaid State Selection. We will use a rotational approach to review the States in Medicaid. For each fiscal year, we expect to measure 17 States. The result is that each State will be measured once, and only once, every 3 years. The rotation allows States to plan for the reviews because States know in advance in which year they will be measured.

In determining the Medicaid State selection, we grouped all States into three equal strata of small, medium, and large based on the States' most recently available FFS annual expenditure data. We randomly selected up to six States from each stratum each year, until we selected all States for review over the current and next 2 fiscal years (that is, FY 2006 through FY 2008). (The third stratum with the large States (based on annual expenditures) was substratified into two strata of 8 and 9 States. Two States were selected from one substratum and three States were selected from the other substratum. We selected 6 States each from the ''small'' and ''medium'' strata for a total of 17 States.)

The States selected for Medicaid FFS review in FY 2006, and Medicaid FFS, managed care, and eligibility reviews in FY 2007 and FY 2008 are listed below. At the end of the 3-year period, the rotation will repeat so that the Medicaid FY 2006 States will be reviewed in FY 2009; the Medicaid FY 2007 States will be reviewed in FY 2010; and the Medicaid FY 2008 States will be reviewed in 2011. We announced the Medicaid State selection rotation through a State Health Official Letter transmitted November 18, 2005.

MEDICAID STATE SELECTION

FY 2006	Pennsylvania, Ohio, Illinois, Michigan, Missouri, Minnesota, Arkansas, Connecticut, New Mexico, Virginia, Wisconsin, Oklahoma, North Dakota, Wyoming, Kansas, Idaho, Delaware.
FY 2007	North Carolina, Georgia, California, Massachusetts, Tennessee, New Jersey, Kentucky, West Virginia, Maryland, Alabama, South Carolina, Colorado, Utah, Vermont, Nebraska, New Hampshire, Rhode Island.
FY 2008	New York, Florida, Texas, Louisiana, Indiana, Mississippi, Iowa, Maine, Oregon, Arizona, Washington, District of Columbia, Alaska, Hawaii, Montana, South Dakota, Nevada.

SCHIP State Selection. Subsequent to the Medicaid State selection for PERM reviews, we completed the SCHIP State selection. We determined that SCHIP can be measured in the same States selected for Medicaid review each fiscal year with a high probability that the SCHIP error rate will meet OMB requirements for confidence and precision levels. Since SCHIP and Medicaid will be measured in the selected States at the same time, each State will be measured for SCHIP once and only once every three years. We will send a State Health Official Letter regarding the SCHIP State selection as we did on the Medicaid State selection.

We believe that paralleling the SCHIP and Medicaid mesaurements will minimize administrative complexities for both CMS and the States. Measuring

both programs at the same time may also reduce the State cost and burden because States are able to plan activities for both measurements and may gain efficiencies by combining staff and resources for the reviews.

As with Medicaid, we expect to measure improper payments in all components (FFS, managed care, and eligibility) of SCHIP in FY 2007 and beyond. For States measured for Medicaid FFS in FY 2006, SCHIP will be measured in FY 2009.

B. Use of Federal Contractors

Under the national contracting strategy, we will use Federal contractors to measure Medicaid and SCHIP FFS and managed care improper payments. For FY 2006, we have engaged three contractors: (1) A statistical contractor (SC); (2) a documentation/database contractor (DDC); and (3) a review contractor (RC). The use of three Federal contractors allows for the award of contracts in areas of specialization and expertise, minimizes potential problems if one contractor experiences operational difficulties, and provides CMS with optimum oversight.

The SC collects adjudicated claims data, determines the sample size, draws the sample, and calculates the State and national error rates. The DDC collects and stores State medical and other related policies, and requests the medical records from providers for the FFS medical reviews. The RC conducts the medical and data processing reviews.

Statistical Contractor

The States selected for review will submit to the SC the following information for Medicaid and SCHIP:

- All adjudicated FFS and managed care claims information from the review year on a quarterly basis, with FFS claims stratified into seven strata by service type and one additional stratum for denied claims;
- Information on claims that were selected as part of the sample, but which changed in substance after selection (for example, successful provider appeals); and
- Adjustments made within 60 days from the adjudication dates for the original claims or line items, with sufficient information to indicate the nature of the adjustments and to match the adjustments to the original claims or line items.

States are requested to provide stratified FFS claims data because stratifying the claims by service type improves the efficiency of the sampling methodology by distributing the claims in the sample in proportion to the dollar share in the universe. Stratification allows services with a larger dollar share to compose a larger share of the sample and reduces the variance in the sample. Stratifying the claims also allows for smaller sample sizes and for the identification of errors in specific service types so that States can systematically target causes of errors.

The SC will work with States and will compare the data submitted to recent data to help establish that the data are complete. Based on the annual expenditure data, the SC will determine the State's sample size and, for FFS claims, the sample size for each of the eight total strata. These strata were established during the pilot projects based on the total share of dollars. In addition, States had already grouped their claims similarly in their Medicaid Management Information System (MMIS); therefore, we believe that the stratification of claims for submission should not be burdensome to States. Stratification of the claims also provides States with information regarding the service areas where the errors are concentrated so that States can better target corrective actions.

The strata are: (1) Hospital services; (2) long term care services; (3) other independent practitioners and clinics; (4) prescription drugs; (5) home and community based services; (6) other services and supplies (for example, durable medical equipment, clinical lab tests, and x-rays); (7) primary care case management; and (8) denied claims. We expect that the average sample size will be 1,000 FFS claims and 500 managed care claims per State program in order to achieve a 3 percent precision level at the 95 percent confidence level (based on a range estimated during the PAM/PERM pilots).

From the State's quarterly adjudicated claims data, the SC will randomly select a sample of FFS and managed care claims each quarter. The State will stratify the FFS claims before submitting the data to the SC. Each selected FFS claim will be subjected to a medical and data processing review. Managed care claims will not be stratified and will not be subject to medical reviews because the payments that are made to a managed care plan are based on a set fee from a predetermined capitation agreement, rather than for the specific service(s) provided.

Documentation/Database Contractor

States selected for review will provide the DDC the following information for Medicaid and SCHIP:

- All medical and other related policies in effect for the review year and any quarterly policy updates;
- Current managed care contracts, rate information, and any quarterly updates to contracts and rates for the review year for SCHIP and, as requested, for Medicaid; and
- Upon request from the contractor, provider contact information that has been verified by the State as current.

Review Contractor

States selected for review will provide the RC the following information for Medicaid and SCHIP:

- Systems manuals for data processing reviews. (If a State's medical and data processing policies are intertwined, the State may send the policies to the DDC. The DDC will then identify the data processing policies so the RC can access them through the DDC.
- Repricing information, as requested by the RC, for claims that the RC determines to be improperly paid. The RC will request that States reprice claims that are found to be in error so that the RC is able to determine the amount of the improper payment.

The RC will use the information collected by the DDC to conduct the medical reviews. The RC will conduct the data processing reviews, most likely on-site, using the systems information provided by the State. The RC will, at a minimum, send monthly disposition reports to the States. The disposition reports will list the contractor's review findings for each sampled claim. States can review these findings and notify the RC if they identify errors they believe should be reversed. The RC will work with States to resolve differences in findings. If the State finding prevails, the RC will reverse the error finding. If the RC's finding is upheld, the error finding will stay in the calculation of the error rate.

When the reviews are completed, the SC will estimate the State-specific error rates for the FFS and managed care components of the Medicaid and SCHIP programs, as well as national program error rates and national component error rates. The States will review their error rates; determine root causes of error-prone areas and develop corrective actions to address the error causes for purposes of reducing the payment error rates.

CMS

States selected for review will provide us with the following information for Medicaid and SCHIP:

- A corrective action report for purposes of reducing the State's payment error rates in the FFS, managed care, and eligibility components of the program; and

• Other information that the Secretary determines necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP.

We will notify selected States regarding any additional information that may be necessary for determining error rates in Medicaid and SCHIP. We do not expect to request additional information other than the information we have specified in this interim final rule with comment period. However, we would necessarily request information we find during the course of measuring each program that would improve the process, produce more accurate error rates, or reduce the cost and burden on either or both the State and Federal governments. Similarly, if we determined that we are collecting specific information that does not add value to the error rate measurement or is not productive to collect, we would discontinue that collection. Once the State-specific and national error rates are estimated, the States will develop and send to us corrective action reports describing corrective actions that the States will implement to reduce the incidence of improper payments.

C. Review Process

The process for measuring improper payments, called the ''production cycle,'' under the national contracting strategy will take approximately 23 months per cycle. For example, the measurement for FY 2006 (which involves the reviews of adjudicated Medicaid FFS claims during October 2005 through September 2006) begins October 1, 2005 and will be completed by August 30, 2007. The results will be included in the FY 2007 PAR, which is published in November 2007. Using FY 2006 as an example, the following table provides an approximate overview of the PERM process. It is important to note that the process is fluid, so timeframes may fluctuate slightly depending on such factors as the complexities of the reviews.

EXAMPLE OF THE PERM PRODUCTION CYCLE: FY 2006

[Note: only includes Medicaid FFS]

Timeframe	Event
December 1, 2005	• States submit medical policies in effect for the review period to the DDC.
January 15, 2006	• States submit 1st quarter FY 2006 (October–December 2005) adjudicated claims to the SC.
February 1, 2006	• State submits 1st quarter FFS policy updates to the DDC.
April 15, 2006	• States submit 2nd quarter FY 2006 (January–March 2006) adjudicated claims to the SC.
May 1, 2006	• States submit 2nd quarter policy updates to the DDC.
July 15, 2006	• States submit 3rd quarter FY 2006 (April–June 2006) adjudicated claims to the SC.
August 1, 2006	• States submit 3rd quarter policy updates to the DDC.
October 15, 2006	• States submit 4th quarter FY 2006 (July–September 2006) adjudicated claims to the SC.
November 1, 2006	• States submit 4th quarter policy updates to the DDC.
Throughout PERM process	• States identify and resolve differences in review findings with the RC.

D. Eligibility Measurement

In the October 5, 2005 interim final rule, we invited comments on methods for measuring improper payments in eligibility in Medicaid and SCHIP. We stated in the October 5, 2005 interim final rule that the States sampled for the Medicaid or SCHIP FFS and managed care reviews in any year may be required to conduct eligibility reviews as set out in the proposed rule. To develop the eligibility measurement, we convened a workgroup comprised of DHHS (including CMS and, in an advisory role, the OIG), OMB, and representatives from two States. The workgroup considered public comments and made recommendations on the best method to measure Medicaid and SCHIP eligibility improper payments within the confines of current law, and with minimal impact on States and on additional discretionary funding.

We also invited comments on managed care review. We received few comments on measuring this component. We developed a plan for measuring managed care improper payments in a manner similar to the managed care reviews conducted under the PERM pilot. We have addressed comments received on eligibility and managed care in this interim final rule.

III. Analysis of and Responses to Public Comments

CMS received a total of 30 comments: 27 from State agencies (including one territory) and 3 from consumer advocacy and other groups. These commenters reiterated many of the comments from the proposed rule to which we responded in the October 5, 2005 interim final rule. Although we are not required to respond to these comments again, we are summarizing the comments in this interim final rule and providing our responses for the convenience of the reader. However, it is important to note that we are bound by, and therefore cannot change, the requirements of the IPIA, the OMB guidance (such as inclusion of denied claims), and section 1903(d)(2) of the Act governing recoveries. Current regulations at 42 CFR part 433, subpart F and 42 CFR part 457, subparts B and F are not addressed by this rulemaking. Below are the comments on the October 5, 2005 interim final rule, grouped by topic, and our responses as follows:

A. Purpose, Basis and Scope
1. Payment Error Rates
2. State Selection
3. Use of National Contractor
4. State Impact
B. Methodology
1. Exclusions From the Claims Universe
a. Denied Claims
b. Provider Appeals/Provider Fraud
2. Sampling Issues
3. Overpayments and Underpayment Errors
4. Adjustments
5. Medical and Data Processing Reviews
a. Methodology
b. Medical Reviews
c. Data Processing Reviews
6. Payment Error Rate and Reporting
C. Expanded FY 2007 Error Rate Measurement
1. Eligibility
a. Cost and Burden
b. Eligibility Workgroup
c. Methodology
2. Managed Care
3. SCHIP
D. Appeals
E. State Requirements
1. Collection of Information
a. State's Role
b. State Cost and Burden
c. Information Collection
d. Repricing
2. Technical Assistance
3. Corrective Action Plans
4. Recoveries
F. Regulatory Impact Statement
G. Anticipated Effects

Overall, comments on the October 5, 2005 interim final rule supported our efforts in assuring that Medicaid and SCHIP payments are correct. Many commenters indicated that although the

October 5, 2005 interim final rule significantly reduced the burden on the States by using a Federal contracting strategy and limiting State selection to once every 3 years, they believed that the October 5, 2005 interim final rule still placed an undue technical and financial burden on the States to assist the Federal contractors. Many commenters believed that the October 5, 2005 interim final rule underestimated the amount of resources that would be necessary to provide information and technical assistance to the Federal contractors for the estimation of State payment error rates. Commenters were also concerned with the States' ability to review and challenge the contractor's error determinations and estimates of State error rates before they were reported to OMB.

A. Purpose, Basis, and Scope

1. Payment Error Rates

Comment: Many commenters stated that the IPIA did not require State-specific error rate estimates and that State-specific error rates went beyond the requirements of the IPIA. Several commenters proposed that CMS abandon the State-level error rates in favor of having the national contractor select a nationwide statistical sample, after which the contractor would review those claims with the assistance of the individual State.

Response: We did not adopt the recommendation to select a nationwide sample because we believed that it was not the best overall method to meet the requirements of the IPIA and OMB guidance.

There is no national sampling framework for SCHIP claims, and the Medicaid Statistical Information Statistics (MSIS) data for Medicaid are too old to produce meaningful data on which States could base effective corrective actions. As such, we are not abandoning State rates for only a national rate. We will use the State rates as the basis for the national rates and States can use their individual results as the basis for corrective actions.

Comment: One commenter stated that State-specific error rates would lead to the unwarranted comparisons of States when there was wide variation in States' Medicaid and SCHIP programs.

Response: We agree and will caveat in our reporting of the error rates that comparisons among States should not be made since each program and its policies vary. State error rates will be used to measure each State's progress in reducing improper payments (that is, individual State error rates will be compared over time).

Comment: Some commenters believed that CMS' adoption of a payment error methodology that includes State-specific error rates constitutes an unnecessary burden on the States.

Response: We believe that our adoption of the recommendation to engage Federal contractors has significantly reduced the cost and burden by limiting State involvement to providing information and technical assistance to the contractor. States are required to provide information necessary for the Secretary to monitor program performance under the Medicaid statute at section 1902(a)(6) of the Act, and the SCHIP statute at section 2107(b)(1) of the Act. Therefore, we believe that it is reasonable that States provide State-specific information to assist in the national improper payment measurements.

Comment: Some commenters believed that since the IPIA is a Federal obligation, State participation should be 100 percent fully funded by CMS rather than at the Federal match rate.

Response: Our adoption of the commenters' recommendation to engage Federal contractors to estimate several components of the improper payment measurement should reduce the cost and burden that States would have otherwise incurred to conduct medical and data processing reviews on FFS and managed care claims. States will not pay for the national contractor. Only those States selected for review each year will incur costs by providing information necessary for claims sample selections and reviews, providing technical assistance, as needed, and developing a corrective action plan to reduce the error rates.

The States selected will also conduct the eligibility measurement. The States will be reimbursed for these activities at the applicable administrative Federal match under Medicaid and SCHIP. As part of the rulemaking process, we have evaluated and determined that the burden and cost of these responsibilities will not significantly impact the States.

Comment: One commenter questioned the likelihood of achieving an accurate national error rate, by aggregating error rates from all the States' programs with their inherent variations.

Response: We will be using a statistical sampling methodology to obtain an estimate of a national error rate and the ''margin of error'' around that rate. By drawing a stratified random sample of States and then reviewing a random sample of claims within each of those States (using each State's program policies), we are able to obtain an estimate of the national error rate without having to conduct reviews on all claims. This methodology will produce the estimate and the precision level of the estimated national error rate, within the parameters set by OMB.

Comment: Several commenters stated that the rule is silent on how PERM relates to existing State Medicaid program integrity functions and asked if it is CMS' intent for PERM to supplant or enhance existing audit programs. They argued that PERM activities should not create duplication of States' existing audit programs and Medicaid Eligibility Quality Control (MEQC). One commenter stated that the rule should not result in any change to these practices.

Response: The PERM program is intended to fulfill the requirements of the IPIA and is not intended to supplant, enhance, or change other program integrity activities in which the States are currently engaged. We are considering methods to minimize duplication of efforts regarding the eligibility reviews.

Comment: Several commenters stated that the PAM/PERM pilots have demonstrated that State-level error rates have a negative return on investment (ROI). One commenter stated that PERM is based upon calculation of the number of claims that had any type of error, which would have minimal cost impact. The commenter recommended that CMS support expansion of State payment integrity programs that use sophisticated algorithms and models to identify targeted leads for investigation and audit that have demonstrated a positive ROI. Another commenter stated that they have found their error rate to be quite low and given that they have a relatively high Federal match rate, this means that State's resources will be expended disproportionately to the State's ROI.

Response: We do support the States' use of sophisticated algorithms and models to identify targeted leads for investigation and audit. However, the IPIA requires error rate measurement for these programs and does not cite lack of cost savings as a circumstance which would excuse us and the States from measuring improper payments. Since we are estimating improper payments in a select number of States, primarily through a Federal contracting strategy, we believe the State cost to measure error rates has been substantially reduced. We anticipate that savings will be realized over time through disseminating findings from selected States, States' corrective action measures, and modeling best practices.

Comment: One commenter asked the following questions regarding CMS targets for future improper payment

levels and a timeline by which the targets would have to be reached:

- Will CMS set an arbitrary target level or use baseline empirical data, when available?
- Will each State be measured against its individual past performance or a national average?
- What are the incentives for having a lower error rate or disincentives for a higher estimate?
- What recourse will a State have if, due to understated CMS cost estimates coupled with the State's budgetary constraints, it is unable to satisfy its PERM process obligation?

Response: CMS will use baseline empirical data, when available, to set targets for future error rate levels. States will be measured against their individual rates rather than a national average. We believe that States strive to be fiscally responsible and will work with us to lower their payment error rates because it will benefit both State and Federal governments.

We aim to work in partnership with States in this endeavor. Thus far, in collecting claims data and medical policies for the FY 2006 measurement, States have been very cooperative and helpful and have not experienced any insurmountable problems in submitting the information.

We believe our cost estimates are accurate and we have minimized the burden as much as possible through the use of Federal contractors and reviewing a subset of States rather than every State every year.

Comment: One commenter stated that there is nothing in the October 5, 2005 interim final rule that would protect a non-sampled State from having a payment error rate applied to it, based upon results from sampled States, and from CMS seeking ''recoveries.''

Response: Section 1903(d)(2) of the Act, 42 CFR part 433, subpart F and 42 CFR part 457, subparts B and F, solely govern recoveries for overpayments identified through the medical and data processing reviews. We will not seek PERM recoveries from States not selected for PERM in that year based on results from other sampled States.

2. State Selection

Comment: Several commenters stated that the proposed selection of States in PERM on a three-year cycle will make it difficult to predict what resources a given State will need in advance to conduct PERM. Other commenters requested that CMS consider alternative methodologies that would permit States to know the schedule for PERM audits in advance so that the States can make staffing and funding plans for the years their program is selected for review.

Response: We agree with these comments and have adopted a State rotation that will provide States with advance notice of which fiscal years they will be participating in PERM. As we described in the preamble to this interim final rule, we randomly selected 17 States from the three strata for PERM measurement in FY 2006 through FY 2008. We announced the State selections for PERM reviews for FY 2006, FY 2007, and FY 2008 through a State Medicaid Director's letter dated November 18, 2005. We have also included the list of States selected for these fiscal years above in the preamble of this interim final rule with comment period. We also indicated that the SCHIP State selection will be based on the Medicaid State selection in that States selected for Medicaid will also be measured for SCHIP in the same year. We expect to measure improper payments in all components of SCHIP in FY 2007 and beyond. We plan to use a rotational basis for subsequent years so each State will know which fiscal year they will be participating in the PERM review of Medicaid and SCHIP.

3. Use of National Contractors

Comment: Several commenters believed the adoption of Federal contractors to measure the improper payments for one-third of the States each year and the phased-in implementation of the components to be reviewed would substantially reduce the burden on State Medicaid and SCHIP agencies. They stated that it would ensure greater consistency across States and reliability in the review process and outcome.

Response: We agree and appreciate the support of our adoption of the recommendations as a result of public comments.

Comment: One commenter stated that the national contracting methodology was not tested in the PAM or PERM studies. They argued that States' extensive knowledge is not easily transferred to a Federal contractor and the implementation of this knowledge transfer has not been designed or tested, but is germane to generating an accurate error rate estimate.

Response: Many States that participated in the PAM and PERM pilots used contractors to implement the reviews and compile the findings. It is important to note that CMS engaged one of the contractors used in the PAM and PERM pilots as the statistical contractor (SC) because of its experience with developing the sampling strategy and calculating error rates. Similarly, we engaged the documentation/database contractor (DDC) based on its experience with information collection for Medicare's Comprehensive Error Rate Testing (CERT) program and a review contractor (RC) that has demonstrated knowledge and experience with claim reviews. Therefore, we believe that the Federal contractors, working closely with States, will be able to produce accurate error rate estimates.

Comment: A number of commenters believed that the use of three contractors places an additional and unreasonable burden on States to ensure timely and coordinated responses to contractor questions, requests, etc. The comments included:

- The contractors will need to learn States' policies, including States' waivers, which would mean the States would have to educate each one of the contractors;
- The fact that three different contractors may have three different standards or procedures is problematic and may skew the error rates;
- The separate contractors may not share data and communicate effectively to complete the reviews; and
- The work should be consolidated for one main contractor or for one lead national contractor to coordinate the processes of the other subcontractors to give consistency to the requirements.

Response: States will be required to provide technical assistance on State policies only to the RC, who will examine State policies and the medical records to determine if payment for a FFS claim was medically necessary and paid correctly. States will also provide technical assistance to the RC on the data processing reviews. The SC will perform the sampling of claims and the calculation of the State and national error rates. The DDC will collect, store, and provide the review contractor with access to the State policies and medical records. The contractual agreements have been written to assure that the contractors will share information and communicate with each other. We will provide coordination and oversight.

Comment: Several commenters believed that the contractor's operational success is heavily contingent on information and technical assistance provided by participating States. The comments included:

- Success would require the contractors to have extensive knowledge of State policies and procedures to be aware of what might constitute special handling of a particular claim, and to know where to find documentation or authority to approve the service or item for payment;

• The contractor may not be well situated to fully grasp the nuances of each individual State program without a very close working relationship with State staff; and

• The rule should require the national contractor to collaborate with each program being reviewed during each stage of the review process (medical records, processing, and eligibility).

Response: We recognize that Medicaid and SCHIP programs are unique to each State. We agree that the contractor may need State assistance with nuances of each State program and as a result, the RC will work closely with the State. In addition, States will have the option to review the contractor's decision on the claims indisposition reports and discuss with the contractor any difference of opinion in the contractor's error determinations through the difference resolution process. Our goal is to work in partnership with the States to produce the most accurate State-specific rates.

Comment: Citing the intricacies inherent within each State's programs and systems, one commenter preferred that States be fully funded to conduct the processing and medical review at the State level. The commenter stated that States have the ability to conduct those reviews more efficiently, more accurately, and at a lower cost than a Federal contractor. The commenter believed that this is an opportunity for the States to learn additional ways to improve the programs and save Federal and State dollars that otherwise would be lost.

Response: We engaged in a national contracting strategy to implement the PERM program based on comments to the proposed rule regarding State cost and burden. We also believe that having the Federal contractor conducting the processing and medical reviews will provide consistency in reviews across States. Therefore, we are not adopting this recommendation. States will be able to identify additional ways to improve the programs and save State and Federal dollars through the contractor's review findings.

Comment: A number of commenters stated that they did not believe that the use of a national contracting strategy exempts CMS or its contractors from having any public review of the procedures on how medical reviews are conducted and how an error is determined. The comments included:

• Since the States are required to share all of their claims processing procedures, policies and provider enrollment, and payment methodologies with the Federal contractor(s), there is a need for a clear process to enable States to know what steps are taken by the contractor(s) working on the PERM project and to re-review error findings.

• CMS should make arrangements for a public review of the PERM protocols and the contractor's performance, including input from State agencies, provider organizations and other public entities.

• The use of a Federal contractor increases the need for outside oversight and review because the procedures will be less transparent to States and other parties who are affected by the policies.

Response: We described in the preamble of this interim final rule what each contractor's roles and responsibilities are in the implementation of the PERM program. We will be using the review and error rate calculation methodologies that we used in the PERM pilot, which States worked with us to design and refine. The contractors will work closely with the States to understand the State's policies such as special handling of claims.

States will also be able to review the contractor's claim determinations and resolve any differences in findings through the difference resolution process, which provides States with a level of outside oversight and review.

Comment: Several commenters argued that unlike Medicare, which is a single national program, reviewers for Medicaid and SCHIP must be experts in the policy, policy application, administration, and claims processing systems of 102 different State programs. The commenters stated that they wanted more opportunities for input in the development and monitoring of the PERM contractors, work plans, work statements, and protocol. Also they believed that the rule should describe the performance standards of the contractors and the ways that CMS will monitor compliance of those standards to ensure that States are not required to devote unnecessary resources in providing assistance to the Federal contractors.

Response: We recognize the complexities of reviewing Medicaid and SCHIP claims, and we have engaged a review contractor (RC) with experience in conducting claims reviews. The RC is required to have clinical experts perform the medical reviews. The RC will perform reviews in 17 States per year for the Medicaid and SCHIP measurements and will work with each State to clarify questions on the application of the policies in the medical review and also will work with States when questions on the data processing reviews arise.

Information regarding the procurement of Medicaid PERM contractors was posted on FedBizOpps.gov during the procurement process for public review. Information regarding the statistical contract was posted on August 4, 2005, the documentation/database contract on August 10, 2005, and the review contract on August 18, September 19, and October 14, 2005. We anticipate using the same standards set in the Medicaid procurement to engage the contractors (statistical, documentation/database, and review) for the SCHIP measurement. The performance and monitoring of the PERM contractors is a Federal responsibility, and we will oversee their work.

Comment: One commenter recommended that CMS employ an independent contractor to evaluate the final results of the PERM process for accuracy and cost effectiveness.

Response: As part of the Chief Financial Officer (CFO) audit, the PERM program may be audited by an independent agency, similar to Medicare's Comprehensive Error Rate Testing (CERT) program, which was established to monitor and report the accuracy of Medicare FFS payments.

4. State Input

Comment: Several commenters stated that CMS should establish a steering committee or other advisory group that includes State representatives to help ensure that the PERM contractors consider all the logistical and data collection issues to reduce demands on State staff.

Response: For the FY 2006 measurement, we have held several conference calls with States clarifying the collection process for the requested information. Due to the wide variation in the States' programs, the contractors have followed up individually with each State selected for the FY 2006 measurement. We believe that this one-on-one communication between the contractor and each selected State has worked well to address any issues the State may have related to data collection. We will continue to have informational conference calls and the contractors will follow up with each State selected for review, as necessary.

Comment: Several commenters expressed concern with the States' inability to actively participate in the rulemaking process, particularly for development of the eligibility and managed care components of PERM. They stated that CMS should not publish a final rule until CMS can draft the eligibility and managed care claims review processes, estimate realistic cost

assessments of the burden to States of the untested national contractor model, and the States can examine these processes, estimates, and other issues regarding PERM. These commenters expected that any rules that are formulated regarding eligibility or managed care reviews related to PERM will be published in the **Federal Register** and be subject to public comment.

Response: We agree and believe that States have been active participants in this process. States commented in the proposed rule, and we invited further comments on eligibility and managed care measurements in the October 5, 2005 interim final rule. We also provided the opportunity for public comment on the information collection requests for FFS (70 FR 42324 and 70 FR 50357), managed care (71 FR 5851 and 19522), and eligibility (71 FR 30410) and believe that our estimates of cost and burden to the States are realistic. Finally, we are publishing this as an interim final rule with an additional comment period to provide the opportunity for further public comment on the PERM eligibility review requirements before publishing a final rule.

Comment: One commenter stated that CMS should open workgroup participation on SCHIP, eligibility, or managed care to any State having an interest. CMS should share the options under consideration with the States. Workgroup minutes should be circulated to all parties.

Response: We solicited representatives through the American Public Human Services Association (APHSA) to participate on the eligibility workgroup. We believe that at least one State representative apprised States of the eligibility workgroup's recommendations through at least one Eligibility Technical Advisory Group conference call. We did not conduct managed care or SCHIP workgroups but we provided opportunity for State input through the proposed rule and the October 5, 2005 interim final rule as well as the information collection requests for FFS and managed care. We note that this workgroup, which was primarily internal, is exempt from FACA requirements under 2 U.S.C. sec. 1534. We are also soliciting further comments on the eligibility reviews through this subsequent interim final rule.

Comment: One commenter asked whether the text of the October 5, 2005 interim final rule with comment at 70 FR 58273, third column, was intended to reference § 437.978 and § 437.982 of the rule or whether these were typographical errors.

Response: Yes, these were technical errors.

Comment: One commenter stated it is imperative that the final eligibility review rules be published as quickly as possible to give States the necessary time to obtain legislative authority to create and fund new positions.

Response: We alerted States in the October 5, 2005 interim final rule that we expect that eligibility would be included in the PERM program beginning in FY 2007 and that it was possible that States would be conducting the eligibility error measurement. This interim final rule with comment period sets out the eligibility review requirements. We expect States selected for review in FY 2007 will conduct eligibility reviews for Medicaid and SCHIP. However, we invite further comments on these eligibility provisions before publication of the final rule.

B. Methodology

1. Exclusions From the Claims Universe

a. Denied Claims

Comment: Some commenters noted that the inclusion of denied claims in the sample is questionable and conflicts with the definition of *payment* in the October 5, 2005 interim final rule since Federal funds are not used to pay denied claims. Therefore, the commenters believe that denied claims should be removed from the sampling universe.

Response: The IPIA defines an improper payment as ''* * * any payment that should not have been made or that was made in an incorrect amount including overpayments and underpayments.'' Additionally, OMB guidance M–03–13, published May 21, 2003, states that ''* * * incorrect amounts are overpayments and underpayments including inappropriate denials or payment of services.'' Therefore, we must include denied claims in the error rate measurement process.

Comment: A number of commenters stated that CMS' response that denied claims are included to comply with OMB guidance does not resolve the State concerns regarding the inclusion of denied claims in the estimation of improper payments. The commenters noted that ''improper'' and ''error'' as used throughout the notice indicate misspent funds and to count non-payments with payments is misleading. One commenter argued that to include unspent dollars with misspent dollars attempts to change the definition of error payment and would result in a meaningless statistic. They recommended that overpayments, underpayment, and denied payment errors should be calculated and reported separately.

Response: The commenters are correct that ''improper'' and ''error'' refers to misspent funds. However, we believe the incorrect denials of claims that should have been paid are payment errors in the same manner that payments of claims that should not have been paid are payment errors and should be measured. Additionally, we are bound by the requirements of the IPIA and OMB guidance and must include denied claims in the error rate measurement process. Therefore, denied claims made in error are included in the estimation of improper payments. We will provide an analysis of these errors in the PERM report.

b. Provider Appeals and Provider Fraud Investigations

Comment: One commenter believed that unresolved disputed claims should be excluded from the PERM measurement to avoid interfering with the resolution.

Response: We believe the commenter's use of ''unresolved disputed claims'' is referring to claims that are in the appeals process at the time data analysis begins. Claims that are appealed by providers are potentially underpaid claims or denied claims, so we must include them in the payment universe as required by OMB guidance. We do not believe that inclusion of these claims will interfere with the State's resolution with the provider. Independent of the State's appeals process, the contractor will review the claim and make its determination as to whether it was correct or in error and provide the State with the disposition of the claim. The State can review the contractor's determination in the difference resolution process but will not be bound by it.

Comment: Many commenters expressed concerns regarding claims from providers and beneficiaries that are under active fraud investigation. Their comments include:

- CMS needs to adopt specific procedures for how fraudulent claims and providers under investigation will be handled.
- Such claims should be excluded from the PERM process to avoid interfering or compromising the investigation.
- The contractor should consult with the States before contacting providers so

as not to jeopardize ongoing fraud investigations.

• Including such claims under active investigation would result in a decrease in response rate and skew the error rate.

• The contractor could over-sample the strata on a quarterly basis to allow for the substitution of claims under investigation; and that CMS should allow for at least 5 percent of the claims sample to be dropped for claims that are under active investigation.

Response: Fraudulent provider claims or claims under active provider fraud investigation will be included in the universe. We believe that the PERM review will not compromise the investigation since requests for medical records are an expected part of the provider's participation in the Federal medical assistance programs. The intent of the IPIA is to measure the extent to which Medicaid and SCHIP payments were made improperly, regardless of whether potential fraud exists. However, we are allowing States to exclude beneficiary cases under active fraud investigations from the eligibility reviews because we believe that, in most cases, payments are not being made directly to the beneficiary.

Comment: One commenter believed that dropping claims under fraud investigation could skew the results if these types of claims were always dropped.

Response: We agree and will include these claims in the FFS and managed care reviews.

Comment: One commenter recommended that States be notified of the list of medical records requested from providers so that the States could notify the contractor of any claims flagged for review that have already been identified as overpayments and addressed by their State Surveillance and Utilization Review Systems (SURS) or Medicaid Fraud Control Unit (MFCU).

Response: Once the quarterly claims sample is completed, the SC will provide the State with a list of the selected claims for which the DDC will be requesting records. However, claims selected for PERM will be reviewed for improper payments regardless of whether overpayments have already been identified by other State review systems.

2. Sampling Issues

Comment: One commenter asked whether CMS or the Federal contractor selects the participating States.

Response: The Federal contractor randomly selected the sample of States for PERM reviews in Medicaid. A table of the States selected for FY 2006, FY 2007, and FY 2008 is provided above in the preamble of this interim final rule. For the SCHIP State selection, we determined that SCHIP will be measured in the same year that States are selected for the Medicaid measurement. We will send a State Health Official Letter announcing the SCHIP State selection.

Comment: One commenter believed that CMS could achieve the IPIA requirements and reduce the State sample size by allowing a larger standard error for each State's sample. The commenter argued that it is possible for States to identify vulnerabilities and to implement corrective actions because States are already performing activities to eliminate reimbursement weaknesses through SURS, Peer Review Organizations, and payment integrity program activities.

Response: Although we agree with the commenter that we could reduce State sample size by allowing for a larger standard error and still achieve the national IPIA requirements, we are not adopting this recommendation. We want to ensure a large enough sample size to provide enough information to the States on where the errors occurred so that States can efficiently and effectively target their efforts to address these vulnerabilities.

We intend for the PERM program to be an independent measurement; however, States can use the information from PERM in conjunction with information from their own payment integrity programs to efficiently and effectively target corrective actions and improve program performance.

Comment: One commenter is concerned that the previous year's data already provided to CMS, which are to be used for determining sample size per stratum, may not agree with the same type of stratification as submitted in the quarterly data.

Response: The SC has determined that it can base the actual sample size per stratum on the stratified quarterly claims data submitted by the States. Therefore, we will not request data from the previous fiscal year on which to approximate the sample.

3. Overpayment and Underpayment Errors

Comment: Several commenters stated a true error rate could only be determined by identifying overpayments and underpayments, and offsetting or netting one against the other to determine the sum of errors. Moreover, aggregating overpayments and underpayments provides a false indicator of overpayments and payment error, and distorts the results.

Response: We must comply with OMB guidance (M–03–13) on IPIA, which defines improper payments as including overpayments and underpayments and requires that these payments be measured separately. Further, we view overpayments and underpayments each as sources of payment error since the amount of payment that should have been made was made incorrectly by virtue of the fact that the State either paid too much or too little for the service provided.

4. Adjustments to Claims

Comment: Several commenters argued that the proposed 60-day limit for adjustments to claims would overstate the amount of the payment error since adjustments occur later than 60 days after the payment adjudication date. They believed that all adjustments to the claims should be included in the review at the time when the sample is drawn and do not believe that the 60-day limit has been adequately tested.

Response: Consistent error rate measurement requires a specified timeframe for considering adjustments. The 60-day limit provides a consistent time period across States since States have varying timeframes for adjustments of claims. We believe that the 60-day timeframe has been adequately tested through the PAM/PERM pilots.

5. Medical and Data Processing Review Procedures

a. Methodology

Comment: Several commenters stated that CMS responded to a number of comments requesting clarification of the review procedures by stating that the comments were ''no longer relevant since States will not be conducting the medical or data processing reviews.'' Although the States will not be conducting the reviews, these commenters believed that:

• CMS has obligated States to provide whatever technical assistance is needed for the contractor to perform the reviews. Clear guidelines will enhance State and provider understanding. This in turn will improve cooperation, compliance, quality, and accuracy;

• States need to understand the processes, standards and requirements in order to develop and implement effective corrective action plans that will address the payment errors identified in the reviews; and

• The guidance already developed cooperatively with CMS and the States should be used along with nationally recognized review criteria.

Response: The contractors will work closely with States during the review process. Most States have participated in the pilots and are familiar with how the reviews are conducted. The contractors will generally follow the guidelines that were developed in the PAM/PERM pilots. Additionally, State corrective action plans are based on the sources of errors rather than the review process.

Comment: One commenter argued that without specifying the methodology in the regulation text, CMS could change the methodology at will, including increasing the sampling precision, thus increasing the response burden on the States, especially for the eligibility component. The commenter asserted that CMS should not be permitted to unilaterally change any element of the methodology without affording the public an opportunity to comment on it through applicable administrative review requirements.

Response: We have tested the methodology within the three pilot programs and may make changes, as needed, to improve the payment error rate measurement. We have specified in the rule that each State error rate must be within the 3 percent precision level at a 95 percent confidence interval level. However, we do not anticipate making significant changes to the methodology unless revisions are necessary to produce accurate error rates that meet the statistical requirements. We will be able to request any further information necessary from the States through our authority under the current Medicaid and SCHIP regulations.

Comment: One commenter stated that CMS should revise the October 5, 2005 interim final rule to allow States' continuing involvement in establishing review procedures and to base these procedures on the best practices already identified through the PAM and PERM pilot projects.

Response: During the PAM/PERM pilots, we sought extensive feedback from the participating States on the review procedures. We used this feedback to help develop the review guidelines. We have based the review procedures for the Federal contractors on the procedures and the best practices identified through the pilots. We also invited and considered public comments on the managed care and eligibility review procedures through the October 5, 2005 interim final rule. Finally, we are publishing this interim final rule with comment period to provide the opportunity for further public comments regarding the PERM eligibility review requirements.

b. Medical Reviews

Comment: One commenter expressed concern about the amount of information that must be gathered and reviewed in context for an adequate error determination. Contract medical reviewers would need access to recipient case histories and provider claim patterns over a number of years to make a full and complete assessment of claims. The commenter stated that they could make available onsite access to the contractor, if requested.

Response: We agree that for some cases, the RC will need to contact the States for additional information for the medical reviews, for example, to determine whether the maximum number of services has been met. For these cases, if necessary, the RC can obtain more information during the data processing reviews, which will be done on-site. However, we do not anticipate that the RC will need additional information to this extent for the majority of the medical reviews.

Comment: One commenter asked if ''no documentation'' would be considered an error. The commenter stated that States should not be penalized because of non-responsive providers who fail to produce records or respond to follow-up questions.

Response: Yes, an error will be cited in cases in which there is no documentation because there is no evidence to adequately determine whether the services were provided, were medically necessary, and were properly coded and paid. The contractors will follow up a number of times with the providers in order to obtain the medical records. States can, at any time, proactively educate their providers about submitting the information for the PERM program. We have posted a ''provider education'' letter at *http://www.cms-perm.org/* that States can use to educate their providers. States need not wait until they are selected for the PERM reviews to begin this activity. In addition, the selected States will be able to obtain information identifying which providers have not submitted the requested medical records within the first 45 days of the initial request from the DDC, so that such States may do their own follow-up, if they choose.

Comment: Some commenters expressed their concerns regarding the inclusion of any documentation error as an improper payment. The inclusion would produce a higher error rate, especially in States that are the most demanding in their documentation requirements. They suggested that CMS could alleviate their concerns by including, in its final report, a comprehensive explanation of what is included as a payment error and distinguish between inadequate documentation and provider non-response to documentation requests.

Response: We agree and the findings will distinguish errors due to no documentation and insufficient documentation from other types of errors. However, the total payment error rate will include these errors.

Comment: Many commenters believed that the contractors will have limited incentives to work to obtain near-complete provider records for the sampled claims and stated that the final rule should clearly indicate the contractor's responsibilities to assure complete receipt of medical records and the accurate review of each and every sampled claim.

Response: According to our contractual agreement with the DDC, the DDC will make a number of attempts to obtain the medical records and will send up to three letters and make up to three phone calls, if necessary, to the providers. As for the accuracy of review, the RC will work closely with States to clarify policies. Also, the RC will conduct a second level review on all errors and on 10 percent of the claims sampled. States also have the option of reviewing and requesting reconsideration of the RC's findings through the difference resolution process discussed below.

Comment: Several commenters stated that labeling a claim an error after a provider exceeded an arbitrarily imposed response deadline does not make a payment improper, and recommended that guidelines allowing an additional 30 days for efforts to be made by the Federal contractor to obtain medical records.

Response: We believe that the 90-day timeframe is a reasonable amount of time for the collection of medical records, given that the DDC will make up to 6 contacts to the provider.

Comment: A number of commenters asked for clarification as to what role States will play in the record collection process. They believed that States will need to commit significant resources to assist the Federal contractor in obtaining the required records and documentation in order to minimize payment error rates resulting from records not received within the 90-day timeframe.

Response: The DDC will contact providers directly to request medical records. States are not required to be involved in the collection of medical records unless they opt to follow up

with providers who do not respond to the DDC's requests.

Comment: Several commenters indicated that States must be considered a partner in the efforts to ensure a reliable error rate determination. They believed that States should be involved in the development of model letters requesting records, establishing provider guidance, and working with the provider to ensure that the contractor has the full record for review.

Response: We agree. We view the States as partners in this effort. States can choose to participate in follow-up discussions with providers who have not responded to requests for medical records. We have placed the provider education letter regarding the requirements of medical records submission on the PERM Web site, *http://www.cms-perm.org/.* States can use this letter and its contents, as appropriate, to educate providers on this program.

Comment: Since some providers may be guarded about confidentiality of medical records, several commenters asked how the contractors will handle complaints about health privacy concerns regulated under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, enacted August 21, 1996) (HIPAA), many of which will be directed to State Medicaid staff. They recommended that the records request letter clearly set forth the business relationship that permits disclosure under HIPAA, the obligation to provide records without compensation, and indicates that HIPAA explicitly allows this type of collection.

Response: We will indicate in the provider letters: (1) That CMS has authority to collect the medical records under section 1902(a)(27) of the Act; (2) that the information collection complies with the Privacy Act and HIPAA; and (3) that we will comply with the Privacy Act, HIPAA and the regulations at 45 CFR parts 160 and 164.

Comment: Several commenters suggested that when the contractor is unable to obtain sufficient information to determine whether a claim was an error, the case should be eliminated from the sample. They stated that the contractor should continue to keep track of the insufficient documentation cases as an incentive to improve future performance of medical record collection.

Response: We are not adopting this recommendation because a claim with either no documentation or insufficient documentation does not have evidence to support that the payment was correct. The RC will record the cases of no documentation and insufficient documentation; States may use the information to educate providers on the importance of submitting adequate documentation.

Comment: One commenter noted that some States verify medical necessity determinations by calling the physicians that delivered the services, and encouraged CMS to include this step in the contractor workplans.

Response: We are not adopting this recommendation because, as part of standard medical practice, providers should include full documentation in the medical records.

Comment: A number of commenters stated that the rule should specify that the contractor will submit to the State agency all erroneous claims with all appropriate documentation, so that the State can decide whether to re-review the case. If the State can demonstrate that there is no error, the error determination should be nullified and the appropriate adjustments should be made to the State's error rate.

Response: Based on the comments to the October 5, 2005 interim final rule, we have provided for a difference-resolution process in this interim final rule. The difference-resolution process, a type of alternative dispute resolution process, will provide the States with the opportunity to review the error determinations made by the RC (through its medical and data processing reviews) and to resolve any concerns about the findings. The RC will make the documentation on which the decision was based available to the States.

Comment: As an alternative to determining claims without sufficient documentation as errors, the contractor could develop a statistically appropriate method to estimate the proportion of State claims with missing documentation which are actually in error and actually correct and use that method to adjust the error rates.

Response: We are not adopting this recommendation. Every claim must have documentation in the medical record to support payment of the claim. A provider must submit this information to support his or her claim; otherwise, the payment of the claim itself is an error.

Comment: One commenter recommended a number of changes to the medical review guidelines including:

- Explaining the difference between a medical necessity review and a comprehensive medical review, including defining the components of each type of review;
- Omitting the words, ''if applicable'' pertaining to prior authorizations;
- Providing more guidance on how a claim line versus a claim will be reviewed; and,
- Providing more detailed sections specific to personal care service providers.

Response: These suggestions were made to clarify areas of the medical review guidelines that some States found troublesome when using the guidelines for the medical reviews under the past PERM pilot project. These changes may no longer be needed since we anticipate the contractor that we engage to conduct the medical reviews will have a higher level of expertise than the States in evaluating medical records. However, we believe that these recommendations may offer improvements to the guidelines, and we will review and incorporate these recommendations, as applicable.

Comment: One commenter indicated that States using InterQual Level of Care criteria for inpatient stay approvals, as opposed to States that use specific length of stay by diagnosis, have a higher likelihood of a higher error rate due to inadequate documentation. The commenter asked if the CMS contractor is licensed and trained for InterQual Reviews, because States cannot provide the proprietary information to the contractor.

Response: Some States use various tools, such as InterQual Reviews, to authorize payments or conduct secondary reviews of payments. These tools are used to review items in the medical record, such as specific chart notations or notations on daily progress and nursing notes. The contractor would not need access to these tools since it will base its determinations on reviews of the underlying medical records.

c. Data Processing Review

Comment: One commenter stated that it is unclear from the October 5, 2005 interim final rule whether there will be a separate systems review component in the process and requested CMS further clarify the extent to which systems will be reviewed as part of PERM.

Response: Yes, data processing reviews, which determine whether there are errors due to the State's payment processing system, will be conducted on all sampled claims. The RC will most likely conduct these reviews on-site and will work with the State on learning its claims processing system. For both FFS and managed care claims, the processing reviews will determine if each sampling unit was processed correctly. The FFS processing reviews will determine, for example, whether the service is a duplicate item or claim;

the service is covered; the service should have been covered by a managed care organization (MCO); the service was priced correctly; whether there was a problem with the logic edits; and whether the information was entered into the system correctly. For managed care claims, the processing reviews will determine whether the capitation payment was made correctly based on the information available to the capitation payment system or to the system that processes vouchers for payment to a MCO; whether the person is in the program; and whether the claim was correctly paid.

Comment: Several commenters asked whose interpretation of the State policy would establish the standard by which payments would be measured. They stated that the contractor must consult with the State regarding all claims they determine to have errors. They believed that the program operations staff will need to provide an enormous amount of technical assistance, explanations and clarifications for non-typical situations, which are not easily found by simply consulting manuals and bulletins, or by review of system edits.

Response: The contractor will follow the State's policy and will work closely with the State to clarify the policy if it is unclear. Upon review of the contractor's determination of claims, the State can review the claims and file a difference resolution.

Comment: One commenter stated that there is no reference to beneficiaries' eligibility files, which the State found was necessary for the processing reviews in the PERM project.

Response: In the data processing review, the eligibility check will be limited to data matching to determine whether a beneficiary was enrolled in the program on the date of service.

Comment: One commenter stated that, regarding the response to third-party liability (TPL) not being reported on the line-item level, it will be necessary to review all line items of a claim (not just the sampled detail line) when TPL or patient liability is involved. They stated that this could be accomplished by using the data extracts submitted by the States.

Response: We agree that in some cases, the contractor will need to review other claim information beside the line item for TPL or patient liability. However, the contractor will not need the States to submit data extracts in these cases. The contractor will be able to review TPL information during the data processing review, which will most likely be conducted through the State's processing system.

Comment: One commenter stated that the probability of a PERM error increases with each safeguard that a State adds to its payment processes. The commenter argued that this may cast a negative light on States that have been aggressive in their efforts to protect the integrity of their payment system.

Response: The PERM program is intended to measure each State against its own standards and policies to determine if it complies with these standards and policies when making payments for services rendered in FFS and managed care settings and when making payments based on program eligibility. Therefore, we do not agree that States with high standards of operation are disadvantaged or would be cast in a negative light since the State is being measured against itself.

6. Payment Error Rate and Reporting

Comment: One commenter stated that managed care and FFS error rates are not comparable because the majority of the managed care sample would have fewer processing requirements and therefore, fewer errors. The commenter believed CMS should include in the final report an explanation of the difference in the managed care and FFS error rates.

Response: We agree. We will measure FFS claims separate from managed care capitation payments.

Comment: One commenter stated that States should receive a copy of the draft report for their State and be provided with an opportunity to respond within 30 days before publication.

Response: We provide States with the opportunity to provide input during the entire measurement process, from clarifying policies to reviewing disposition reports. Moreover, States may use the difference resolution process when States disagree with a contractor determination. States will also be provided with their error rate information before CMS reports the rates.

Comment: One commenter asked whether the State error rates would be presented in a way that provides for accurate representation of a national rate with an understanding of each State's performance.

Response: Yes, CMS will report national error rate information in the PAR and will include State information in its error rate report. We believe the reporting will accurately represent both a national rate and individual State performance.

Comment: Several commenters expressed concern that it is possible for PERM to be flawed by both dependent and independent variables. For example, if a claim was determined to be an error in the eligibility review due to the participant having an open Medicaid number, then the State would incur a second error if it was inappropriately denied. There is no provision for preventing the double counting of error dollars.

Response: The proposed method for accounting for both eligibility errors and medical and processing review errors is to draw two independent samples. For FFS, one sample will be drawn for eligibility review and one sample will be drawn for medical and processing reviews. For managed care, one sample will be drawn for eligibility review and one sample will be drawn for processing review.

The eligibility error rate and the medical and processing review error rates will be calculated independently for the two respective samples. They will be combined into a single, total error rate under the assumption that the types of errors (that is, eligibility, medical and processing reviews) are independent. ''Independence'' means that the probability of a processing or medical review error on a given claim or line item is not related to the probability of an eligibility error for the recipient of the services implied by the claim or line item. In making this assumption, we considered the results from the PAM Year 3 pilot study. In those States that subjected the same sampling unit to a full eligibility review and medical and processing reviews, the data suggested that the two types of errors were independent (though this finding is limited because the sample sizes were small).

As the methodology for combining both samples for ''total'' error rate is implemented, we plan to monitor the individual results. In particular, over time there will be some overlap between the beneficiaries reviewed for eligibility review and the claims of those beneficiaries reviewed for medical and processing reviews. This will allow us to test the independence assumption as this type of data accumulates. In practice, the independence assumption will overstate the error rate significantly only if eligibility and medical and processing review errors are highly correlated. There is no evidence at this time that there is a dependence or correlation of the samples.

Comment: One commenter recommended using a systematic random sampling methodology in which claims are ordered before the sample is drawn to accomplish maximum precision, given the wide variation in the Medicaid benefits provided by the States, and the

corresponding variation in claims processing procedures.

Response: We agree that using a systematic sampling methodology would increase the precision. We adopted the stratification methodology, which was first used in the pilots, to substitute for the systematic sampling and to minimize the required sample size and burden on the States. Also, the stratification of the FFS claims sample provides States with information on where the errors are concentrated so that States can target corrective actions.

Comment: Several commenters stated that the proposed strata are neither mutually exclusive nor representative across all Medicaid programs and if unchanged, these methods will produce invalid estimates of the State-specific error. Also, there is considerable confusion and overlap regarding the groupings of service types among the strata. One commenter stated that using a systematic random sampling methodology would increase the validity of the estimates and reduce the confusion, or alternatively, CMS might consider reducing the number of strata.

Response: The States selected for the FY 2006 measurement were provided with a list of crosswalk codes from the MSIS for the PERM strata, and the SC will work with each State in order to stratify the claims. We intend for the strata to be mutually exclusive, but because of variations in coverage and how the services are categorized across the States, there may be overlap between the groupings of service types for some States. We believe that because the estimates are based on a sample of all services, regardless of the categories, the effect of any potential overlap on the error rates would be insignificant. Also, if we reduced the number of strata, it could result in an increase in the required sample size and would limit the ability of States to identify specific service types that were vulnerable to improper payments.

Comment: One commenter questioned whether a ''one-size fits all'' statistical approach works across 50 different State Medicaid programs, especially in light of the differences in the types of populations each State covers and the populations in FFS as compared to managed care. They asked whether error rates in a State with a high managed care population would be equivalent to a State with a predominantly FFS population, and whether CMS asserts that any error rate calculation in the first year is complete without managed care claim reviews and eligibility reviews.

Response: In order to produce a statistically valid national error rate, we must implement a standardized methodology that is consistent across all States. We understand that there are great variations among State programs and will point out these variances in our reporting. We note that the FY 2006 error rates are based only on Medicaid FFS claims. The reason for this is because we solicited public comment on methods to measure managed care and eligibility. The rate reported in the FY 2007 PAR is exclusively a FFS component rate; a complete program error rate will be reported in the FY 2008 PAR based on FY 2007 reviews of FFS, managed care and eligibility.

Comment: A number of commenters requested the opportunity to allow State statisticians to review and comment on the relevance and reliability of the methodology for determining the error rates.

Response: We appreciate the commenters' offers to review the relevance and reliability of the error rate methodology. However, we believe that, in consultation with our contracted statisticians, the method developed to produce the error rate calculations is valid and reliable. The PERM program, including its statistical aspects, will be subject to an independent audit and we believe this audit would reveal any issues that may need to be addressed.

C. Expanded FY 2007 Error Rate Measurements

1. Eligibility

a. Cost and Burden

Comment: One commenter observed that if CMS' intent was to implement the eligibility component of PERM within existing Medicaid and SCHIP law, then 42 CFR part 431 subpart P would have to be revised to substitute the existing MEQC requirements with PERM eligibility requirements. Another commenter acknowledged that MEQC and PERM have different methodologies and are in separate areas of the law. However, the commenter believed that the PERM reviews could be substituted for the MEQC reviews in years when a State was selected to participate in PERM. This would eliminate duplication of efforts and enable States to convert MEQC resources to PERM eligibility resources.

Response: We agree that duplication of effort should be minimized to the extent possible. However, we cannot waive the MEQC statutory requirements and substitute the PERM eligibility reviews for the MEQC reviews. In light of States' expressed concern regarding duplication of effort and cost to operate two eligibility review systems, we will consider this suggestion.

Comment: Several commenters believed that there are significant resource implications to conducting eligibility reviews for PERM. They stated that the Federal government must be responsible for the resource and logistical implications of the eligibility reviews and that the expense of eligibility reviews should be fully federally funded. A number of commenters expressed concern that State-conducted eligibility reviews will be costly and inherently duplicate MEQC activities. One commenter stated that if the eligibility measurement followed what was planned in the proposed rule, CMS would not have responded adequately to State concerns regarding burden. One commenter believed that it was incumbent on CMS to look at other regulations already in place and make every attempt to incorporate established requirements rather than overburden States with redundant policies.

Response: We have determined that States will be conducting the eligibility reviews for Medicaid and SCHIP. We are considering public comments to eliminate or reduce duplication of effort. However, since State submission of information on Medicaid and SCHIP program performance is an ongoing administrative requirement, States will be reimbursed at their normal administrative match for conducting the eligibility reviews and associated activities.

Comment: One commenter questioned CMS estimates that the burden of the eligibility review component will be no greater than the traditional MEQC effort. The demands on State staff to educate the contractor staff are uncertain at best since the contractor's capabilities are unknown.

Response: Since the States, rather than the Federal contractor, will be conducting the eligibility reviews, the State will not need to educate the contractor; thus eliminating this demand on State staff.

Comment: One commenter anticipated that its actual cost for performing eligibility reviews similar to MEQC reviews would exceed CMS' previous estimate of $570 per eligibility review. The commenter suggested that the eligibility workgroup consider this figure as a starting point when developing the eligibility review methodology.

Response: We based our estimated cost to perform the review on State-reported costs from PAM Year 2.

Comment: One commenter believed that because the eligibility component of PERM has not yet been developed, it

is premature to conclude that the impact on State resources will be minimal.

Response: As stated in the October 5, 2005 interim final rule, we strove to develop a review process that has minimal impact on the States.

Comment: Stressing that eligibility reviews are extremely time-consuming and labor-intensive, several commenters believed that CMS should consider conducting eligibility reviews on a statistically valid sub-sample of the claims selected for the PERM review.

Response: We are not adopting this recommendation. The PAM and PERM pilots used this approach and the review results indicated that claims-based eligibility reviews had inherent problems predominantly due to the inability to verify eligibility information as of the date the service was received, which could be up to two years prior to when the claim was sampled. Therefore, we developed a case-based sample and methodology that reviews recent cases at less cost and burden, and provides more current information on which States can base corrective actions.

Comment: One commenter stated that the PERM rule should address the organizational structures that are applicable for conducting the PERM eligibility reviews. Since PERM identifies improper payments, the commenter believed that a possible conflict of interest may occur if a Quality Control (QC) Unit is contained within a Medicaid Policy Office or Division.

Response: We agree and will adopt this recommendation. We will provide in the regulation that the agency conducting the PERM eligibility reviews must be functionally and physically separate and independent from the State agency responsible for Medicaid and SCHIP policy and operations, including eligibility determinations.

b. Eligibility Workgroup

Comment: A number of commenters stated that they believed that members of the public, including State officials and other interested parties, should be able to participate in the eligibility workgroup. Their comments include:

- CMS should comply with requirements under the Sunshine Act;
- The workgroup has been formed without the opportunity for public participation and no information has been sent to States on it, nor was there an opportunity for interested States to participate in the workgroup;
- There should be an opportunity for States to submit their comments to the workgroup and a procedure for input before the promulgation process;
- States included in the workgroup (that is, New Jersey) have not participated in previous PERM pilots; and,
- The eligibility workgroup should include presentations from States with and without PAM or PERM pilot experience in Medicaid and SCHIP.

Response: The ''Government in the Sunshine Act'' (Pub. L. 94–409, codified at 5 U.S.C. section 552b) (''Sunshine Act''), defines ''agency'' under (a)(1) as a collegial body. This definition applies to independent commissions rather than Cabinet agencies. Therefore, DHHS is exempt from the requirements of the Sunshine Act. Generally, meetings of workgroups of this kind would be covered by the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. However, under 2 U.S.C. 1534(b), as promulgated by section 204 of the Unfunded Mandates Reform Act (Pub. L. 104–4, enacted March 22, 1995), the workgroup did not need to comply with the FACA requirements because meetings between Federal officials and designated State employees are FACA-exempt under the statute.

Nonetheless, States and the public were offered the opportunity, through the rulemaking process of both the proposed rule and the October 5, 2005 interim final rule, to submit comments and recommendations on the best measurement for eligibility errors and to express concerns. Public comments were considered by both the workgroup in making recommendations, and by CMS in crafting this interim final rule to incorporate the views of the public. Moreover, we are publishing this rule as an interim final rule with comment period rather than a final rule to provide the opportunity for further public comment on the PERM eligibility review requirements.

To solicit State participation in the workgroup, we contacted the American Public Human Services Association (APHSA) and we were notified of two States they selected for the workgroup. We believe that participation in the PAM or PERM pilots was not necessary to provide valuable input in the workgroup because the pilots demonstrated many problems with a claims-based sample and the States commented on these problems.

c. Methodology

Comment: One commenter stated that having the contractor conduct the eligibility review raises confidentiality issues both in State and Federal law concerning Social Security Administration and Internal Revenue Service information in the case records.

Response: We believe these concerns are addressed by having the States rather than the Federal contractor conduct the reviews.

Comment: A few commenters expressed concern about the lack of an administrative period to allow for the reporting of changes in beneficiary status. One commenter stated that measuring eligibility solely based on the date of service was inconsistent with CMS regulations at 42 CFR 431.211, which requires the State to mail the Medicaid recipient a notice 10 days before withdrawing Medicaid eligibility for an individual, and is also inconsistent with quality control policies in other programs. One commenter recommended that as part of the review, the administrative period be applicable to eligibility determinations and that failure to do so will result in an artificially inflated eligibility error rate.

Response: As defined under § 431.804, the administrative period is a timeframe under the MEQC program that provides States with a reasonable period of time to reflect changes in the beneficiary's circumstances without an error being cited. This period consists of the review month and month before the review month. The administrative period is not applicable for those cases where the review is the month of the State's most recent action (application or redetermination cases). For all other cases, eligibility is also reviewed as of the State's most recent action so the administrative period would not be applicable in this instance either. However, if the State did not redetermine eligibility timely, the review will assess eligibility as of the sample month. We will not apply the administrative period to these cases because we do not believe the State should be held harmless when it has not demonstrated good case management by redetermining eligibility at least annually as required by Federal regulations at 42 CFR 435.916(a) and 457.960.

Comment: One commenter stated that, under the pilot projects, a relatively large percentage of improper payments were due to ''lack of documentation'' errors. The commenter believed that if full documentation were provided, it is possible that the error findings would decrease. Regarding eligibility samples, the commenter argued that caseloads larger than those selected in traditional MEQC were not needed to identify and address problem areas.

Response: In the past PAM and PERM pilot projects, ''insufficient documentation'' errors were determined with respect to lack of documentation to

support the medical reviews, not to support eligibility determinations. Regarding eligibility samples, we will base the number of eligibility reviews on an estimated sample size projected to be within 3 percent precision level at the 95 percent confidence interval level. We estimate an average of 500 reviews per year, which is less than the sample sizes for half the States under the traditional MEQC program.

Comment: Several commenters agreed with CMS' response that the State should be accountable for all Medicaid eligibility determinations regardless of which State agency made the determination but believed that Medicaid recipients who receive Supplementary Security Income (SSI) and whose Medicaid eligibility were determined by the Social Security Administration pursuant to section 1634 agreements should be excluded.

Response: We agree and have excluded from the Medicaid universe SSI cases in States with a section 1634 agreement, as well as Title IV–E foster care and adoption cases in all States.

Comment: One commenter noted that the PERM rule provided for adjustment to the error rate due to the provider appeals process. The commenter argued that adjustments should also be made to eligibility determinations under a fair hearing process and that decisions from such process should cause the error to be backed out of the error rate.

Response: If a State is properly continuing coverage due to a beneficiary appeal, the case would be counted as correct. There are no dollars associated with an improper denial or termination, so these cases would not have been included in the payment error rate and therefore would not need to be reversed. Note that for Medicaid, there are no adverse consequences associated with eligibility error rate computations under the IPIA. Disallowances of misspent Federal Medicaid funds are statutorily required for MEQC under section 1903(u) of the Act. For identified improper payments based on eligibility errors in SCHIP, the general recoveries statute at section 2105(e) applies.

Comment: One commenter expressed concern for conducting the Medicaid and SCHIP reviews independently and recommended that the issue be considered by the eligibility workgroup. The commenter stated that, in some States, families applying for SCHIP are first reviewed to determine if they are Medicaid eligible and if they are Medicaid eligible, they do not have the choice to be enrolled in SCHIP. In the above situation, the commenter argued that it is counterproductive to pursue repayment of Medicaid overpayments, especially for families who applied using only SCHIP applications.

Response: We are measuring SCHIP and Medicaid dollars separately and, therefore, must conduct these program reviews independent of each other. Under SCHIP regulations at 42 CFR 457.350, States are required to screen SCHIP applicants for Medicaid eligibility. If a State erroneously determines a person eligible for Medicaid, the payments for the Medicaid services made by the State are improper regardless of whether the eligibility determination was made as a result of an SCHIP application or a Medicaid application. The statutory provisions requiring recoveries of misspent Federal funds due to Medicaid eligibility errors are at section 1903(u) of the Act. The general recovery provisions for misspent Medicaid Federal funds other than those due to eligibility errors are at section 1903(d) of the Act. For SCHIP, the recovery provisions are at section 2105(e) of the Act. These statutory provisions do not permit us to make exceptions to recoveries of misspent funds on the basis that such recoveries are counterproductive.

Comment: Several commenters expressed concern about citing eligibility errors for participants sampled for one program (SCHIP) while found eligible for the other program (Medicaid). The commenters believed that the difference between the levels of Federal matching should be considered erroneous and that adjustments to Federal claims should be allowed simply as adjustments to claims.

Response: As we previously stated, we are measuring improper payments in each separately funded program. The OMB guidance requires a statistically valid error rate that meets specified confidence and precision levels for estimating improper payments in each individual program. Therefore, for purposes of measuring improper payments in a program under PERM, adjustments in Federal claiming will not be made between a State's Medicaid and SCHIP programs.

Comment: One commenter stated that while he believed that CMS does not intend the payment error rate measurements to affect beneficiary eligibility or program coverage through State actions (such as States imposing more restrictive documentation requirements to prove eligibility) it is a possible outcome of PERM.

Response: States may take actions to avoid errors in eligibility determinations in any of a number of ways, including by making the application or redetermination process more stringent. For example, States may require a higher level of proof of eligibility or require face-to-face interviews which could discourage program enrollment. This interim final rule does not require States to change their eligibility policies and procedures. However, if analysis of a State's error rate reveals weaknesses in its policies or procedures, the State may decide to address the causes in a manner that could require a higher level of beneficiary participation in substantiating his or her eligibility.

Comment: One commenter stated that a possible solution to address the barriers in eligibility verification as of the date the service was received, which can be 12 months prior to the date the claim is sampled for review, is to impose a maximum date of service of no earlier than 3 to 6 months from when the claim is sampled.

Response: We are using a case-based methodology for eligibility reviews to avoid situations where the reviewer is attempting to verify eligibility factors for a year or more in the past. The case-based sample reviews eligibility as of the State's most recent action rather than as of the date of service.

Comment: One commenter stated that CMS should eliminate the multiple month reviews for individuals within a continuous eligibility period; the review requirements should be limited to the month of service only. The commenter argued that this would support the intent of the PERM process, which is to determine if the individual was eligible for the service at the time the service was provided. The commenter stated that it also clearly highlights areas where the eligibility determination process could be improved to more accurately reflect the participants' continuing eligibility. The errors could be categorized as disqualifying or non-disqualifying depending on which eligibility factor was determined to be in error (that is, income, age, and/or residency). The commenter believed that this generally would move the review month closer to the month in which the eligibility review itself is completed.

Response: The review month is the month when the State took its last action to grant or redetermine eligibility and is the month in which the State will verify eligibility for the purposes of PERM. If the State's last action was taken beyond 12 months before the sample month, the review month will be the sample month. Each month, a State will divide its universe of cases into three strata and draw a random sample of cases from each stratum. The strata are as follows: (1) All applications (2) all redeterminations on which the State took an action to continue eligibility,

and (3) all other cases. For cases in stratum one, the review month is the month of the State's last action to grant eligibility. For stratum two, the review month is the month of the State's last action to redetermine eligibility. Therefore, for continuous eligibility cases in strata one and two, eligibility will be determined as of the first month of the 12-month continuous eligibility period. The same concept is true for cases in stratum three unless the State's last action was taken prior to 12 months from the sample month. In those instances, eligibility is reviewed as of the sample month. These review procedures eliminate the multiple month reviews for continuous eligibility cases.

Comment: One commenter is interested in how eligibility errors will translate into dollars.

Response: For purposes of computing an eligibility error rate (as opposed to the FFS and managed care error rates), the amount of improper payments is the amount paid improperly for services received, if any, either in the first 30 days of eligibility or in the review month (for cases in strata 1 and 2) or during the sample month (for cases in stratum 3). Each State will compute its error rate as a result of the reviews and associated claims. Disallowances of Federal funds due to Medicaid eligibility errors are governed by section 1903(u) of the Act as part of the MEQC program. The general recoveries statute at section 2105(e) of the Act applies to identified improper payments based on eligibility errors in SCHIP. States must attempt recoveries on identified errors under these statutory requirements.

2. Managed Care

Comment: One commenter stated that for managed care reviews there are two considerations: whether the individual was eligible when payment was made to the MCO and whether the payment to the MCO was in the proper amount (for example, capitation code and amount). With respect to SCHIP, CMS must additionally consider whether any applicable cost-shares were correctly assessed for the enrollee's family (for those in premium assistance programs).

Response: Medicaid and SCHIP managed care data processing reviews will determine whether: (1) the beneficiary was enrolled in Medicaid or the SCHIP program; (2) the capitation amount was correct according to State policy; and (3) the capitation payment was paid correctly. Cost-sharing will not be reviewed because generally the State has built these cost sharing amounts into their rate structures and CMS is not reviewing the accuracy of the cost-sharing calculations as part of the review.

Comment: One commenter expressed concern regarding the potential additional expenses incurred in connection with medical reviews, which may erode provider participation in Medicaid/SCHIP managed care programs due to increases in response burdens.

Response: The managed care measurement does not include medical reviews; thus, provider participation in the managed care programs should not be affected since providers would not need to send in medical records.

Comment: One commenter expressed an interest in an opportunity to participate in any discussions about the methodology and procedures for calculating errors in managed care. Another commenter stated that the guidance and instructions from CMS for the PERM pilot managed care reviews would serve as a thorough and appropriate methodology for managed care reviews.

Response: We invited comments on managed care in the proposed rule and the October 5, 2005 interim final rule; the respective comment periods provided the opportunity to participate in discussions about the methodology and procedures for calculating errors. A number of commenters availed themselves of those opportunities. We concluded that it was best to base the managed care reviews and error calculations on the general methodology used in the PERM pilot project.

3. SCHIP

Comment: One commenter stated that, in the event the State exceeded its allotment, for every dollar the State used to provide information to support the measurement of a SCHIP payment error rate (or, in the instance of eligibility, actually makes such determinations), a dollar would be taken away from providing insurance coverage to the target population. The commenter used CMS' estimate of $620,000 per State to argue that the State would need to cut 344 individuals from SCHIP (at an average cost of $1,800 per individual per year) in order to comply with the October 5, 2005 interim final rule.

Response: The cost estimate of $620,000 per State that we indicated in the October 5, 2005 interim final rule is the Federal cost, not the State cost, for PERM activities related to the medical and data processing reviews of FFS claims. We estimated that the cost to submit the information requested would not be significant, since States should have this information on hand. Therefore, we do not believe that complying with the PERM requirements would necessarily result in termination of individuals from the State's program.

D. Appeals

Comment: Most commenters were concerned that the PERM regulation does not provide a process for States to review the contractor's findings for accuracy. Their comments include:

- The rule should allow States to formally review all errors using the documentation, including State reimbursement or billing policies used by the contractor to determine errors, before a final set of State-specific or national estimates are made;
- States will need a report with error codes to evaluate whether the error determination was appropriate;
- The Federal contractor should be required to hold an exit conference with the State before the findings are categorized as errors; and,
- CMS should revise the rule to clarify how and when the contractor would be able to validate the errors and resolve any discrepancies with the States.

Response: In responding to these comments, we have incorporated a ''difference-resolution'' process (a type of alternative dispute resolution) in this interim final rule, which provides States with the opportunity to review the RC's error findings and resolve instances where the State believes the claims were not erroneously paid.

At least monthly, the RC will provide the State with a disposition report. The disposition report includes the review determinations of the medical and data processing reviews for each sampled claim reviewed for the time period covered by the disposition report. The RC will make available information on which it based its findings so that the State can agree or disagree with the findings. A State can file a disagreement with a finding by sending a written request to the RC. If the RC agrees with the State, the RC will send the corrected findings to the SC. The SC will then delete the error and recalculate the error rate. If the State and the RC cannot resolve the difference in findings, the State may appeal to CMS for final resolution.

Comment: Several commenters expressed their concern that it was unclear who would make the final decision on the error determinations. One commenter stated that an appeals process, consisting of a neutral independent party to review potential errors that could not be mutually agreed upon by the State and the national contractor, should be incorporated in the final rule.

Response: This interim final rule provides that we will make the final decision on claims that cannot be resolved between the RC and the State.

Comment: One commenter stated that clarification is needed on whether States have appeal rights. Since CMS did not indicate whether States could appeal the contractor's error determinations, the commenters believed that appeals would fall upon the providers when the State implemented recovery efforts based on the contractor's findings of overpayments. However, if a provider receives a notice of overpayment and it is a small amount, the provider may not feel it worthy of an appeal, but the error would nonetheless affect the State error rate.

Response: States may work with the RC to resolve differences in findings on claims that are determined by the RC to have been paid in error (except for errors caused by no documentation). In addition, we would reverse errors based on successful provider appeals. However, whether or not a provider chooses to appeal an overpayment is a factor that we believe should not be influential on error determinations or error rates.

Comment: One commenter stated that CMS' description of the appeals process, in which States provided any adjudication changes due to successful provider appeals of the State's determinations, was unclear, and that more clarification is required in order for States to correctly submit the requested information. The commenter believed that CMS was referring to sampled denials by the State agency that the provider appealed. However, in those cases the commenter observed that entire new claims were created (not adjustments to prior claims). The commenter argued that, by regulation, providers must accept the payment that Medicaid sends them; providers can only appeal notices of recoupment of overpayment.

Response: Under our regulations at 42 CFR 447.15, providers participating in the Medicaid program must accept, as payment in full, the amount paid for the service by the State (plus any beneficiary cost-sharing required to be paid by the beneficiary). Thus, the provider cannot appeal the rate set by the State for each service. However, this does not preclude a provider from appealing partial payments, incorrect payments, or denied payments for services delivered to Medicaid beneficiaries. As part of the PERM process, States will provide the SC with information regarding the resolution of sampled claims that enter their appeals process. As the commenter noted, in many States an entirely new claim is created after a successful provider appeal and is not associated with the original claim. If the resolution affects the contractor's disposition on the sampled claim, the error rate calculation will be revised to reflect that change.

Comment: Several commenters stated that CMS' response of adjusting the State's error rate if a provider's appeal reverses the decision would not be feasible for some States where the appeal process can take at least 2 years. They asked how transaction errors would be handled when a provider appealed an error and the State had an appeal process that was not exhausted before the completion of the PERM audit.

Response: The contractor will adjust the error rate in instances where the provider appeals the adjudication decision, the claim is adjusted and it affects the review finding so long as this process is completed earlier than 45 days before the error rate calculation. For claims adjustments due to provider appeals that occurred after the error rate calculation, the State may request that we adjust the State's error rate and issue a revised error rate.

Comment: Several commenters expressed their concerns regarding their ability to respond to provider appeals of overpayments identified through PERM. The commenters noted that in their States' respective provider appeal and repayment process, they could not rely on the contractor's determination as the sole reason for collection of an overpayment. Other commenters stated that the national contractor should be responsible for defending its decisions related to all provider appeals in the appeals process and that States should not have to expend time and effort to defend the error findings of the national contractor when State staff did not participate in the reviews. Otherwise, they argued that the States would have to make their own determinations, which puts additional burden on States.

Response: We have provided States with the opportunity to review the RC's error findings on all claims and have these errors reversed if the State can demonstrate the claims were correctly paid through the difference-resolution process. This is the vehicle we intend the States to use to participate in the reviews. For claims where error findings stand, the State must recover the overpayment from the provider under section 1903(d) or section 2105(e) of the Act. The RC will make available to the State the information on which the RC made its determination that a claim was improperly paid.

E. State Requirements

1. Collection of Information

a. State's Role

Comment: One commenter stated that it appeared that the information collection notice listing State responsibilities in the **Federal Register** (70 FR 50357) was different than the list of State responsibilities sent to the State Health Officials by letter on October 6, 2005.

Response: The October 6, 2005 letter addressed to State Health Officials listed the information to be submitted by the sampled States as outlined in the October 5, 2005 interim final rule. The letter did not include the requirement that States provide ''other information'' that the Secretary may need to estimate error rates; we apologize for this omission. In response to public comments regarding the burden of information collection, we have reduced the burden by making one change in this interim final rule. We have provided that States will no longer need to submit the previous year's claims data. The contractor can use the quarterly claims data to determine sample size and, therefore, we determined that the collection of this information would be superfluous.

Comment: One commenter asked whether CMS would require States to establish data use agreements with each of the three national contractors.

Response: States do not need to establish data use agreements with the national contractors. The contractors will collect the required information for us under the authority in the Medicaid statute at section 1902(a)(6) of the Act and the SCHIP statute at section 2107(b)(1) of the Act. The contractors would be business associates of CMS pursuant to 45 CFR 164.502(e), and would be required to sign a business associate agreement as specified at 45 CFR 164.504(e). Our contractors must abide by terms and conditions of these contractual agreements, which incorporate HIPAA and Privacy Act provisions requiring security measures and imposing limitation on use.

Comment: Several commenters were concerned with the open-ended language used in describing the information States would need to submit. Their comments included:

- The use of the language ''that include but are not limited to'' in conjunction with the language in 42 CFR 431.970(g) means that CMS could require States to report State-specific payment error rates for Medicaid and SCHIP. The commenter argued that § 431.970 should reflect CMS' intention

as expressed in the preamble to the October 5, 2005 interim final rule that States would not be required to submit State-specific payment error rates to CMS.

• Section 431.971, paragraph (g) would require States to provide ''other information that the Secretary deems necessary for, among other purposes, estimating improper payments, and determining error rates.'' The commenter believed that the rule was intended to govern only estimating improper payments and error rates and that CMS had other authority under Federal law to demand information necessary for the administration of the Medicaid program. The commenter argued that the phrase ''among other purposes'' is not within CMS' authority under the IPIA, is unnecessary, and should be deleted.

Response: The phrase, ''that include but are not limited to,'' in the information submission requirements enables us to collect information that is not specifically listed so that we could include any information that could help improve the process or would produce more accurate error rates. ''Among other purposes'' is included to allow us to use the information for other purposes if needed without duplicating our request for information from the States.

Comment: One commenter stated that requiring its territory to meet error rate standards without the territory having comparable access to technology support is a serious challenge that places financial strain on the territorial government.

Response: As stated in the August 27, 2004 proposed rule and the October 5, 2005 interim final rule, we have excluded the territories from payment error rate measurements.

Comment: Several commenters noted that for States to provide the Federal contractors with the requested information would require constant communication between the State and the Federal contractors. The commenters recommended that CMS assure States that the Federal contractors and States will have systematic and regular contact and communication for the duration of the project. To facilitate the communication, one commenter asked whether States planned to use staff from the State's Program Integrity or Program Operations as the designated contact persons.

Response: A State can designate, at its own discretion, State contacts for PERM. Once the State contacts are established, the contractors will communicate with the designated person regarding specific State information that is needed for the program. We have provided the Federal contractor and CMS contact information at *http://www.cms-perm.org/*.

Comment: Several commenters stated that it would be difficult to obtain approval for additional staff when PERM activities occur only once every 3 years. They stated that even temporary positions are time consuming to establish at the State level, and retention of knowledgeable and experienced staff for the PERM project will not be possible if they are utilized only once every 3 years.

Response: Since the Federal contractors will conduct the reviews for managed care and FFS, the selected State will only provide the required State policies and claims information, technical assistance on the State's program, and the State's corrective action plan to reduce improper payments. We believe the submission of information would not require experts or experienced staff since the information that we are requesting (for example, State medical policies and updates) should be available in-house for submission. With respect to eligibility reviews, staff for PERM will be needed longer than once every 3 years because the process to measure one fiscal year takes approximately 23 months. In the interim time before a State's next PERM measurement activities (approximately 13 months), a State could use the staff for other quality assurance initiatives, such as enhancing its MEQC and/or SCHIP program integrity activities.

b. State Cost and Burden

Comment: Many commenters believed that the October 5, 2005 interim final rule underestimates the amount of resources that will be needed to comply with the proposed rule. Their comments include:

• Experience with the PERM pilot project indicates that this work will require more than 1,630 hours, with one commenter believing that it would require 4,000 to 5,000 hours of State effort.

• The estimation of 800 hours for the sole purpose of submitting the quarterly stratified claims data (200 FTE hours per quarter) leaves only 830 budgeted hours left for each State's program to perform all other functions, which seems inadequate.

• The estimates do not incorporate the appropriate sample sizes, or account for the expanded scope of PERM or other tasks.

Response: We believe our estimates are accurate based on the experience with the past PAM/PERM pilots. Under the national contracting strategy, the Federal contractors will conduct the reviews. We agree that the estimates do not account for the expanded scope of PERM. The October 5, 2005 interim final rule only included estimates for the FFS measurement.

Comment: Several commenters stated that the rule does not take into account that each State will need to dedicate a substantial amount of personnel and resources to ensure that the payment error rate is accurate. The commenter requested that the rule be amended to consider the resources that will be required for this task.

Response: We have provided estimates of State burden and cost in this interim final rule with comment. However, ensuring that the FFS and managed care payment error rates are accurate is not a State requirement under PERM. Reviewing the RC's findings is the State's option. We believe that our monitoring of the contractor's quality assurance plan is sufficient to provide for accurate and reliable findings. The quality assurance plan includes, at a minimum, that the RC:

• Become International Organization for Standardization (ISO) compliant and registered within one year of being awarded its contract;

• Perform a second level review on each sampling unit determined to have a payment error and on a 10 percent random sample of all other sampling units.

Comment: Some commenters stated that CMS' cost and burden estimates of the information collection and technical assistance requirement are understated. Their comments included:

• CMS assumes that the contractor will operate with minimal State technical assistance. Because of the complexities of State programs, the commenters believed that it will be difficult for a Federal contractor to become proficient in evaluating how claims are processed and reviewed in all 50 States without constant guidance from the States.

• This will require a substantial commitment of the States' resources, from multiple program areas and from the States' contractors, to support initial contractor start-up and follow-up with contractors on State policies.

• It is difficult to gauge the technical assistance that States must provide because the contractor's capabilities are unknown.

Response: As previously stated, we have engaged, and will continue to engage, a review contractor that has demonstrated knowledge and experience with claims reviews. In this

way, we have tried to minimize the burden on States.

Comment: Some commenters believed that implementing the PERM requirements as described in the October 5, 2005 interim final rule will compete with State resources that are directed toward more promising quality control projects. They stated the rule will create a diversion of staff from program integrity and MEQC, which target known areas of vulnerability, and could result in a decline in recoupments, fewer ineligible recipients being detected, and fewer corrective actions implemented.

Response: The purpose of the PERM program is to fulfill the requirements of the IPIA. PERM does not serve as a waiver of other Medicaid and SCHIP program requirements. States have a responsibility to comply with those other requirements.

Comment: Since resources will be pulled from various State program areas and from multiple State program contractors, the State will be faced with a significant responsibility as it attempts to coordinate the work efforts of multiple State and contractor staff that will be interfacing with multiple CMS contractors.

Response: We believe that the need for State coordination will be minimal for medical and data processing reviews since each Federal contractor will contact the appropriate State staff members to obtain the information requested for the PERM reviews. Also, we will be coordinating efforts of the Federal contractors.

Comment: One commenter questioned whether the estimated State burden of 200 FTE hours per quarter for submitting claims data is adequate given that fiscal intermediaries must write new data programs for each stratum and the data must be reviewed for quality. They argued that due to the unique design of the data extracts, significant burden may be placed on States if the Federal contractor requests multiple data extracts because of incorrect data queries provided by the fiscal intermediaries.

Response: The 200 hours per quarter is an estimate for the FFS measurement. We anticipate the majority of the hours required for submitting the claims data will be in the initial quarter of review. Once the statistical program, which stratifies the claims information for the first quarter, is created, that same statistical program will be used for the subsequent quarters. The SC can provide technical assistance to the State or fiscal intermediary so the State correctly submits the quarterly claims information. We do not anticipate multiple requests for data extracts. The SC will provide detailed instructions and technical assistance to each selected State or its fiscal agent on the stratification process. Through our experience with the past PAM/PERM pilots, stratification will require minimal data programming since we have based the strata on the MSIS categories. We do not believe this will substantially burden the States or their fiscal agents.

Comment: Several commenters expressed concern about the 10 percent cap on SCHIP administrative expenditures and recommended that CMS consider exempting the cost of PERM-related SCHIP activities. One commenter believed that the PERM-related SCHIP activity costs should be 100 percent federally-funded. A number of commenters asked whether the enhanced Federal funding would be available for the State to meet this obligation and some commenters requested a 90 percent enhanced match. Other commenters asserted that providing full funding or increasing the FFP to 100 percent would alleviate the burden on States for the hours and resources necessary for the State to support this Federal initiative.

Response: States will be compensated at the SCHIP match rate, similar to other Federal audits. We are not considering exempting the costs of PERM-related activities from the 10 percent cap on SCHIP administrative expenditures.

Comment: Several commenters expressed concerns regarding the start-up costs for PERM. Their comments included:

- CMS should consider additional support to States during the start-up phase; the initial time would be most onerous since States are transferring a large body of information for medical reviews, systems, and provider information to PERM contractors; and
- Since CMS did not issue final plans for the PERM model until recently, States have not received budgetary approval to support this initiative. CMS should consider fully funding these costs until such time that they can be included in an approved State budget.

Response: Our adoption of the commenters' recommendation to engage a Federal contractor to estimate several components of the improper payment measurement significantly reduces the cost and burden. States will not pay for the Federal contractors. Only those States selected for review each year will provide information necessary for the sample selections and reviews, provide technical assistance as needed, and implement and report on the corrective actions to reduce the error rate. The States will be reimbursed for these activities at the applicable Federal SCHIP match rate for SCHIP and at the Medicaid administrative match rate for Medicaid. Our estimates of the burden and cost of these responsibilities can be found in this interim final rule at Section VI, Regulatory Impact.

We understand that States may need to receive budgetary approval in advance and we have selected States for review in a manner that allows for States to plan for the reviews.

Comment: Some commenters stated that the stratification of quarterly claims data by service is a burden to the States. They believed that the contractor will need substantially more data files from the States than specified in the notice, which will increase the burden to States. They stated that States should not be responsible for the costs of formatting the data into required format and delivering the data to the contractor. One commenter stated that to comply with the minimum data sets, a State will have to pay their fiscal agents for any and all work that amends the fiscal agent's scope of work.

Response: The SC will provide detailed instructions and technical assistance to each selected State or its fiscal agent on the stratification process. Through our experience with the past PAM/PERM pilots, stratification will not require more information than we have specified in the rule since we have based the strata on the MSIS categories. We have determined that this will not substantially burden the States or their fiscal agents.

Comment: One commenter stated that providing the universe of denied claims data to the Federal contractor will be time-consuming and the cost of this activity may not have been properly estimated since it was not included in the PAM cost study.

Response: The strata were used in the PERM pilot and we must include the denied claims in the universe. We incorporated the cost of including denied claims in the universe when we estimated the impact on States and do not believe that including denied claims would be a burden to the States.

c. Information Collection

Comment: Several commenters noted that the resources needed by the States to meet the information requirements vary considerably depending on the level of detail required and expressed that it is critical that States have a clear understanding of the CMS requirements, so that States can more accurately assess the resources needed to support PERM.

Response: We have provided cost estimates and more specific details

regarding the methods and timeframe for the submission of information in Section IV, Regulatory Impact, of this interim final rule.

Comment: One commenter stated that since only the States selected for review are required to provide the information needed by the Federal contractor, the body of the regulation should explicitly state that States should not have to report any information if the State's program has not been selected in the sample to be reviewed.

Response: The information collected through this rule applies only to the PERM program and does not relieve States, whether or not they are selected for the PERM program, of their responsibilities to report to the Secretary for this or other purposes, as required under Medicaid law at section 1902(a)(6) of the Act and SCHIP law at section 2107(b)(1) of the Act. Both Medicaid and SCHIP statutes require States to provide information necessary for the Secretary to monitor program performance. We do not anticipate situations that would require a State to report information not related to its error rate in the off years to satisfy PERM requirements.

Comment: One commenter cited the statement in the rule that CMS will be reporting the error rates in the FY 2007 and FY 2008 PAR and believed that States could be asked to submit all required information delineated in the regulation whether or not the information will actually be used for reporting in the PAR. The commenter asserted that the body of the regulation should explicitly indicate that States should not have to report any information if a program will not be reported in the PAR.

Response: The information collected through the October 5, 2005 interim final rule will be necessary for producing the national Medicaid and SCHIP improper payment estimates that will be reported in the PAR. Otherwise, as noted above, we retain a statutory right to collect information from States to effectively administer the Medicaid and SCHIP programs.

Comment: One commenter argued that the timelines associated with the States submitting the quarterly data are unclear and asked when the quarterly claims data would be due. They believed there may not be sufficient time for the Federal contractor to receive the data for the last quarter of FY 2006 (July though September 2006) and then request medical documentation, review the claims for processing errors, and report on the findings by August 2007.

Response: The FY 2006 measurement timeline runs from October 2005 through August 2007. This timeline is aggressive; however, we believe we will be able to report the FY 2006 error rates in August 2007.

Comment: Several commenters pointed out that CMS will direct the Federal contractors on stratification issues; however, they argued that States will also need to know these directions in a timely fashion so they can properly submit their data in the required stratified format. They asked whether the States would need to reformat their claims data using standard headings before submission, since the States' data systems are different.

Response: The stratification of FFS claims will be similar to the classification system used in the PERM pilot, in which the claims were stratified into the eight strata: (1) Hospital services; (2) long-term care services; (3) other independent practitioners and clinics; (4) prescription drugs; (5) home and community based services; (6) other services and supplies, for example, labs, x-rays; (7) fixed payments, such as Medicare Parts A and B premiums; and (8) denied claims. States can submit the claims information using the following formats: A portable flat file, CD/DVD, or tapes. The SC will also work with the States to determine the best format for each individual submission of the stratified claims data.

Comment: Several commenters stated that the proposed rule would not require States to provide the contractor with States' Medicaid Management Information System (MMIS) (the claims processing system for the State) data and that this would add substantial State staff burdens. They recommended that the contractor use data by extracting Medicaid Statistical Information System (MSIS) data (which summarizes historical claims payment information from the different MMIS systems and stores it in a centralized CMS database) that the Federal government already collects, to avoid duplication with information already reported by the States.

Response: States are not required to submit MMIS data to the contractor, but rather the adjudicated claims from the previous quarter stratified into eight strata. The MSIS data that we have in-house are too old to produce meaningful data on which States could base effective corrective actions. Also, we note that there is no similar national sampling framework which could be used to process SCHIP claims.

Comment: One commenter stated that CMS should provide a ''preprint'' for the States to fulfill PERM requirements in order to minimize the response burden on the States in this regard.

Response: States are not required to submit State plan amendments for PERM purposes. Therefore, a preprint is not necessary.

d. Repricing

Comment: One commenter stated that the re-pricing of claims which were determined by the national contractor to have been underpaid or overpaid would require the contractor to copy all medical records associated with the claims reviewed and provide them to the States.

Response: The repricing of claims will be performed by the national contractor during the data processing reviews or through other available State information. If the contractor cannot determine a reprice, the contractor will provide the States with the appropriate information (for example, billing code, place of service) for the States to use to reprice the claim.

Comment: One commenter stated that in a particular State, providers have a year to submit valid claims and 18 months to adjust their claims.

Response: We recognize that States have varying time period for adjustments. In order to have a consistent timeframe and to allow for timely completion of the error rate estimates, only adjustments made to claims within 60 days of adjudication or payment will be considered in the error rate calculation.

Comment: One commenter asked whether States can factor in both provider and Department of Medical Assistance adjustments in the re-pricing of claims.

Response: In this context we intend ''re-pricing'' to mean the Federal contractor's determination of the correct payment amount (according to the State's payment rate) that should have been paid for a claim so that the Federal contractor can calculate the amount of improper payment. The Federal contractor will determine the correct payment amount during the data processing review or through other available State information. If the contractor is unable to determine the correct payment amount, the contractor will contact the state for re-pricing.

Comment: One commenter asked whether the re-pricing of errors identified by the Federal contractor would provide an opportunity for each State to review the Federal contractor's work and for the State to dispute a potential error and provide more information. The commenter argued that this review by the State is necessary

considering the Federal contractor's work is final and that the State's review is a crucial component of obtaining a valid national error rate that States can agree with and support.

Response: The repricing of claims is not meant to occasion a review of the national contractor's findings. However, the re-pricing of errors will offer the State an early indication that there may be an error determination by the contractor. States will have the opportunity to review the contractor's determination of the claims and resolve differences through the difference-resolution process.

2. Technical Assistance

Comment: Several commenters noted that section IV of the October 5, 2005 interim final rule stated that selected States would provide technical assistance to the CMS contractors as needed to ''allow the contractor to fully and effectively perform all functions necessary to produce the program error rates.'' They argued that if the provision of technical assistance by the States is required or expected, those expectations should be expressed more clearly.

Response: The States must provide technical assistance to assist the RC in conducting the medical and data processing reviews. For instance, the State may need to explain or clarify unusual policies or procedures, and the State may need to provide training on its MMIS or claims processing system.

Comment: One commenter observed that data processing reviews will be an additional cost to States because the IT staff would have to provide manual and technical assistance to the federal contractors. The IT staff would have to interpret fields for the Federal contractor's process reviews and provide answers in a timely manner.

Response: We agree that the State must provide technical assistance to the contractor for the processing reviews. However, the data processing reviews will most likely be performed on-site, which will allow the State to work directly with the contractor when questions or issues arise. We believe this assistance provided to the contractor will not result in additional costs and estimate that the burden will be minimal.

3. Corrective Action Plans

Comment: Several commenters stated that the October 5, 2005 interim final rule contains little detail on the required corrective action plans, such as what is required in the plans and how they will be monitored and evaluated. One commenter stated that CMS should clarify the reporting requirements for corrective action, including the source and the consequences of the corrective action components. Another commenter stated that CMS should be required to enter into a dialogue with States to identify the components of model corrective action plans so that these can be refined and agreed upon before the PERM information collection process begins.

Response: States will submit a report to CMS. The corrective action plan format should include the following:

- Data analysis—an analysis of the findings to identify where and why errors are occurring.
- Program analysis—an analysis of the findings to determine the causes of errors in program operations.
- Corrective action planning—steps taken to determine cost-effective actions that can be implemented to correct error causes.
- Implementation—plans to operationalize the corrective actions, including milestones and a timeframe for achieving error reduction.
- Monitoring and evaluation—to assess whether the corrective actions are in place and are effective at reducing or eliminating error causes.

States will monitor implemented corrective actions to determine whether the actions are effective and whether milestones are being reached.

Comment: Several commenters stated that it would be impossible to determine the costs and resources that would be needed to comply without clarifying the corrective action requirements. They stated that if States prepare and implement corrective action plans, these plans could constitute a significant workload beyond the 500 hours identified in the supporting statements for the information collection notices published July 22, 2005 (70 FR 42324) and August 26, 2005 (70 FR 50357). For example, the development and implementation of a provider outreach program could entail considerable staff time.

Response: The corrective action requirements are to evaluate the findings from the PERM reviews, plan and implement actions to be taken to address the major causes of identified payment errors, and monitor those actions to evaluate their effectiveness on error rate reduction. The State may have to discontinue corrective actions that are determined to be ineffective and implement new actions. All of this information will be contained in the State's corrective action plan. CMS intends such plans to be carried out within the restrictions of the ongoing program.

Comment: One commenter believes that the rule did not describe how the corrective action plans would improve the national error rate over time. The commenter believes that by the time the States were re-sampled, their corrective action plans for the initial errors found would be stale. The commenter argued that CMS should allow States flexibility in developing corrective action plans in order for these plans to be of maximum use to the States.

Response: We agree. We believe that it will take time for the implementation of corrective actions to impact States' error rates. We also agree that States should have flexibility in developing their corrective action plans.

Comment: One commenter asked what would be the appropriate corrective action if a provider miscoded a claim or failed to adequately document a service in his or her medical records. The comment asked what would be expected by CMS beyond education of that provider's staff.

Response: We believe that determining the appropriate corrective actions to correct error causes is a State action. If, in this instance, provider education is working to reduce the incidence of errors, the State may determine that actions beyond this are not needed. However, if the education is not effective, we would expect the State to develop new corrective actions to address the problem.

Comment: A commenter asked whether corrective actions would be required for all errors, or whether CMS planned to set a percentage point or dollar threshold at which corrective actions would be required. Another commenter asked at what point States that had low error rate estimates would be exempt from submitting a corrective action plan or participating in PERM.

Response: Corrective actions will be required from each State being measured, as will PERM participation. States should target corrective actions to the major causes of errors identified by PERM in order to improve payment accuracy. ''Major causes'' are not necessarily tied to a percentage point or dollar threshold and, therefore, we are not promulgating such thresholds. In planning corrective actions, States can estimate the cost-effectiveness in evaluating what actions to implement.

Comment: The commenter believed that States with low error rates should be given the same consideration offered through MEQC—to develop and operate pilot projects that identify and resolve payment and eligibility issues that have improved program performance and administration. The commenter argued

that Medicaid pilot projects allow States to concentrate on identified problems and are a much better use of limited resources.

Response: We are required to report Medicaid and SCHIP error rates by the IPIA and must use a standard measurement process to ensure the reliability of those rates. Furthermore, the improper payments for medical and processing reviews in FFS and managed care will be measured by the Federal contractor, so States do not need to conduct pilot programs.

4. Recoveries

Comment: Some commenters were concerned about recoveries of overpayments. Their comments and suggestions are as follows:

- Claims with only ''technical errors'' that do not affect payment should not be disallowed;
- The date of discovery of overpayments should be the date that the State agency confirms that an error had occurred;
- The Federal share of the overpayments should be offset by the amount of underpayments identified by the review, and overpayments should be returned to CMS within 60 days after the actual recovery of the overpayments and not 60 days after the overpayment is identified;
- CMS should not be permitted to offset any alleged overpayments until a State's appeal has been resolved;
- Any offset amount should be further reduced by an agreed-upon factor to represent the actual claims adjustments that were made but were not included in the payment error rate methodology that would inflate or exaggerate the amount of overpayments made;
- Identified overpayments should not be subject to the 60 day rule until such time that the State agreed that an overpayment had occurred or administrative remedies available to the State had been exhausted; and
- It is problematic that States would be required to return Federal funds even when recoupment on claims proved impossible (for example, when a provider was terminated or could not be located).

Response: In the regulation text at the conclusion of this preamble, we have cross-referenced the recoveries provisions in existing Federal regulations for the convenience of the reader. As previously stated, recoveries of overpayments are governed by the existing statutory and regulatory requirements (section 1903(d)(2) of the Act; 42 CFR part 433, subpart F; and 42 CFR part 457, subparts B and F). We are not proposing to amend these regulations and, therefore, are not accepting recommendations for revisions or exceptions to its provisions.

Comment: Some commenters discussed possible alternatives to recoveries in the PERM measurement. Their comments included:

- CMS should not require States to repay the Federal share of erroneous payments identified via PERM reviews;
- It would pose significant problems to States' budgets and accounting systems if CMS applied States' error rates to the total expenditure of the States' Medicaid programs and sought recoupment at the universe level, rather than on specific claims found to have been paid inaccurately;
- The corrective action plan to reduce the error rate is the intended output of this study, not recoveries;
- If CMS pursues an alternative payment recovery from the States, States should be provided an opportunity to review, comment, and if necessary, appeal CMS findings in accordance with existing Federal regulations; and
- CMS could adopt an error threshold similar to existing standards for the Single Audit, which requires a dollar threshold of $10,000 for a reportable condition to be found.

Response: As previously stated, recoveries of Federal funds are governed under current law and regulation. This interim final rule with comment does not seek to make revisions, so we are not accepting these recommendations.

Comment: One commenter has found strict adherence to the wrong date of service policy results in recoupment of funds for which the provider cannot rebill because the timeframe had ended for filing a new claim for the service. The State has allowed a discrepancy in dates in past audits if the service or procedure is only a day off and is not duplicated in the claims history for that timeframe.

Response: We will follow the State payment policies to determine how the State deals with incorrect dates of services. However, any special payment conditions, such as special treatment of dates of service, should be stated in the State policies submitted to the Federal contractor.

F. Regulatory Impact Statement

Comment: One commenter stated that the cost estimates for the reviews, in their entirety, seem exorbitant. They argued that it would use resources that would be better spent on the provision of services for recipients rather than for a review that will recoup possibly significant funds from the State and will ultimately lead to smaller budgets for the administration of services.

Response: The cost estimate in the October 5, 2005 interim final rule is for the Federal contractor to review FFS claims in Medicaid and SCHIP. There, we estimated the FFS review cost to be $11.16 million per program, per year. These costs are the Federal costs to fund the contractor; the States would not pay for the Federal contractor. In the October 5th rule, we estimated the State's cost to be $1,524,506 total computable ($42,348 per State per program) to submit information needed to review Medicaid or SCHIP FFS claims.

We believe that we have reduced the burden on States from the proposed rule by engaging Federal contractors to conduct the medical and data processing components of PERM review and by reviewing these components in a State once every 3 years. Regarding the recoupment of funds from States, this regulation does not supersede current law and regulations governing the recovery of misspent funds.

Comment: Several commenters stated that the amounts of State time and resources required for the reviews have been underestimated. Their comments included:

- Many States that participated in the PERM pilot process strongly believed that the burden and cost estimates should be higher;
- CMS underestimated the time and cost required to obtain medical records from providers;
- The CMS rule associated with formulating cost estimates was based on incomplete data; CMS utilized these rules to exclude time and effort estimates for both eligibility and managed care claims reviews; and
- CMS' impact estimate on States ignored the resources that would be needed to develop, submit, monitor, and evaluate the required corrective action plans.

Response: We based the cost estimates on the information provided by the States participating in the PAM Year 2 pilot, and believe that our estimates for States to provide requested information and technical assistance to the Federal contractor are reasonable. The October 5, 2005 interim final rule did not estimate the costs for measuring improper payments in managed care and eligibility because we postponed issuing a final methodology on the measurement of these components and invited further public comments. We have included the estimate for the costs of providing information for managed care, conducting eligibility reviews, and developing a corrective action plan in

this interim final rule. Estimates of this burden and these costs are indicated in section VI of this interim final rule. However, we believe that the costs of monitoring and evaluating the corrective plan are part of the States' overall operating procedures and, therefore, we did not include these costs in our estimates.

Comment: One commenter argued that States would incur additional undocumented costs to meet PERM requirements. At a minimum, CMS should require all 17 initial FFS States to track all attendant costs for staff time and effort in FY 2006. They argued that final PERM regulations should not be issued until a more realistic cost baseline can be ascertained and a revised regulatory impact assessment performed.

Response: We have revised the estimated program costs, including State costs, based on a rate of pay that incorporates fringe and overhead costs. The revised estimates have been included in section V of this preamble. Based on our experience in the past PAM and PERM pilot projects, we believe our estimates are accurate and we do not anticipate that the State burden will be more than what is specified in this rule. We will not adopt the recommendation to require States to track costs for staff time and effort because we limited the information collection requirements to the minimal information needed to measure improper payments. Collection of more information would place an additional burden on States.

Comment: One commenter stated that although CMS indicated in its response to comments in the October 5, 2005 interim final rule that it has analyzed the cost and burden on providers as part of this rule and determined that there would not be a significant impact, no such analysis appears anywhere in the October 5, 2005 interim final rule.

Response: We described our reasoning for determining that there would not be a significant cost or impact on providers on pages 58274 and 58275 of the October 5, 2005 interim final rule. As we stated in the October 5, interim final rule's regulatory impact statement, a request for medical documentation to substantiate a claim for payment is not a burden on individual providers nor is the request outside the customary and usual business practice of Medicaid and SCHIP providers. Since not all States will be reviewed every year, it is highly unlikely that a provider selected to provide supporting documentation will find it burdensome or incur significant additional cost.

Also, such information should be readily available and the response should take minimal time and cost since the response requires gathering the documents and either copying and mailing them or sending them by facsimile. States are free to reimburse their providers for the cost of submitting this information. Thus, the request for medical documentation from providers is within the usual practice of a provider who accepts payment from an insurance provider, whether it is a private organization, Medicare, Medicaid or SCHIP, and should not have a significant impact on the provider's operations.

Comment: One commenter stated that whether or not the RFA requires CMS to conduct an impact analysis, States that have never participated in the PAM or PERM pilots should have an opportunity to review the analysis to which CMS referred so that these States could make their own determinations of potential response burden on providers.

Response: We stated in the October 5, 2005 interim final rule that we believe that the impact on providers will be minimal. States are free to make their own determinations by conducting their own impact study.

G. Anticipated Effects

Comment: The commenter agreed that the anticipated effects of the rule would not be evident for several years. The PERM process is a large and labor-intensive activity that will have high costs in paying contractors and in the use of States' staff for information-sharing and liaison activities. These costs may ultimately have a very large, negative impact on the State should the review show a high error rate.

Response: In meeting the requirements of the IPIA, the purpose of PERM is to measure improper payments and identify vulnerabilities in State programs, which States can address in their corrective action plans. We believe that this effort will improve the States' program performance. Insofar as the process discloses overpayments, both the Federal and State shares can be recouped from providers.

IV. Provisions of This Interim Final Regulation

We published an interim final rule on October 5, 2005 because we significantly revised the approach we originally proposed to implement the IPIA. Based on recommendations received in response to the August 27, 2004 proposed rule, we adopted the recommendation to engage a Federal contractor to estimate improper payments in Medicaid and SCHIP for reviews of adjudicated FFS and managed care claims. We also adopted the recommendation to review a subset of States each year rather than measuring every State every year. However, we continued to propose that the States selected for review in any given year would measure improper payments based on eligibility reviews rather than delegating this responsibility to a Federal contractor. The national contracting strategy significantly deviated from the provision in the proposed rule so the October 5, 2005 interim final rule provided the opportunity for further public comment. We also specifically invited comments on methods for estimating improper payments for managed care and program eligibility.

In the preamble, we describe the national contracting strategy for review of FFS and managed care claims and list the States selected for Medicaid review in FY 2006 through FY 2008. We also describe the State eligibility review requirements. Additionally, this interim final rule with comment period—

- Retains the State requirements for information submission laid out in the October 5, 2005 interim final rule;
- Adds a new information collection from States in order to measure improper payments in managed care; and
- Adds a new section on the State requirements for measuring payment errors through eligibility reviews and providing this information to CMS.

Descriptions of the measurement process for managed care and eligibility improper payments are set forth below.

1. Managed Care

In commenting on the proposed rule, States objected to conducting the reviews, including managed care reviews. We invited further comments in the October 5, 2005 interim final rule on methods for measuring managed care claims in Medicaid and SCHIP. Commenters recommended that we measure: (1) Whether the individual was eligible when payment was made; and (2) whether the State's payment to the managed care organization was made according to State policy and in the proper amount. An additional consideration would be whether any applicable cost-shares were correctly assessed.

For this interim final rule, we determined that the Federal contractor will measure improper payments in Medicaid and SCHIP managed care by:

- Measuring managed care improper payments in the same States that are selected in any given year for FFS and eligibility reviews; and

• Using a claims-based sample to determine whether the beneficiary was enrolled in the Medicaid or SCHIP program and whether that State's capitation payment to the managed care organization was made correctly according to the State's policies.

We are limiting the review of managed care enrollment to program enrollment since other factors such as eligibility for the plan will be determined as part of the program eligibility reviews. We are not adopting the recommendation to review whether cost-shares were correctly assessed since these payments do not offset or otherwise affect the State's payment to the plan.

The Federal contractor will measure managed care in the same year that a State is selected for FFS reviews in Medicaid and SCHIP. Beginning in FY 2007 each State will be measured for managed care payment errors Medicaid and SCHIP, once and only once every 3 years. We will calculate a separate managed care error rate for each State under review and will merge the State's managed care and FFS error rates together with the State's eligibility error rate to produce State-specific error rates for Medicaid and SCHIP. The following is an overview of the managed care measurement process.

a. Claims Universe

For each program, the universe will consist of all capitation payments made on behalf of beneficiaries in Medicaid or SCHIP. Capitation payments are payments made by the State to a managed care plan for a set fee that is based on a pre-determined agreement rather than on the actual cost of care and services delivered. Excluded from the universe are FFS payments to the managed care plan on behalf of managed care beneficiaries (for example, services such as childbirth); these payments instead will be subject to sampling in the FFS review.

b. Sample Size

For the managed care error rate measurement, we estimate an annual sample size of 500 claims per State per program will be reviewed. This estimate is based on the experience in the past PAM and PERM pilots. Since the variances for capitation payments are low, we believe that this estimated sample size will allow us to produce a State-level error rate that meets 3 percent precision level at a 95 percent confidence interval level.

c. Managed Care Review Process

The review of managed care payments will be similar to the managed care data processing reviews under the past PAM and PERM pilots. The review will determine whether the capitation payments are correctly paid based on the information available from the claims processing system or the system that processes vouchers for payment to a managed care organization. We anticipate the managed care data processing reviews will be conducted on-site, along with the FFS claims data processing reviews. Managed care claims are not subject to medical reviews.

The purpose of the managed care review is to verify that:

• The beneficiary was enrolled in the Medicaid or SCHIP program;

• The capitation payment was made in accordance with State policies; and

• The capitation payment was made in the correct dollar amount.

The review contractor will identify and report on errors found through these reviews and the statistical contractor will calculate and report to CMS State-specific error rates, which will be used to determine a national managed care error rate for Medicaid and SCHIP.

2. Eligibility

States objected to conducting eligibility reviews primarily because these reviews substantially duplicate the eligibility reviews required by the Medicaid Eligibility Quality Control (MEQC) program as well as the cost to operate a separate eligibility measurement program. We invited further comment in the October 5, 2005 interim final rule on methods for measuring eligibility in Medicaid and SCHIP. We stated in the October 5 interim final rule that it could be possible that States sampled for Medicaid and SCHIP FFS and managed care reviews may be required to conduct eligibility reviews in a manner similar to the provisions set forth in the proposed rule. We have responded to specific comments in this second interim final rule, and have set out the requirements for eligibility reviews in the regulation text following.

As we stated in the October 5, 2005 interim final rule, we assembled an eligibility workgroup comprised of CMS and OIG (which acted in an advisory capacity) within the DHHS, OMB, and two State representatives to review public comments and recommend a method for measuring program eligibility. The eligibility workgroup reviewed Federal Medicaid and SCHIP laws, regulations, and policies and public comments from the proposed rule and October 5, 2005 interim final rule. Considering the workgroup's recommendations and public comments, we have determined that:

• States will administer the Medicaid and SCHIP eligibility reviews.

• In response to comments regarding the relationship of the FFS and managed care reviews to eligibility, we have provided that States will measure eligibility improper payments in the same fiscal year that they are selected for FFS and managed care reviews in Medicaid and SCHIP;

• In response to comments regarding the barriers to reviewing eligibility at the time of service, States will sample individual beneficiaries, rather than claims or capitation payments.

• In response to comments regarding duplication of effort and costs, we have stated that we will consider recommendations.

• In response to comments regarding measuring progress in serving eligible people, the eligibility measurement will review two eligibility samples. One sample will include beneficiaries enrolled in Medicaid or SCHIP (that is, active cases) to ensure that the person was eligible. The other sample will include denied and terminated cases (that is, negative cases) to ensure that eligible persons are not erroneously denied or terminated from Medicaid or SCHIP.

• In response to comments regarding application of the administrative period to account for a time period in which States react to case changes, we have provided that States will review eligibility as of the latest action taken by the State to determine eligibility. States will review Medicaid and SCHIP eligibility in the month of (1) application, (2) redetermination, or (3) as of the last action taken by the State for all other cases (providing the last action was taken within 12 months of the month the case is sampled; otherwise States review eligibility as of the month the case is sampled). Since the review will focus on the month in which the State took an action on a case, application of the administrative period is not necessary.

• Based on public comments regarding dropping cases when eligibility cannot be determined, we have provided that States can designate these cases as ''undetermined.'' Though a payment error rate will not be associated with these cases, the State will report and CMS will track the percentage of ''undetermined'' cases.

• In response to comments regarding potential conflicts of interest, we have provided that the eligibility reviews must be conducted by a State agency independent of the State agency responsible for Medicaid and SCHIP

policy and operations (that is, is functionally and physically separate) including making the program eligibility determinations.

• The State must, at a minimum, produce an error rate within a 3 percent precision level at a 95 percent confidence interval level.

The procedures for eligibility review in this interim final rule differ from those in the August 2004 proposed rule in the following ways:

• Under proposed § 431.982(a) and § 431.986(a), the proposed rule would have required an eligibility review on all sampled claims. This interim final rule at § 431.980(a) and (b) revises the review process to sample individual beneficiary cases rather than claims or capitation payments made by the State.

• Section 431.982(a)(2)(i) and (ii) of the proposed rule would have required the reviewer to verify eligibility as of the day or month the claimed service was provided.

Under this interim final rule at § 431.980(d)(i) and (ii), States will review eligibility as of the State's most recent action to grant eligibility based on an eligibility determination at application or at redetermination, and, for all other cases, the most recent action providing that action is within 12 months of the month the case is sampled; otherwise States will review eligibility as of the sample month.

• Under § 431.982(a)(2)(iii), the proposed rule stated that the eligibility review would have followed the MEQC procedures established by sections § 431.812(e)(1) through (e)(4), except that the States would not apply the administrative period. This interim final rule changes the focus of the reviews to eliminate the need for the administrative period and does not otherwise rely on MEQC procedures.

• Section 431.982(a)(2)(iv) of the proposed rule had included reviews of Medicaid recipients who receive Supplemental Security Income (SSI) in certain States where the Social Security Administration (SSA) determines Medicaid eligibility. Based on comments to the proposed rule and the October 5, 2005 interim final rule, this interim final rule at § 431.978(d)(1)(i) excludes these cases from review in these States. In addition, we are excluding Title IV—E adoption assistance and foster care cases that receive Medicaid from review in all States.

• Under § 431.982(a)(2)(v), the proposed rule would have required States to take appropriate action on individual error cases that could affect eligibility. This interim final rule deletes this provision, since § 435.916(c)(1) of our rules already requires a prompt redetermination of eligibility when the agency learns of changes that may affect eligibility.

a. Eligibility Universe

The Medicaid and SCHIP universes will consist of both active cases (individuals enrolled in the program) and negative cases (individuals denied or terminated from the program). For purposes of the PERM reviews, we define ''case'' as an individual; not as families or groups of more than one person. For Medicaid active cases, the universe will include all individuals enrolled in the program in the sample month. The universe will exclude SSI recipients in States with an agreement with the SSA whereby, under section 1634 of the Act, SSA determines Medicaid eligibility for SSI cases. The universe also will exclude, in all States, Title IV–E foster care and adoption assistance cases that receive Medicaid, due to the complexities of obtaining information for verifying eligibility, which is often subject to strict parameters of confidentiality (for example, sealed adoption records). Finally, States shall exclude Medicaid cases that are under active fraud investigation from the universe; if these cases cannot be identified before sampling, States can drop these cases from review.

For the Medicaid negative cases, the universe will include all individuals denied or terminated in the sample month. Individuals denied due to incomplete applications or terminated because they did not complete the eligibility redetermination process according to State policy will be excluded.

The SCHIP universe also will consist of both active and negative cases. For SCHIP active cases, the universe will consist of all individuals enrolled in the program for the sample month. States shall exclude SCHIP cases that are under active fraud investigation from the universe; if these cases cannot be identified before sampling, States can drop these cases from review. There are no other SCHIP cases excluded from the SCHIP active universe, because SCHIP eligibility is not determined by a Federal agency, such as Medicaid eligibility for SSI cases in certain States.

For SCHIP negative cases, the universe will consist of all individuals denied or terminated in the sample month and will exclude individuals denied due to incomplete applications or terminated because they did not complete the eligibility redetermination process according to State policy.

b. Sample Selection and Sample Size

Medicaid and SCHIP cases in the active universe will be stratified into three strata:

• Stratum 1—Applications approved in the sample month;

• Stratum 2—Cases where eligibility was redetermined in the sample month; and

• Stratum 3—All other cases.

Each month, an equal number of cases will be selected from each stratum. Negative case action samples will not be stratified in either program.

For active case reviews, we estimate an annual sample size of 501 cases will be reviewed per State per program. We believe this estimated sample size will produce error rates within a 3 percent precision level at a 95 percent confidence interval level for the State. However, the annual sample size may vary and a State may have a sample that contains more than 501 active cases in order to meet this statistical requirement. The sample will be selected each month. We estimate that a State will select and review approximately 42 cases each month.

If not excluded from the universe, States shall drop a case from review when the case is currently under an active fraud investigation. ''Active fraud investigation'' means a beneficiary's name has been referred to the State Medicaid (or SCHIP) Fraud and Abuse Control Unit or similar investigation unit and the unit is currently and actively pursuing an investigation to determine whether fraud was committed by the beneficiary. States must drop these cases from the eligibility reviews because we believe that, in most cases, payments are not being made directly to the beneficiary.

The State will classify any case in which eligibility cannot be conclusively verified as ''undetermined.'' These cases will not be considered eligible or ineligible when calculating the error rate but the number and rate of undetermined cases will be noted in our reporting of the error rates.

For negative case reviews, we estimate the annual sample size will be 200 cases per program. As above, we believe this should produce an estimate that is within a 3 percent precision level at a 95 percent confidence interval level. However, the sample size may vary and a State may have a sample that contains more than 200 negative cases in order to meet this statistical requirement. The sample will be selected each month. We estimate that a State will select and review approximately 17 cases each month.

c. Eligibility Review Process

We determined that a State will review program eligibility in the year it is scheduled for review for FFS and managed care improper payments. Based on recommendations from public comments and the eligibility workgroup, we developed a review process that is less burdensome than the review requirements under the proposed rule and that follow State procedures. We have designed the review process to minimize the effect on States regarding cost and burden.

Finally, to provide objective review findings and error rate calculations, we adopted the recommendation that the eligibility reviews be conducted by a State agency which is independent of the State agency making the program eligibility determinations.

In preparation for the PERM measurement, we will provide the selected States with advance implementation guidelines attached to a State Health Official letter to all States being measured in FY 2007. Essentially, States will conduct eligibility reviews on a sample of active cases that are stratified as follows: (1) Current applications; (2) current redeterminations; and (3) other cases. States will measure eligibility as of the latest action taken by the State to determine eligibility for Medicaid and SCHIP (providing the action for all ''other cases'' is within 12 months of the sample month; otherwise, States will review eligibility as of the sample month). We expect eligibility can be established primarily through desk reviews of the case records, although there are instances when States would be required to verify information (for example, information missing from the file, outdated, or likely to change).

The review process will apply to both Medicaid and SCHIP cases. However, for all SCHIP cases, the reviewer will further verify that the case is not eligible for Medicaid by following the SCHIP requirements at 42 CFR 457.350 to screen SCHIP applicants for potential Medicaid eligibility.

d. Eligibility Error Rate Calculation

The State will determine:

- State-specific case and payment error rates for active cases;
- State-specific case error rates for negative cases; and
- The number of undetermined cases in each sample (with associated paid claims for each case) and the total amount of payments for all undetermined cases in the active case sample.

These rates will be computed using the following general calculations:

$$\text{Case error rate} = \frac{\text{Total number of cases in error}}{\text{Total number of cases in the sample}}$$

$$\text{Payment error rate} = \frac{\text{Total amount of dollars in error}}{\text{Total amount of dollars in the sample}}$$

Once the State reports the State-specific eligibility rates, the national contractor will combine the State specific eligibility error rates to produce national eligibility error rates for each program.

e. Reporting

For purposes of eligibility information collection and reporting, States will submit to CMS and its contractors:

- A sampling plan for approval 60 days prior to the beginning of the fiscal year selected for review. States selected for the measurement for FY 2008 and beyond will submit a sampling plan by August 1. States selected for the FY 2007 measurement will submit the sampling plan by November 15, 2006;
- A monthly sample selection list that identifies the cases selected for review, to be submitted each month and before commencing the reviews;
- Summary eligibility findings on all case reviews to be submitted by July 1 following the fiscal year under review; and
- State-specific case and payment error rates for active cases, case error rates for negative cases, the number and amount of undetermined cases in the samples, and the total amount of payment from all undetermined cases in the active case sample to be submitted by July 1 after the end of the fiscal year under review.

3. Difference Resolution Process

We received many comments on the October 5, 2005 interim final rule regarding State opportunity to review the contractor's findings on FFS and managed care claims. In response to these comments, we developed a difference-resolution process to provide States with the opportunity to review the RC's reconsideration of its error determinations (on its medical and data processing reviews) and to resolve the differences in findings.

On at least a monthly basis, the RC will provide each State under review with a disposition report. This report includes the review findings of the medical and data processing reviews for each FFS claim, and the findings of the data processing reviews for each managed care claim completed that month. Towards the end of the review period, the RC will provide these disposition reports on a bi-weekly basis to the State. Information on which the RC based its findings will be made available to the State so that the State can determine whether it agrees with the findings.

A State can notify the RC in writing that it has a difference in finding on a claim in error. To support the State's position that the claim was properly paid, the State: (1) Must have a factual basis for filing the difference on any claim; and (2) must present valid evidence to support its position that the claim was correctly paid. If the RC agrees with the State, the error will be adjusted or backed out of the error rate calculation. The difference resolution process is the only means by which the State and the Federal contractor can consider differences in findings and reverse the RC's error findings.

For cases in which the State and the RC cannot resolve the differences in findings, the State may file a written appeal to CMS for final resolution. However, for CMS to review the claim, the difference in findings must be in the amount of $100 or greater. The State must provide CMS with the specific reasons and necessary documentation to support its determination that the claim was correctly paid as well as the review contractor's justification for upholding its initial error finding. CMS will make the final determination on the sampled claim.

Claims with ''no documentation'' errors or ''insufficient documentation''

errors due to the provider not submitting the requested information will not be considered in the difference resolution process because all medical documentation must be provided within the 90-day timeframe. We have provided an opportunity for the States to participate in ensuring that the provider submits the necessary documentation within the 90-day timeframe; and the difference resolution process is not intended to extend this timeframe for the collection of medical documentation. Additionally, we allow for adjustments to claims to be made pending completion of the reviews; the difference resolution process is not intended to extend the timeframe for adjustments. Therefore, subsequent adjustments to claims will not be considered as a valid reason to reverse findings on claims. All differences in findings between the State and the RC on any claim not resolved in time to be included in the error rate calculation will be considered as errors for meeting the reporting requirements of the IPIA. However, at State request, we will calculate a subsequent State-specific rate that reflects any reversed disposition of the unresolved claims.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment 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.

This interim final rule with comment sets forth requirements for States to provide information for purposes of estimating improper payments through FFS, managed care and eligibility reviews in Medicaid and SCHIP. Therefore, we solicited public comment on each of the issues listed above for the following sections of the rule that contain information collection requirements.

It is important to note that subsequent to the information collection notices, which estimated cost and burden for 34 States, we have determined that SCHIP will be measured in the same year that States are measured for Medicaid. Thus, the estimate for ''34 States'' should be interpreted to mean ''34 State programs'' in 17 States.

Section 431.970(a) Information Submission Requirements

Section 431.970(a)(1)–(11) sets forth requirements for States to provide information to the Secretary for purposes of estimating improper payments in FFS and managed care based on medical and data processing reviews in Medicaid and SCHIP. Those States selected for review in any given year will be required to provide, at a minimum, the following information for Medicaid and SCHIP:

(a)(1) All adjudicated fee-for-service (FFS) and managed care claims information, on a quarterly basis, from the review year with FFS claims stratified by type of service;

(a)(2) Upon request from CMS, provider contact information that has been verified by the State as current;

(a)(3) All medical and other related policies in effect and any quarterly policy updates;

(a)(4) Current managed care contracts, rate information, and any quarterly updates to both for the review year for SCHIP and, as requested, for Medicaid;

(a)(5) Data processing systems manuals;

(a)(6) Repricing information for claims that are determined to have been improperly paid;

(a)(7) Information on claims that were selected as part of the sample, but changed in substance after selection, for example, successful provider appeals;

(a)(8) Adjustments made within 60 days of the adjudication date for the original claim or line item with sufficient information to indicate the nature of the adjustments and to match the adjustments to the original claim or line items;

(a)(9) For the eligibility improper payment measurement, information as set forth in § 431.978 through § 431.988;

(a)(10) A corrective action plan for purposes of reducing erroneous payments in FFS, managed care, and eligibility; and

(a)(11) Other information that the Secretary determines is necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP.

The burden described at § 431.970(a) represents the total State information collection burden for PERM. Based on our estimates of State participation burden for both Medicaid and SCHIP, for 34 States (17 States per Medicaid and 17 States for SCHIP), for the FFS reviews (55,420 hours), the managed care reviews (22,100 hours), and eligibility (448,120 hours), we calculated that the annual State burden for the PERM program is 525,640 hours (262,820 hours per program). The burden associated with these requirements is the time and effort necessary for States to collect this information and provide it to CMS or the Federal contractor. We estimated these costs through three information collection notices based on the information needed for the FFS, managed care, and eligibility review as follows:

Estimate for FFS reviews. A notice of the FFS proposed collection was previously published in the **Federal Register** for public comment on July 22, 2005 (70 FR 42324). That document was available for public inspection at the Office of the Federal Register beginning on July 15, 2005 and comments were requested by August 15, 2005 (30 days from date of display). We republished the notice of the FFS proposed collection on August 26, 2005 (70 FR 50357), which was available for public inspection for an additional comment period ending September 26, 2005 (30 days from date of publication). The shortened timeframe for public comment was essential so that CMS could proceed with the FFS data collection from States and providers by October 2005 to initiate reviews for timely reporting of a FY 2006 Medicaid FFS error rate to OMB. We received OMB approval of this information collection on October 3, 2005. The OMB approval number is 0938–0974 with an expiration date of October 31, 2008.

Initially, in the information collection notice for the FFS reviews, we estimated that the annualized number of hours that would be required for up to 36 States (18 States for Medicaid and 18 States for SCHIP) to respond to the requests for information would be 58,680 hours (1,630 hours per State per program). Subsequent to the notice, we revised our estimates of the burden to reflect that 17 States would be selected for each program (rather than ''up to 18 States'' per program). The revised annualized number of hours that would be required for 34 States (17 States for Medicaid and 17 States for SCHIP) to respond to the requests for information for the FFS measurement is 55,420 hours (1,630 hours per State per program).

It is important to note that subsequent to the notice and initiation of the FY

2006 FFS measurement in Medicaid, we determined that each State's FFS sample sizes for Medicaid and SCHIP could be determined by the annual expenditure data that States already report to CMS. Therefore, States do not need to resubmit the annual expenditure data to CMS for the purposes of PERM.

Estimate for managed care reviews. A notice of the proposed collection of managed care information was previously published in the **Federal Register** for public comment on February 3, 2006 (71 FR 5851). Comments were requested by April 4, 2006 (60 days from date of display). We republished the notice of proposed collection on April 14, 2006 (71 FR 19521), which was available for public inspection for an additional comment period ending May 17, 2006 (30 days from date of publication).

Initially, in the information collection notice for the managed care reviews, we estimated that the annualized number of hours that would be required for up to 36 States (18 States for Medicaid and 18 States for SCHIP) to respond to the requests for information would be 23,400 hours (650 hours per State, per program). Subsequent to the notice, we revised our estimates of the burden to reflect the 17 States selected for each program (rather than ''up to 18 States'' per program). The revised annualized number of hours that would be required for 34 States to respond to the requests for information for the managed care reviews is 22,100 hours (650 hours per State per program).

Estimate for eligibility reviews. A notice of this proposed collection was previously published in the **Federal Register** for public comment on May 26, 2006 (71 FR 30409). Comments were requested by July 26, 2006 (60 days from date of display). We expect to republish the notice of proposed collection on August 25, 2006, which will be available for public inspection for an additional comment period ending 30 days from date of publication.

In the information collection notice for the eligibility reviews, we estimated: (1) The annualized number of hours needed to respond to the information request for the purpose of Medicaid and SCHIP eligibility reviews; and (2) the number of respondents, 34 States (17 States for Medicaid and 17 States for SCHIP). Based on these estimates, we determined that the total annualized number of hours required for the eligibility reviews for 34 States would be 448,120 hours (13,180 hours per State per program).

For the specific information requests in § 431.978 (referenced at § 431.970(a)(9)) and § 431.992 (as referenced at § 431.970(a)(10)), the burden includes the following estimated annualized hours: (1) Up to 1,000 hours required for a State to develop and submit a sampling plan; (2) up to 1,200 hours for a State to submit 12 monthly sample lists detailing the cases selected for review; and (3) up to 1,000 hours for a State to develop a corrective action report for purposes of reducing the eligibility payment error rate.

For the requirements for eligibility reviews in § 431.980 and the reporting of findings in § 431.988, as referenced at § 431.970(a)(9), we estimated that each State would need to review an annual sample size of 501 active cases to achieve within 3 percent precision at a 95 percent confidence interval level in the State-specific error rates. We also estimated that States would need to review 200 negative cases to produce a case error rate that meet similar standards for statistical significance. We therefore estimate that the annualized number of hours required for 34 States to complete the eligibility case reviews and report the eligibility-based error rates to CMS will be 339,320 hours (9,980 hours per State per program).

Section 431.970(b) Information Submission Requirements

Section 431.970(b) requires providers to submit medical record information to the Secretary for estimating improper payments in Medicaid and SCHIP. In the ''Anticipated Effects'' section of the impact statement in the August 27, 2004 proposed rule, we stated that providers could be required to supply medical records or other similar documentation that verified the provision of medical services to beneficiaries as part of reviewing paid and denied claims under PERM. We believed this action would not have a significant cost impact on providers. We continue, as stated in the regulatory impact section, to estimate this burden to be part of a provider's usual and customary business practices.

Section 431.978 Eligibility Sampling Plan and Procedures

This section requires that the selected States submit a Medicaid and a SCHIP sampling plan (or revisions to the current plans) for both active and negative cases to CMS for approval at least 60 days before the beginning of the review year (for the FY 2008 measurement and beyond). (States will submit the sampling plans by November 15, 2006 for the FY 2007 review year.) The State must receive approval of the plans before implementation.

As stated above, the burden associated with this requirement will be the time and effort it will take for the States to prepare and submit a sampling plan to CMS for approval. We estimate that the annual burden associated with this requirement for 34 States (17 States for Medicaid and 17 States for SCHIP) will be 34,000 hours (1,000 hours per State per program).

Section 431.988 Eligibility Case Review Completion and Submittal of Reports

Sections 431.988(a) and (b) require the selected States to submit reports of findings and error rates in accordance with paragraphs (b)(1) through (b)(2) beginning with the FY 2007 measurement.

As stated above, the burden associated with this requirement is the time and effort it would take for the States to produce the required material and submit a report to CMS. We estimate that the annual burden associated with this requirement for 34 States (17 States for Medicaid and 17 States for SCHIP) will be 339,320 hours (9,980 hours per State per program).

Section 431.992 Corrective Action Plan

This section requires the selected States to submit to CMS a corrective action plan to reduce improper payments in Medicaid and SCHIP based on the major causes of the errors in the FFS, managed care, and eligibility components.

The burden associated with this requirement is the time and effort put forth by the selected States to develop and submit a corrective action plan to CMS. In the information collection notices, we estimated that it would take each selected State up to 500 hours for the FFS component, up to 500 hours for the managed care component, and up to 1,000 hours for the eligibility component of the corrective action plan for each program. Therefore, we estimate that the total annual burden associated with this requirement for 34 States (17 States for Medicaid and 17 States for SCHIP) will be 68,000 hours (2,000 hours per State per program).

Section 431.998 Difference Resolution Process

Section 431.998(b)(2) provides the selected States the option to enter the difference resolution process. States wishing to do so must notify the Federal contractor and submit documentation to support its determination that the claim was incorrectly paid.

We have included this State option in this interim final rule in response to public comments on both the proposed rule and the October 5, 2005 interim final rule. The burden associated with

this requirement would be the time and effort it would take for a State to gather the facts and valid documentation and submit it to the Federal contractor or, upon appeal, to CMS. We anticipate that 34 States will request a difference resolution for each fiscal year and that it will take up to 5 hours per claim to request a difference resolution and present evidence to support the State's disagreement with the Federal contractor's determination.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Melissa Musotto (Attn: CMS–6026–IFC2), Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Katherine Astrich, CMS Desk Officer, CMS–6026–IFC2, or *Katherine_T._Astrich@omb.eop.gov.* Fax (202) 395–6947.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impact 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).

1. Cost Estimate for FFS Reviews

We have estimated that it will cost approximately $23.3 million annually ($22,367,088 in Federal cost and $951,326 in State cost) to review FFS claims and estimate error rates in 34 States (17 States for Medicaid and 17 States for SCHIP). This estimate is based on the Federal cost of engaging the Federal contractors to conduct the reviews and calculate the error rates, and the State cost to submit requested information to support the reviews. We estimated these costs as follows:

Through the use of Federal contractors, we estimated that for the FFS measurement it would cost approximately $21,080,000 in Federal funds ($10,540,000 per program). This estimate is based on the cost per State of $383.80 per claim multiplied by an average of 1,000 claims; $66,147 for travel and administrative expenses; $133,488 for overhead and other expenses; and $36,565 for systems hardware and software. Based on $620,000 per State to estimate FFS error rates in Medicaid and $620,000 per State to estimate FFS error rates in SCHIP, the FFS error rate estimates for 34 States would cost approximately $21,080,000 in Federal funds for the Federal contracting cost.

Under the national contracting strategy, we anticipate State cost to be the cost associated with submitting information. As we indicated in the information collection section of this rule, we estimated the cost to respond to requests for information for the Medicaid and SCHIP FFS reviews is $2,238,414 ($1,287,088 in Federal cost and $951,326 in State cost). Therefore, the estimated total Federal cost is approximately $22,367,088 and total State cost is $951,300 for FFS measurement.

2. Cost Estimate for Managed Care Reviews

We have estimated that it will cost approximately $7.5 million annually ($7,153,256 in Federal cost and $379,363 in State cost) to estimate managed care error rates for 34 States (17 States for Medicaid and 17 States for SCHIP). This is based on the Federal cost of engaging the Federal contractors to conduct the reviews and calculate the error rates, and the State cost to submit requested information to support the reviews. We estimated these costs as follows:

We estimated that it will cost $6,640,000 in Federal funds annually for a Federal contractor to estimate the error rates for 34 States. This is based on FY 2006 FFS estimates that were used as baseline assumptions for the managed care reviews. We assumed that we will use the same statistical contractor and the same review contractor for managed care and FFS reviews in each program to gain cost efficiencies in administration, overhead and systems. Based an average of 500 claims reviewed plus travel and other administrative expenses, we estimate that it would cost $6,640,000 in Federal funds for the Federal contracting cost.

Under the national contracting strategy, we anticipate State cost to be the cost associated with submitting information, similar to the cost for FFS reviews. As we indicated in the information collection section of this rule, we estimated the cost to respond to requests for information for the managed care reviews would be $892,619 ($513,256 in Federal cost and $379,363 in State cost). Therefore, the estimated total Federal cost is approximately $7,153,256 and total State cost is $379,363 for managed care measurement.

3. Cost Estimate for Eligibility Reviews

Beginning in FY 2007, States will review eligibility in the same year they are selected for FFS and managed care reviews in Medicaid and SCHIP. We estimated that total cost for eligibility review for 34 States is approximately $18.1 million ($10,407,251 in Federal cost and $7,692,316 in State cost). This cost estimate is based on the cost for States to submit information to CMS and the cost for States to conduct eligibility reviews and report rates to CMS. These costs are estimated as follows:

We estimated in the information collection section, that the annualized number of hours required to respond to requests for information for the eligibility review (for example, sampling plan, monthly sample lists, the eligibility corrective action report) for 34 States will be 108,800 hours (3,200 hours per State per program). At the 2006 general schedule GS–12–01 rate of pay that includes fringe and overhead costs ($40.39/hour), we calculated a cost of $4,394,432 ($2,526,798 in Federal cost and $1,867,634 in State cost). This cost estimate includes the following estimated annualized hours: (1) Up to 1,000 hours required for States to develop and submit a sampling plan; (2) up to 1,200 hours for States to submit 12 monthly sample lists detailing the cases selected for review; and (3) up to 1,000 hours for States to submit a corrective action plan for purposes of reducing the eligibility payment error rate.

For the eligibility review and reporting of the findings, we estimated that each State would need to review an annual sample size of 501 active cases to achieve a 3 percent margin of error at a 95 percent confidence interval level in the State-specific error rates. We also estimated that States would need to review 200 negative cases to produce a case error rate that met similar standards for statistical significance. We

estimated that for 34 States the annualized number of hours required to complete the eligibility case reviews and report the eligibility-based error rates to CMS would be 339,320 hours (9,980 hours per State, per program). At the 2006 general schedule GS–12–01 costs that include fringe and overhead ($40.39/hour), we calculated a cost of $13,705,135 ($7,880,453 in Federal cost and $5,824,682 in State cost).

Therefore, the total annual estimate of the cost for 34 States to submit information and to conduct the eligibility reviews and report the error rate to CMS is approximately $18,099,567 ($10,407,251 in Federal cost and $7,692,316 in State cost).

4. Cost Estimate for Total PERM Costs

Based on our estimates of the costs for the FFS, managed care and eligibility reviews for both the Medicaid and SCHIP programs at approximately $49 million ($39,927,595 in Federal cost and $9,023,005 in State cost), this rule does not exceed the $100 million or more in any 1 year criterion for a major rule, and a regulatory impact analysis is not required.

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.

We stated in the August 27, 2004 proposed rule that providers could be required to supply medical records or other similar documentation that verified the provision of Medicaid or SCHIP services to beneficiaries as part of the PERM reviews, but we anticipated this action would not have a significant cost impact on providers. Providers would only need to provide medical records for the FFS component of this program. A request for medical documentation to substantiate a claim for payment would not be a burden to providers nor would it be outside the customary and usual business practices of Medicaid or SCHIP providers. Not all States would be reviewed every year and medical records would only be requested for FFS claims, so it would be unlikely for a provider to be selected more than once per program to provide supporting documentation, particularly in States with a large Medicaid or SCHIP managed care population.

In addition, the information should be readily available and the response should take minimal time and cost since the response would merely require gathering the documents and either copying and mailing them or sending them by facsimile. Therefore, we have concluded in this interim final rule with comment that the provision of medical documentation by providers is within the customary and usual business practice of a provider who accepts payment from an insurance provider, whether it is a private organization, Medicare, Medicaid, or SCHIP and should not have a significant impact on the provider's operations. Individuals and States are not included in the definition of a small entity. Therefore, an impact analysis is not required under the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

These entities may incur costs due to collecting and submitting medical records to the contractor to support medical reviews; but, like any other Medicaid or SCHIP provider, we estimate these costs would not be outside the limit of usual and customary business practices. Also, since the sample is randomly selected and only FFS claims are subject to medical review, we do not anticipate that a great number of small rural hospitals would be asked for an unreasonable number of medical records. As stated before, a State will be reviewed only once, per program, every 3 years and it is highly unlikely for a provider to be selected more than once per program to provide supporting documentation. Therefore, we believe that an impact analysis is not required under section 1102(b) of the Social Security Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $120 million or more. This interim final rule does not impose costs on States to produce the error rates for FFS and managed care payments, but only requires States and providers to submit information already on hand to the contractor so that the error rates can be calculated. The costs associated with submitting information for copying and mailing the information or for sending the information by facsimile are minimal.

Based on our estimates of State participation burden for both Medicaid and SCHIP, for 34 States (17 States per Medicaid and 17 States for SCHIP), for the FFS reviews ($951,326), the managed care reviews ($379,363), and eligibility ($7,692,316), we calculated that the annual State burden for the PERM program is approximately $9,023,005 in State cost for both programs. Thus, we do not anticipate State costs to exceed $120 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements on State and local governments, preempts State law, or otherwise has Federalism implications. The proposed rule, which would have imposed significantly more cost burden on States to measure improper payments, had estimated costs of $1 million to $2 million per State. This interim final rule significantly reduces these costs by requiring States only to submit information to support the medical and data processing reviews. The cost and burden associated with submitting this information is the time and cost to copy and mail the information or, at State option, submit the information electronically.

This interim final rule does require States selected for review to submit an eligibility sampling plan, monthly sample selection information, summary review findings, State error rate calculations, and other information in order for CMS to calculate the eligibility national error rate. We estimated that the burden to conduct the eligibility measurement for Medicaid and SCHIP for 34 States will be approximately $18,099,567 ($10,407,251 in Federal cost and $7,692,316 in State cost). As a result, we assert that this regulation will not have a substantial impact on State or local governments.

B. Anticipated Effects

The interim final rule is intended to measure improper payments in Medicaid and SCHIP. States would implement corrective actions to reduce the error rate, thereby producing savings over time. These savings cannot be estimated until after the corrective actions have been monitored and determined to be effective, which can take several years.

C. Alternatives Considered

We considered the alternatives recommended by the public commenting on the October 5, 2005 interim final rule with comment and

adopted the recommendation to include a difference-resolution process through which States can express and resolve a difference of opinion with the error determinations made by the review contractor through its medical and data processing reviews.

We considered the other alternatives, which were recommended in the proposed rule and reiterated in the October 5, 2005 interim final rule, and determined that these recommendations were not viable or were not the best approach to meet the requirements of the law. We received comments on the October 5, 2005 interim final rule regarding the national contracting strategy that recommended allowing States to have input on CMS operational issues and evaluation of the Federal contractors. We did not adopt these recommendations because we believe that these are operational issues that are outside the scope of the rulemaking process. Comments considered and not adopted include:

• States should administer the Medicaid and SCHIP FFS and managed care measurement at an enhanced match rate;

• CMS should abandon State-level error rates in favor of national sampling, pooling State data across years or accepting larger standard errors;

• States should receive 100 percent Federal match for any State technical assistance on this effort; and

• CMS should provide more transparency on its methodologies by promulgating rules for the Federal contractor and CMS' procedures or by establishing an advisory committee.

We believe the national contracting strategy is superior to these proposals because it provides a standardized review methodology that is applied objectively and consistently to the States under review. Under the contracting strategy, each State is measured against its own standards, which we believe provides better information for States to reduce erroneous payments than using a national sample, pooling State data across years or accepting larger standard errors. We have the statutory authority to collect the claims data and policy information. The technical assistance that States provide to the contractors should be limited primarily to the claims processing reviews and will help ensure the accuracy of these reviews and the error rates. We do not believe 100 percent Federal match should be provided for technical assistance to the contractors since the PERM reviews are similar to other Federal audits for which States do not receive enhanced match. Finally, we believe the national contracting strategy provides transparencies such as our review methodologies, cost and burden estimates, when States will be reviewed, and State responsibilities as we have stated in the October 5, 2005 interim final rule and this interim final rule. We do not believe an advisory committee is needed since we have provided States ample opportunities to comment through the rulemaking process.

D. Conclusion

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 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

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 amends 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Part 431 is amended by revising subpart Q to read as follows:

Subpart Q—Requirements for Estimating Improper Payments in Medicaid and SCHIP

Sec.

431.950 Purpose.
431.954 Basis and scope.
431.958 Definitions and use of terms.
431.970 Information submission requirements.
431.974 Basic elements of Medicaid and SCHIP eligibility reviews.
431.978 Eligibility sampling plan and procedures.
431.980 Eligibility review procedures.
431.988 Eligibility case review completion deadlines and submittal of reports.
431.992 Corrective action plan.
431.998 Difference resolution process.
431.1002 Recoveries.

Subpart Q—Requirements for Estimating Improper Payments in Medicaid and SCHIP

§ 431.950 Purpose.

This subpart requires States and providers to submit information necessary to enable the Secretary to produce national improper payment estimates for Medicaid and the State Children's Health Insurance Program (SCHIP).

§ 431.954 Basis and scope.

(a) *Basis.* The statutory bases for this subpart are sections 1102, 1902(a)(6), and 2107(b)(1) of the Act, which contain the Secretary's general rulemaking authority and obligate States to provide information, as the Secretary may require, to monitor program performance. In addition, this rule supports the Improper Payments Information Act of 2002 (Pub. L. 107–300), which requires Federal agencies to review and identify annually those programs and activities that may be susceptible to significant erroneous payments, estimate the amount of improper payments, report such estimates to the Congress, and submit a report on actions the agency is taking to reduce erroneous payments. Section 1902(a)(27)(B) of the Act requires States to require providers to agree to furnish the State Medicaid agencies and the Secretary with information regarding payments claimed by Medicaid providers for furnishing Medicaid services.

(b) *Scope.* (1) This subpart requires States under the statutory provisions cited in paragraph (a) of this section to submit information as set forth in § 431.970 for, among other purposes, estimating improper payments in the fee-for-service (FFS) and managed care components of the Medicaid and SCHIP programs and to determine whether eligibility was correctly determined. This subpart also requires providers to submit to the Secretary any medical records and other information necessary to disclose the extent of services provided to individuals receiving assistance, and to furnish information regarding any payments claimed by the provider for furnishing such services, as requested by the Secretary.

(2) All information must be furnished in accordance with section 1902(a)(7)(A) of the Act, regarding confidentiality.

(3) This subpart does not apply with respect to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands or American Samoa.

§ 431.958 Definitions and use of terms.

Active case means a case containing information on a beneficiary who is enrolled in the Medicaid or SCHIP program in the month that eligibility is reviewed.

Active fraud investigation means a beneficiary's name has been referred to the State Fraud and Abuse Control or

similar investigation unit and the unit is currently actively pursuing an investigation to determine whether the beneficiary committed fraud.

Adjudication date means either the date on which money was obligated to pay a claim or the date the decision was made to deny a claim.

Agency means, for purposes of the PERM eligibility reviews and this regulation, the agency that performs the Medicaid and SCHIP eligibility determinations under PERM and excludes the State agency as defined in the regulation.

Application means an application form for Medicaid or SCHIP benefits deemed complete by the State, with respect to which such State approved or denied eligibility.

Beneficiary means an applicant for, or recipient of, Medicaid or SCHIP program benefits.

Case means an individual beneficiary.

Case error rate means an error rate that reflects the number of cases in error in the eligibility sample for the active cases plus the number of cases in error in the eligibility sample for the negative cases expressed as a percentage of the total number of cases examined in the sample.

Case record means either a hardcopy or electronic file that contains information on a beneficiary regarding program eligibility.

Eligibility means meeting the State's categorical and financial criteria for receipt of benefits under the Medicaid or SCHIP programs.

Improper payment means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and includes any payment to an ineligible recipient, any duplicate payment, any payment for services not received, any payment incorrectly denied, and any payment that does not account for credits or applicable discounts.

Last action means the most recent date on which the State agency took action to grant, deny, or terminate program benefits based on the State agency's eligibility determination; and is the point in time for the PERM eligibility reviews unless the last action occurred outside of 12 months prior to the sample month.

Medicaid means the joint Federal and State program, authorized and funded under Title XIX of the Act, that provides medical care to people with low incomes and limited resources.

Negative case means a case containing information on a beneficiary who applied for benefits and was denied or whose program benefits were terminated, based on the State agency's eligibility determination or on a completed redetermination.

Payment means any payment to a provider, insurer, or managed care organization for a Medicaid or SCHIP beneficiary for which there is Medicaid or SCHIP Federal financial participation. It may also mean a direct payment to a Medicaid or SCHIP beneficiary in limited circumstances permitted by CMS regulation or policy.

Payment error rate means an annual estimate of improper payments made under Medicaid and SCHIP equal to the sum of the overpayments and underpayments in the sample, that is, the absolute value of such payments, expressed as a percentage of total payments made in the sample.

Payment review means the process by which payments for services are associated with cases reviewed for eligibility. Payments are collected for services received in the review month or in the sample month, depending on the case reviewed.

PERM means the Payment Error Rate Measurement process to measure improper payment in Medicaid and SCHIP.

Provider means any qualified provider recognized under Medicaid and SCHIP statute and regulations.

Review cycle means the complete timeframe to complete the improper payments measurement including the fiscal year being measured; generally this timeframe begins in October of the fiscal year reviewed and ends in August of the following fiscal year.

Review month means the month in which eligibility is reviewed and is usually when the State took its last action to grant or redetermine eligibility. If the State's last action was taken beyond 12 months prior to the sample month, the review month shall be the sample month.

Review year means the Federal fiscal year being analyzed for errors by Federal contractors or the State.

Sample month means the month the State selects a case from the sample for an eligibility review.

State agency means the State agency that is responsible for determining program eligibility for Medicaid and SCHIP, as applicable, based on applications and redeterminations.

State Children's Health Insurance Program (SCHIP) means the program authorized and funded under Title XXI of the Act.

States means the 50 States and the District of Columbia.

Undetermined means a beneficiary case subject to a Medicaid or SCHIP eligibility determination under this regulation about which a definitive determination of eligibility could not be made.

§ 431.970 Information submission requirements.

(a) States must submit information to the Secretary for, among other purposes, estimating improper payments in Medicaid and SCHIP, that include but are not limited to—

(1) All adjudicated fee-for-service (FFS) and managed care claims information, on a quarterly basis, from the review year with FFS claims stratified by service;

(2) Upon request from CMS, provider contact information that has been verified by the State as current;

(3) All medical and other related policies in effect and any quarterly policy updates;

(4) Current managed care contracts, rate information, and any quarterly updates applicable to the review year for SCHIP and, as requested, for Medicaid;

(5) Data processing systems manuals;

(6) Repricing information for claims that are determined during the review to have been improperly paid;

(7) Information on claims that were selected as part of the sample, but changed in substance after selection, for example, successful provider appeals;

(8) Adjustments made within 60 days of the adjudication dates for the original claims or line items with sufficient information to indicate the nature of the adjustments and to match the adjustments to the original claims or line items;

(9) For the eligibility improper payment measurement, information as set forth in § 431.978 through § 431.988;

(10) A corrective action plan for purposes of reducing erroneous payments in FFS, managed care, and eligibility; and

(11) Other information that the Secretary determines is necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP.

(b) Providers must submit information to the Secretary for, among other purposes, estimating improper payments in Medicaid and SCHIP, which include but are not limited to, Medicaid and SCHIP beneficiary medical records.

§ 431.974 Basic elements of Medicaid and SCHIP eligibility reviews.

(a) *General requirements.* (1) States selected in any given year for Medicaid

and SCHIP improper payments measurement under the Improper Payments Information Act of 2002 must conduct reviews of a statistically valid random sample of beneficiary cases for such programs to determine if improper payments were made based on errors in the State agency's eligibility determinations.

(2) The agency and personnel responsible for the development, direction, implementation, and evaluation of the eligibility reviews and associated activities, including calculation of the error rates under this section, must be functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and SCHIP policy and operations, including eligibility determinations.

(3) Any individual performing activities under this section must do so in a manner that is consistent with the provisions of § 435.901, concerning the rights of recipients.

(b) *Sampling requirements.* The State must have in effect a CMS-approved sampling plan for the review year in accordance with the requirements specified in § 431.978.

(c) *Review requirements.* The State must conduct eligibility reviews in accordance with the requirements specified in § 431.980.

§ 431.978 Eligibility sampling plan and procedures.

(a) *Plan approval.* For the review year beginning October 1, 2006, the agency must submit a Medicaid and a SCHIP sampling plan for both active and negative cases to CMS for approval by November 15, 2006. For review years beginning October 1, 2007 and beyond, the agency must submit a Medicaid or SCHIP sampling plan (or revisions to a current plan) for both active and negative cases to CMS for approval by the August 1 before the review year and must receive approval of the plan before implementation. The agency must notify CMS that it will be using the same plan from the previous review year if the plan is unchanged.

(b) *Maintain current plan.* States must keep the plan current, for example, by making adjustments to the plan when necessary due to fluctuations in the universe. The State must review and determine that the approved plan is unchanged from the previous review year and submit a revised plan for CMS approval if changes have occurred.

(c) *Sample size.* Total sample size must be estimated to achieve within a 3 percent precision level at 95 percent confidence interval for the eligibility component of the program.

(d) *Sample selection.* The sample must be stratified in accordance with § 431.978(d)(3). Cases must be selected each month throughout the fiscal year under review. Each month throughout the year and before commencing the eligibility reviews, States must submit to CMS a monthly sample selection list that identifies the cases selected in that month.

(1) *Eligibility universe-active cases*—(i) *Medicaid.* The Medicaid active universe consists of all active Medicaid cases funded through Title XIX for the sample month. Cases for which the Social Security Administration, under a section 1634 agreement with a State, determines Medicaid eligibility for Supplemental Security Income recipients are excluded from the universe. All foster care and adoption assistance cases under Title IV–E of the Act are excluded from the universe in all States. Cases under active fraud investigations shall be excluded from the universe. If the State cannot identify cases under active fraud investigations for exclusion from the universe previous to the sample selection, the State shall drop these cases from review if they are selected in the sample and are later determined to be under active fraud investigation at the time of selection.

(ii) *SCHIP.* The SCHIP active universe consists of all active SCHIP and Medicaid expansion cases that are funded through Title XXI for the sample month. Cases under active fraud investigations shall be excluded from the SCHIP active universe. If the State cannot identify cases under active fraud investigations for exclusion from the universe previous to sample selection, the State shall drop these cases from review if they are selected in the sample and are later determined to be under active fraud investigation at the time of selection.

(2) *Eligibility universe-negative cases.* The Medicaid and SCHIP negative universe consists of all negative cases for the sample month. Cases denied or terminated based upon incomplete applications or cases where beneficiaries who do not complete the redetermination process are excluded. The negative case universe is not stratified.

(3) *Stratifying the universe.* Each month, the State stratifies the Medicaid and SCHIP active case universe into three strata:

(i) Program applications completed by the beneficiaries in which the State took action in the sample month to approve such beneficiaries for Medicaid or SCHIP based on the eligibility determination.

(ii) Redeterminations of eligibility in which the State took action in the sample month to approve the beneficiaries for Medicaid or SCHIP based on information obtained through the completed redetermination.

(iii) All other cases.

(4) *Sample selection.* Each month, an equal number of cases are selected from each stratum for review, unless otherwise provided for in the plan approved by CMS.

§ 431.980 Eligibility review procedures.

(a) *Active case reviews.* The agency must verify eligibility for all selected active cases for Medicaid and SCHIP for the review month for compliance with the State's eligibility criteria.

(b) *Negative case reviews.* The agency must review all selected negative cases for Medicaid and SCHIP for the review month to determine whether the cases were properly denied or terminated.

(c) *Payment review.* The agency must identify all Medicaid and SCHIP payments made for services furnished, either in the first 30 days of eligibility or in the review month for applications under § 431.978(d)(3)(i) and redeterminations under § 431.978(d)(3)(ii) in accordance to State policy or from the sample month for all other cases under § 431.978(d)(3)(iii), to identify erroneous payments resulting from ineligibility for services or for the program.

(d) *Eligibility determination.* The agency must verify program eligibility for all active cases in the sample based on acceptable documentation contained in the case file or obtained independently through the review process.

(1) *Active cases—Medicaid.* The agency must—

(i) Review the cases specified at § 431.978(d)(3)(i) and § 431.978(d)(3)(ii) in accordance with the State's categorical and financial eligibility criteria as of the review month and identify with a specific beneficiary payments made on behalf of such beneficiary for services received in the first 30 days of eligibility or in the review month;

(ii) For cases specified in § 431.978(d)(3)(iii), if the last action was 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility criteria as of the last action and identify with a specific beneficiary payments made on behalf of such beneficiary for services received in the sample month. If the last action occurred more than 12 months prior to the sample month, review in accordance with the State's categorical and financial eligibility

criteria as of the sample month and identify payments made on behalf of the specific beneficiary for services received in the sample month;

(iii) Examine the evidence in the case file that supports categorical and financial eligibility for the category of coverage in which the case is assigned, and independently verify information that is missing, older than 12 months, likely to change, based on self declaration, or otherwise as needed, to verify eligibility; and

(iv) For managed care cases, also verify residency and eligibility for and actual enrollment in the managed care plan during the month under review.

(v) If the case is ineligible under paragraphs (d)(1)(i) through (d)(1)(iv) of this section, review the case to determine whether the case is eligible under any coverage category within the program.

(vi) As a result of paragraphs (d)(1)(i) through (d)(1)(v) of this section—

(A) Cite the case as eligible or ineligible based on the review findings and identify with the particular beneficiary the payments made on behalf of the particular beneficiary for services received in the first 30 days of eligibility, the review month or sample month, as appropriate; or

(B) Cite the case as undetermined if after due diligence an eligibility determination could not be made and identify with the particular beneficiary the payments made on behalf of the particular beneficiary for services received in the first 30 days of eligibility, the review month or sample month, as appropriate.

(2) *Active cases—SCHIP.* In addition to the procedures for active cases as set forth in paragraphs (d)(1)(i) through (d)(1)(v) of this section, once the agency establishes SCHIP eligibility, the agency must verify that the case is not eligible for Medicaid by determining that the child has income above the Medicaid levels in accordance with the requirements in § 457.350 of this chapter. Upon verification, the agency must—

(i) Cite the case as eligible or ineligible based on the review findings and identify with the particular beneficiary the payments made on behalf of the particular beneficiary for services received in the review month or sample month, as appropriate; or

(ii) Cite the case as undetermined if after due diligence an eligibility determination could not be made and identify with the particular beneficiary the payments made on behalf of the particular beneficiary for services received in the review month or sample month, as appropriate.

(e) *Negative cases—Medicaid and SCHIP.* The agency must—

(1) Identify the reason the State agency determined ineligibility;

(2) Examine the evidence in the case file to determine whether the State agency's denial or termination was correct or whether there is any reason the case should have been denied or terminated; and

(i) Record the State agency's finding as correct if the case record review substantiates that the individual was not eligible; or

(ii) Record the case as an error if there is no valid reason for the denial or termination.

§ 431.988 Eligibility case review completion deadlines and submittal of reports.

(a) States must complete and report to CMS the findings, including the error causes if known, for all active case reviews listed on the monthly sample selection lists, including cases dropped from review due to active fraud investigations and cases for which eligibility could not be determined. States must submit a summary report of the active case eligibility and payment review findings to CMS by July 1 following the review year.

(b) The agency must report by July 1 following the review year, information as follows:

(1) Case and payment error rates for active cases.

(2) Case error rates for negative cases.

(3) The number and amounts of undetermined cases in the sample and the total amount of payments from all undetermined cases.

(4) The number of cases dropped from review due to active fraud investigations.

§ 431.992 Corrective action plan.

The State agency must submit to CMS a corrective action plan to reduce improper payments in its Medicaid and SCHIP programs based on its analysis of the error causes in the FFS, managed care, and eligibility components.

§ 431.998 Difference resolution process.

(a) The State may file, in writing, a request with the Federal contractor to resolve differences in the Federal contractor's findings based on medical or data processing reviews on FFS and managed care claims in Medicaid and SCHIP. The State must have a factual basis for filing the difference and must provide the Federal contractor with valid evidence directly related to the error finding to support the State's position that the claim was properly paid.

(b) For a claim in which the State and the Federal contractor cannot resolve the difference in findings, the State may appeal to CMS for final resolution.

(1) The difference in findings must be in the amount of $100 or greater; and

(2) The agency must provide CMS with the facts and valid documentation to support its determination that the claim was correctly paid, as well as the Federal contractor's justification for upholding its initial error finding.

(3) CMS will make the final decision on the claim. There will be no further judicial or administrative review of CMS' decision.

(c) All differences, including those pending in CMS for final decision that are not resolved in time to be included in the error rate calculation, will be considered as errors for meeting the reporting requirements of the IPIA. Upon State request, CMS will calculate a subsequent State-specific error rate that reflects any reversed disposition of the unresolved claims.

§ 431.1002 Recoveries.

(a) *Medicaid.* States must return to CMS the Federal share of overpayments based on medical and processing errors in accordance with section 1903(d)(2) of the Act and related regulations at part 433, subpart F of this chapter. Payments based on erroneous Medicaid eligibility determinations are addressed under section 1903(u) of the Act and related regulations at part 431, subpart P of this chapter.

(b) *SCHIP.* Quarterly Federal payments to the States under Title XXI of the Act must be reduced in accordance with section 2105(e) of the Act and related regulations at part 457, subpart B of this chapter.

SUBCHAPTER D—STATE CHILDREN'S HEALTH INSURANCE PROGRAM

PART 457—ALLOTMENTS AND GRANTS TO STATES

Subpart G—Strategic Planning, Reporting, and Evaluation

■ 4. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

■ 5. Section 457.720 is revised to read as follows:

§ 457.720 State plan requirement: State assurance regarding data collection, records, and reports.

A State plan must include an assurance that the State collects data, maintains records, and furnishes reports to the Secretary, at the times and in the standardized format the Secretary may

require to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under Title XXI of the Act. This includes collection of data and reporting as required under § 431.970 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: April 17, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 25, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–7133 Filed 8–25–06; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Monday,
August 28, 2006

Part IV

The President

Executive Order 13410—Promoting Quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs

Notice of August 24, 2006—Intention To Enter Into a Free Trade Agreement With Colombia

Federal Register
Vol. 71, No. 166
Monday, August 28, 2006

Presidential Documents

Title 3—

The President

Executive Order 13410 of August 22, 2006

Promoting Quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to promote federally led efforts to implement more transparent and high-quality health care, it is hereby ordered as follows:

Section 1. *Purpose.* It is the purpose of this order to ensure that health care programs administered or sponsored by the Federal Government promote quality and efficient delivery of health care through the use of health information technology, transparency regarding health care quality and price, and better incentives for program beneficiaries, enrollees, and providers. It is the further purpose of this order to make relevant information available to these beneficiaries, enrollees, and providers in a readily useable manner and in collaboration with similar initiatives in the private sector and non-Federal public sector. Consistent with the purpose of improving the quality and efficiency of health care, the actions and steps taken by Federal Government agencies should not incur additional costs for the Federal Government.

Sec. 2. *Definitions.* For purposes of this order:

(a) ''Agency'' means an agency of the Federal Government that administers or sponsors a Federal health care program.

(b) ''Federal health care program'' means the Federal Employees Health Benefit Program, the Medicare program, programs operated directly by the Indian Health Service, the TRICARE program for the Department of Defense and other uniformed services, and the health care program operated by the Department of Veterans Affairs. For purposes of this order, ''Federal health care program'' does not include State operated or funded federally subsidized programs such as Medicaid, the State Children's Health Insurance Program, or services provided to Department of Veterans' Affairs beneficiaries under 38 U.S.C. 1703.

(c) ''Interoperability'' means the ability to communicate and exchange data accurately, effectively, securely, and consistently with different information technology systems, software applications, and networks in various settings, and exchange data such that clinical or operational purpose and meaning of the data are preserved and unaltered.

(d) ''Recognized interoperability standards'' means interoperability standards recognized by the Secretary of Health and Human Services (the ''Secretary''), in accordance with guidance developed by the Secretary, as existing on the date of the implementation, acquisition, or upgrade of health information technology systems under subsections (1) or (2) of section 3(a) of this order.

Sec. 3. *Directives for Agencies.* Agencies shall perform the following functions:

(a) Health Information Technology.

(1) For Federal Agencies. As each agency implements, acquires, or upgrades health information technology systems used for the direct exchange of health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet recognized interoperability standards.

(2) For Contracting Purposes. Each agency shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health information technology systems, it shall utilize, where available, health information technology systems and products that meet recognized interoperability standards.

(b) Transparency of Quality Measurements.

(1) In General. Each agency shall implement programs measuring the quality of services supplied by health care providers to the beneficiaries or enrollees of a Federal health care program. Such programs shall be based upon standards established by multi-stakeholder entities identified by the Secretary or by another agency subject to this order. Each agency shall develop its quality measurements in collaboration with similar initiatives in the private and non-Federal public sectors.

(2) Facilitation. An agency satisfies the requirements of this subsection if it participates in the aggregation of claims and other appropriate data for the purposes of quality measurement. Such aggregation shall be based upon standards established by multi-stakeholder entities identified by the Secretary or by another agency subject to this order.

(c) Transparency of Pricing Information. Each agency shall make available (or provide for the availability) to the beneficiaries or enrollees of a Federal health care program (and, at the option of the agency, to the public) the prices that it, its health insurance issuers, or its health insurance plans pay for procedures to providers in the health care program with which the agency, issuer, or plan contracts. Each agency shall also, in collaboration with multi-stakeholder groups such as those described in subsection (b)(1), participate in the development of information regarding the overall costs of services for common episodes of care and the treatment of common chronic diseases.

(d) Promoting Quality and Efficiency of Care. Each agency shall develop and identify, for beneficiaries, enrollees, and providers, approaches that encourage and facilitate the provision and receipt of high-quality and efficient health care. Such approaches may include pay-for-performance models of reimbursement consistent with current law. An agency will satisfy the requirements of this subsection if it makes available to beneficiaries or enrollees consumer-directed health care insurance products.

Sec. 4. *Implementation Date.* Agencies shall comply with the requirements of this order by January 1, 2007.

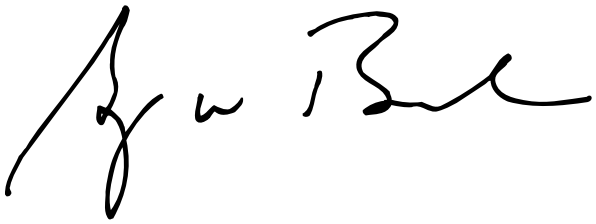
Sec. 5. *Administration and Judicial Review.*

(a) This order does not assume or rely upon additional Federal resources or spending to promote quality and efficient health care. Further, the actions directed by this order shall be carried out subject to the availability of appropriations and to the maximum extent permitted by law.

(b) This order shall be implemented in new contracts or new contract cycles as they may be renewed from time to time. Renegotiation outside of the normal contract cycle processes should be avoided.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United

States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
August 22, 2006.

[FR Doc. 06–7220
Filed 8–25–06; 8:45 am]
Billing code 3195–01–P

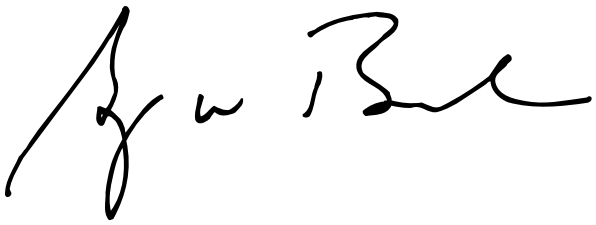
Presidential Documents

Notice of August 24, 2006

Intention To Enter Into a Free Trade Agreement With Colombia

Consistent with section 2105(a)(1)(A) of the Trade Act of 2002, I have notified the Congress of my intention to enter into a free trade agreement with the Republic of Colombia.

Consistent with section 2105(a)(1)(A) of that Act, this notice shall be published in the **Federal Register.**



THE WHITE HOUSE,
August 24, 2006.

[FR Doc. 06–7221
Filed 8–25–06; 8:45 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4646/P.L. 109–273

To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the ''Coach John Wooden Post Office Building''. (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109–274

To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the ''John Paul Hammerschmidt Post Office Building''. (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109–275

To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the ''Captain George A. Wood Post Office Building''. (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109–276

To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the ''Morris W. Milton Post Office''. (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109–277

To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the ''Earl D. Hutto Post Office Building''. (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109–278

To designate the facility of the United States Postal Service located at 1310 Highway 64 NW. in Ramsey, Indiana, as the ''Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office''. (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109–279

To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the ''Sergeant Jacob Dan Dones Post Office''. (Aug. 17, 2006; 120 Stat. 779)

H.R. 4/P.L. 109–280

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63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
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425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
*101	(869–060–00170–1)	21.00	[11]July 1, 2006
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
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1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
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1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
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70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
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3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
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49 Parts:			
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50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

[10] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[11] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.