



Federal Register

5-29-07

Vol. 72 No. 102

Tuesday

May 29, 2007

Pages 29429-29836



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

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

WHEN: Tuesday, June 12, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008



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

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

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

[FDMS Docket NARA-07-0002]

RIN 3095-AB49

NARA Reproduction Fees

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising its regulations relating to reproduction of records and other materials in the custody of the Archivist of the United States. We have determined that it is not appropriate to include in those regulations the reproduction of records of other Federal agencies stored in NARA Federal records centers that are not in our legal custody. This final rule will affect individuals and Federal agencies who request copies of Federal agency records in NARA Federal records centers.

DATES: *Effective date:* May 29, 2007.

FOR FURTHER INFORMATION CONTACT:

Jennifer Davis Heaps at 301-837-1850 or fax at 301-837-0319.

SUPPLEMENTARY INFORMATION: On February 26, 2007, NARA published an interim final rule (72 FR 8279) for a 60-day public comment period removing records center holdings from our reproduction fee schedule. We received one responsive comment on the interim final rule. Other comments received through www.regulations.gov in the interim final rule docket were nonresponsive because they related to the NARA proposed rule published in the **Federal Register** on the same day. We have transferred those comments to the proposed rule docket and will consider them as part of that rulemaking. The individual who commented on the interim final rule expressed concern about the absence of

set fees for copies of agency records from the NARA fee schedule. The commenter asked who would determine the reproduction fees and how would the fees be set. We did not adopt this comment because records stored in NARA's records centers still belong to the agencies that created them. As explained in the interim final rule, NARA provides copies according to the owning agency's instructions; the agency, not NARA, must determine the extent to which reproduction costs will be borne by the agency or the agency's customer.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individual researchers. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1258

Archives and records.

PART 1258—FEES

■ Accordingly, the interim final rule amending 36 CFR part 1258 which was published at 72 FR 8279 on February 26, 2007, is adopted as a final rule without change.

Dated: May 23, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7-10359 Filed 5-25-07; 8:45 am]

BILLING CODE 7515-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2006-0973; FRL-8318-6]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Kansas' State Implementation Plan (SIP)

to include updates to its Prevention of Significant Deterioration (PSD) of Air Quality rule, which incorporate portions of the New Source Review (NSR) program promulgated by the Environmental Protection Agency in December 2002. Specifically, these revisions adopt by reference provisions of 40 CFR 52.21 as in effect July 1, 2004, except for subsections with references to the clean unit exemptions, pollution control projects, and the record keeping provisions for the actual-to-projected-actual emissions applicability test. Kansas did not adopt the latter provisions because of the June 2005 decision by the United States Court of Appeals for the District of Columbia Circuit, which vacated the clean unit exemption and pollution control project provisions and remanded back to EPA the record keeping provisions for the actual-to-projected-actual emissions applicability test. We proposed to approve the revisions on January 31, 2007, and received no comments on the proposal.

DATES: This rule is effective on June 28, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2006-0973. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Gina Grier at (913) 551-7078, or by e-mail at grier.gina@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we", "us", or "our" is used, we mean

EPA. This section provides additional information by addressing the following questions:

What is the Federal Approval Process for a SIP?

What is the background of this action?

What is EPA's final action on Kansas' rule to incorporate NSR reform?

Have the requirements for approval of a SIP revision been met?

What is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What is the Background of This Action?

The 2002 NSR Reform rules made changes to five areas of the NSR programs. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits (PALs) to consider plant-wide emission changes in order to determine whether or not a significant emission increase has been triggered under the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs).

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of these rules, along with portions of EPA's 1980 NSR rules (45 FR 5276, August 7, 1980). On June 24, 2005, the District of Columbia Circuit Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. See *New York v. United States*, 413 F.3d (DC Cir. 2005). In summary, the Court vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from record keeping, e.g., 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules. EPA has not yet responded to the Court's remand regarding record keeping provisions.

The Kansas rule was submitted to EPA on July 25, 2006. The submission included comments on the rules made during the state's adoption process, the state's response to comments and other information necessary to meet EPA's completeness criteria.

This rule adopts by reference sections of 40 CFR 52.21 as in effect July 1, 2004, except for subsections with references to the clean unit exemptions, pollution control projects, and the record keeping provisions for the actual-to-projected-actual emissions applicability test. Kansas did not adopt the latter provisions because of the June 24, 2005, District of Columbia Court of Appeals decision.

What is EPA's Final Action on Kansas' Rule to Incorporate NSR Reform?

In this action, we are approving revisions to Kansas' air quality regulation, K.A.R. 28-19-350, entitled Prevention of Significant Deterioration (PSD) of Air Quality, into the SIP. The final action described in this section is identical to the action we proposed in the January 31, 2007, notice of proposed rulemaking (72 FR 4472). The rationale for this action is described in more detail in the proposal. EPA received no comments on the proposal. This SIP amendment incorporates by reference the Federal PSD program in 40 CFR 52.21, including the 2002 NSR Reform rules, except for subsections with references to the clean unit exemptions, pollution control projects, and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The

submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the proposed rule, EPA believes that the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final 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 final action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final 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 approves 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 final 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This final 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 approves a

state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. 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 CAA. 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 final 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.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 30, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 14, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart R—Kansas

■ 2. In § 52.870(c) the table is amended by revising an entry for K.A.R. 28–19–350 to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
K.A.R. 28–19–350 ...	Prevention of Significant Deterioration (PSD) of Air Quality.	06/30/06	05/29/07 [insert FR page number where the document begins].	Kansas did not adopt subsections with references to the clean unit exemptions, pollution control projects, and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test because of the June 24, 2005, decision of the United States Court of Appeals for the District of Columbia Circuit relating to the Clean Unit Exemption, Pollution Control Projects and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test.
* * *	* * *	* * *	* * *	* * *

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[FR Doc. E7–10235 Filed 5–25–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Parts 913 and 970

RIN 1991–AB62

Acquisition Regulation: Technical Revisions or Amendments to Update Clauses

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to remove clauses concerning simplified acquisition procedures and facilities management contracting and to add a clause addressing work authorization. This rule also revises associated regulatory coverage, as necessary.

DATES: *Effective Date:* June 28, 2007.

FOR FURTHER INFORMATION CONTACT: Sandra Cover at (202) 287–1344 or Sandra.Cover@hq.doe.gov

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Comments, Responses, and Discussion
- III. Section-by-Section Analysis
- IV. Procedural Requirements
 - A. Review Under Executive Order 12866
 - B. Review Under Executive Order 12988
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 - F. Review Under Executive Order 13132
 - G. Review Under the Unfunded Mandates Reform Act of 1995

- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 13211
- J. Review Under the Treasury and General Government Appropriations Act, 2001
- K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
- L. Approval by the Office of the Secretary

I. Background.

On July 29, 2005, DOE published in the **Federal Register** (70 FR 43832) a notice of proposed rulemaking to modify clauses contained in the Department of Energy Acquisition Regulation (DEAR) concerning debarment; fast payment procedures; applicable laws, regulations, and directives; work authorization; and integration of environment, safety, and health into work planning and execution. In addition, DOE proposed to delete a clause on facilities management and the corresponding instruction.

DOE received comments from interested parties and based upon our review and consideration DOE issues a final rule that: (1) Deletes DEAR 913.4, Fast Payment Procedure; (2) adds DEAR 970.5211–1, Work authorization, with prescriptive language at 970.1170–1 and a contract clause instruction at DEAR 970.1170–2; and (3) deletes DEAR 970.5237–2, Facilities Management System, and the corresponding instruction at DEAR 970.37, Facilities management contracting.

The proposed changes to DEAR 909.406, Debarment; DEAR 970.5204–2, Laws, Regulations, and DOE Directives', and DEAR 970.5223–1, Integration of Environment, Safety, and Health into Work Planning and Execution are withdrawn after reviewing comments and further consideration.

II. Comments, Responses and Discussion

DOE received three comments concerning the proposal to amend DEAR 909.406–2, the Debarment clause. The proposed amendment would have permitted the debarring officials to debar a contractor if it was established by a preponderance of evidence that the contractor falsely self-certified itself as falling into one of the business categories aided by the Small Business Administration Act. The commenters argued that the proposed rule is not a technical amendment and could harm the small business community. Commenters further argued that Congress vested Small Business Administration (SBA) with exclusive jurisdiction to determine small business size standards and eligibility. Current SBA regulations contain size rules, which differ depending on whether a

company is subject to employee-based size standards or revenue-based size standards. Because small businesses self-certify their size, SBA affiliation determinations are made after the fact, and there is a risk of erroneous self-certification. Therefore, it was argued, the proposed rule could result in debarment of small businesses that unintentionally misrepresented their size status.

Response: After reviewing and considering the comments, DOE has concluded this change is unnecessary and is withdrawing the proposed amendment to DEAR 909.406–2. First, there is sufficient coverage of this issue in the Federal Acquisition Regulation (FAR). In addition, the Small Business Act vests exclusive jurisdiction in SBA for making determinations of small business status, while 15 U.S.C. 645 grants SBA the authority to debar or suspend contractors who misrepresent their status as small business to obtain government contracts. This statutory provision provides SBA with authority to initiate corrective action in cases of suspected misrepresentation of small business size status if the solicitation and award reference Section 8(d) of the Small Business Act.

DOE has further considered the proposed revisions to clauses DEAR 970.5204–2, Laws, Regulations, and DOE Directives and DEAR 970.5223–1, Integration of Environment, Safety and Health into Work Planning and Execution, and decided not to promulgate the proposed revisions. After, further considering the proposed revisions, DOE has decided to retain the current clauses.

III. Section-by-Section Analysis

DOE is amending the DEAR as follows:

1. DEAR subpart 913.4, Fast Payment Procedure, is deleted in its entirety. DEAR 913.402 currently prohibits the use of fast payment procedures. Upon review of DOE's policy and the FAR, DOE has determined that FAR coverage in subpart 13.4, Fast Payment Procedure, is adequate to protect the DOE interests. DOE will now use fast payment procedures under FAR 13.4.

2. A new section 970.1170, Work authorization, is added. It consists of DEAR 970.1170–1, Policy, and 970.1170–2, Contract provision.

3. DEAR 970.5211–1, Work authorization, is added. This clause incorporates requirements that are presently located in the contractor requirements document attached to Directive DOE O 412.1A, Work Authorization System. That Order establishes an assignment and control

process for budget of estimated costs, description of work, and schedule of performance, and for individual work activities performed by designated contractors within the contract scope of work. The DEAR clause eliminates the need for a contractor requirements document.

4. DEAR 970.5237–2, Facilities management, and the corresponding instruction at DEAR 970.37, Facilities Management Contracting, are deleted. They currently provide guidance concerning site development planning, design criteria, energy management, and subcontract requirements. DOE has decided that other DOE directives, such as DOE O 430.1B, Real Property Asset Management, already provide sufficient guidance.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rulemaking is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires

Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. While rule requirements may flow down to subcontractors in certain circumstances, the costs of compliance are not estimated to be large and, in any event, would be reimbursable expenses under the contract or subcontract. On the basis of the foregoing, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This rulemaking contains information collection requirements associated with the contract clause Work authorization at 970.5211-1. The information collection requirements were forwarded to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). OMB assigned this information collection OMB Control No. 1910-5132.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104(4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking would only affect private sector entities, and the impact is less than \$100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to OIRA, of the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act., 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

L. Approval by the Office of the Secretary of Energy

Issuance of this rule has been approved by the Office of the Secretary.

List of Subjects in 48 CFR Parts 913 and 970.

Government procurement.

Issued in Washington, DC on May 21, 2007.

Edward R. Simpson,
Director, Office of Procurement and Assistance Management, Office of Management.

David O. Boyd,
Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for part 913 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418(b); 50 U.S.C. 2401 *et seq.*

Subpart 913.4—[Removed and Reserved]

■ 2. Subpart 913.4 is removed and reserved.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 3. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

Subpart 970.11—Describing Agency Needs

■ 4. Sections 970.1170, 970.1170–1, and 970.1170–2 are added to read as follows:

970.1170 Work authorization.

970.1170–1 Policy.

Each contract for the management and operation of a DOE site or facility, and other contracts designated by the DOE or NNSA Procurement Executive, must

contain a scope of work section that describes, in general terms, work planned and/or required to be performed. Work to be performed under the contract shall be assigned through the use of a work authorization to control individual work activities performed within the scope of work. Work authorizations must be issued prior to the commencement of the work and incurrence of any costs.

970.1170–2 Contract provision.

The Contracting Officer shall insert the clause at 48 CFR 970.5211–1, Work authorization, in each solicitation and contract for the management and operation of a DOE site or facility and in other contracts designated by the DOE or NNSA Procurement Executive.

Subpart 970.37—Facilities Management Contracting

970.3770–2 [Removed and Reserved]

■ 5. Section 970.3770–2 is removed and reserved.

Subpart 970.52—Solicitation Provisions and Contract Clauses For Management and Operating Contracts

■ 6. Section 970.5211–1 is added to read as follows:

970.5211–1 Work authorization.

As prescribed in 970.1170–2, insert the following clause:

Work Authorization (MAY 2007)

(a) *Work authorization proposal.* Prior to the start of each fiscal year, the Contracting Officer or designee shall provide the contractor with program execution guidance in sufficient detail to enable the contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.

(b) *Cost estimates.* The contractor and the Contracting Officer shall establish a budget of estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost, the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work

authorization or direction concerning continuation of activities of the contract.

(c) *Performance.* The contractor shall perform work as specified in the work authorization, consistent with the terms and conditions of this contract.

(d) *Modification.* The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(e) *Increase in estimated cost.* The contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The contractor shall submit a proposal for modification in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(f) *Expenditure of funds and incurrence of costs.* The expenditure of monies by the contractor in the performance of all authorized work shall be governed by the "Obligation of Funds" or equivalent clause of the contract.

(g) *Responsibility to achieve environment, safety, health, and security compliance.* Notwithstanding other provisions of the contract, the contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause. (End of clause)

970.5237–2 [Removed and Reserved]

■ 7. Section 970.5237–2 is removed and reserved.

[FR Doc. E7–10247 Filed 5–25–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 579****[Docket No. NHTSA–2006–25653; Notice 2]****RIN 2127–AJ94****Reporting of Early Warning Information****AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.**ACTION:** Final rule.

SUMMARY: This rule amends certain provisions of the early warning reporting rule published pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. The amendments modify and clarify some of the manufacturers' reporting requirements under the rule. The rule identifies a subclass of field reports referred to as product evaluation reports and eliminates the requirement that manufacturers submit copies of them to the agency, revises the definition of fire, and limits the time period for required updates to a few data elements in reports of deaths and injuries.

DATES: *Effective Date:* The effective date of this final rule is June 28, 2007, except for the amended definition of fire in 49 CFR 579.4(c). The effective date of the amended definition of fire in 49 CFR 579.4(c) is for the reporting period beginning on January 1, 2008.

Petitions for Reconsideration: Petitions for reconsideration of the final rule must be received not later than July 13, 2007.

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 all issues except legal issues: Ms. Tina Morgan, Office of Defects Investigation, NHTSA (phone: 202–366–0699) (Fax: 202–366–7882).

For legal issues: Mr. Andrew J. DiMarsico, Office of the Chief Counsel (Telephone: 202–366–5263) (Fax: 202–366–3820).

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I. Summary of the Final Rule

This rule completes the first phase of NHTSA's review and update of the early warning reporting (EWR) rule, as required under 49 U.S.C. 30166(m)(5). As explained below, this rule amends certain EWR reporting requirements. Some changes enhance the early warning program by eliminating provisions for submissions of information that have not been valuable to NHTSA in identifying possible defect trends in motor vehicles and motor vehicle equipment. Other changes provide for more focused reporting. Overall, this rule reduces burdens on the agency to review EWR information that has not advanced our mission in identifying potential defects and facilitates our focus on more probative information. It will also reduce the reporting burden on manufacturers. It does not change the basic structure of the early warning reporting program.

In general, the EWR rule requires certain vehicle and equipment manufacturers to submit to NHTSA numerical tallies on property damage claims, consumer complaints, warranty claims and field reports, which are collectively known as EWR aggregate data, and copies of certain field reports. 49 CFR part 579, subpart C. As originally promulgated, the EWR rule excluded a subset of reports known as dealer field reports from the requirement to submit copies of field reports. Today's rule denominates another subset of field reports known as "product evaluation reports" and eliminates the requirement that manufacturers submit copies of them to NHTSA. In general, product evaluation reports are evaluations by manufacturers' employees who as part of a program fill out evaluations of the vehicles provided to them for personal use.

Second, this rule amends the definition of fire that applies across the EWR program. Manufacturers are required to submit aggregate data subcategorized by specified systems and

components and to report whether it involved a fire. They are also required to provide field reports involving fires. The regulatory definition of fire includes fires and precursors of fires and includes illustrative examples of phenomena within the latter category. The final rule amends the definition of a fire to eliminate two illustrative examples of precursors of fire—the terms "sparks" and "smoldering"—and adds one term, "melt", to the definition.

Last, the EWR rule requires manufacturers to submit reports of incidents involving death or injury, and to update these reports to include missing vehicle identification numbers (VINs), tire identification numbers (TINs) and codes on systems or components that allegedly contributed to the incident and whether the incident involved a fire or rollover, if this information is later identified by the manufacturer. This final rule temporally limits the requirement to submit updates of the missing VIN/TIN or components on incidents of death or injury to a period of no more than one year after NHTSA receives the initial report.

II. Background*A. The TREAD Act and Review of the Early Warning Reporting Program*

In November 2000, Congress enacted and the President signed the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Public Law 106–414, which was, in part, a response to the controversy surrounding the recall of certain tires that had been involved in numerous fatal crashes. Up until that time, in its efforts to identify safety-related defects in motor vehicles and equipment, NHTSA relied primarily on its analysis of complaints from consumers and technical service bulletins from manufacturers. Congress concluded that NHTSA did not have access to data that may have provided an earlier warning of the safety defects that existed in the tires that were eventually recalled. Accordingly, the TREAD Act included a requirement that NHTSA prescribe rules establishing early warning reporting requirements.

In response to the TREAD Act requirements, NHTSA issued rules (49 CFR part 579; 67 FR 45822; 67 FR 63295) that, in addition to the information motor vehicle and equipment manufacturers were already required to provide, required that they provide certain additional information on foreign recalls and early warning indicators. The rules require:

- Monthly reporting of manufacturer communications (e.g., notices to distributors or vehicle owners, customer satisfaction campaign letters, etc.) concerning defective equipment or repair or replacement of equipment;
- Reporting (within five days of a determination to take such an action) of information concerning foreign safety recalls and other safety campaigns in foreign countries; and
- Quarterly reporting of early warning information: Production information; information on incidents involving death or injury; aggregate data on property damage claims, consumer complaints, warranty claims, and field reports; and copies of field reports (other than dealer reports) involving specified vehicle components, a fire, or a rollover.

We use the term “Early Warning Reporting” (EWR) here to apply to the requirements in the third category above, which are found at 49 CFR part 579, subpart C. As described more fully below, the requirements vary somewhat depending on the nature of the reporting entity (motor vehicle manufacturers, child restraint system manufacturers, tire manufacturers, and other equipment manufacturers) and the annual production of the entity.

EWR reporting was phased in. The first quarterly aggregate EWR reports were submitted on about December 1, 2003. However, actual copies of field reports were first submitted on about July 1, 2004. 68 FR 35145, 35148 (June 11, 2003). Accordingly, NHTSA has three years of experience using the EWR information.

The TREAD Act requires NHTSA periodically to review the EWR rule. 49 U.S.C. 30166(m)(5). In previous EWR rulemakings, the agency indicated that we would begin a review of the EWR rule after two full years of reporting experience.

NHTSA is evaluating the EWR rule in two phases. The first phase covers the definitional issues that are addressed in this document. We were able to evaluate these issues within a short period of time based on available information and based on the comments we received in response to the September 1, 2006 Notice of Proposed Rulemaking (NPRM), 71 FR 52040.

The second phase of our evaluation will address issues that require more analysis than those addressed in the first phase. For example, in the second phase we expect to evaluate whether there is a need to adjust any of the reporting thresholds and whether any categories of aggregate data should either be enhanced or eliminated. With regard to the specific categories of

aggregate data (e.g., data concerning light vehicles), we expect to address whether the information being provided has had or may reasonably have value in the future in terms of helping identify defects and, if not, how the requirement might be adjusted to provide such value. These tasks will require considerable time, but we want to ensure that any significant changes in EWR requirements, or decisions not to make such changes, are based on sound analysis. We anticipate that the agency’s internal evaluation of phase two issues will be completed in the latter part of 2007 and that a **Federal Register** notice (if regulatory changes are contemplated) or a report containing the agency’s conclusions will follow.

B. The Early Warning Reporting Regulation

On July 10, 2002, NHTSA published a rule implementing the early warning reporting provisions of the TREAD Act, 49 U.S.C. 30166(m). 67 FR 45822. The rule requires certain motor vehicle manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA’s Office of Defects Investigation (ODI) that could be used to identify potential safety-related defects. Thereafter, in response to petitions for reconsideration, NHTSA amended the EWR rule.

The EWR regulation divides manufacturers of motor vehicles and motor vehicle equipment into two groups with different reporting responsibilities for reporting information. The first group consists of (a) larger vehicle manufacturers (manufacturers of 500 or more vehicles annually) that produce light vehicles, medium-heavy vehicles and buses, trailers and/or motorcycles; (b) tire manufacturers that produce over a certain number per tire line; and (c) all manufacturers of child restraints. The first group must provide comprehensive reports. 49 CFR 579.21–26. The second group consists of smaller vehicle manufacturers (e.g., manufacturers of fewer than 500 vehicles annually) and all motor vehicle equipment manufacturers other than those in the first group. The second group has limited reporting responsibility. 49 CFR 579.27.

On a quarterly basis, manufacturers in the first group must provide comprehensive reports for each make and model for the calendar year of the report and nine previous model years. Tire and child restraint manufacturers must provide comprehensive reports for the calendar year of the report and four previous model years. Each report is

subdivided so that the information on each make and model is provided by specified vehicle systems and components. The vehicle systems or components on which manufacturers provide information vary depending upon the type of vehicle or equipment manufactured.¹

In general (not all of these requirements apply to manufacturers of child restraints or tires), manufacturers that provide comprehensive reports must provide information relating to:

- Production (the cumulative total of vehicles or items of equipment manufactured in the year)
- Incidents involving death or injury based on claims and notices received by the manufacturer
- Claims relating to property damage received by the manufacturer
- Consumer complaints (a communication by a consumer to the manufacturer that expresses dissatisfaction with the manufacturer’s product or performance of its product or an alleged defect)
- Warranty claims paid by the manufacturer (in the tire industry these are warranty adjustment claims)
- Field reports (a communication by an employee or representative of the manufacturer concerning the failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment).

Most of the provisions summarized above (i.e., property damage claims, consumer complaints, warranty claims and field reports) require manufacturers to submit information in the form of

¹ For instance, light vehicle manufacturers must provide reports on twenty (20) vehicle components or systems: steering, suspension, service brake, parking brake, engine and engine cooling system, fuel system, power train, electrical system, exterior lighting, visibility, air bags, seat belts, structure, latch, vehicle speed control, tires, wheels, seats, fire and rollover.

In addition to the systems and components reported by light vehicle manufacturers, medium-heavy vehicle and bus manufacturers must report on the following systems or components: service brake system air, fuel system diesel, fuel system other and trailer hitch.

Motorcycle manufacturers report on thirteen (13) systems or components: steering, suspension, service brake system, engine and engine cooling system, fuel system, power train, electrical, exterior lighting, structure, vehicle speed control, tires, wheels and fire.

Trailer manufacturers report on twelve (12) systems or components: suspension, service brake system-hydraulic, service brake system-air, parking brake, electrical system, exterior lighting, structure, latch, tires, wheels, trailer hitch and fire.

Child restraint and tire manufacturers report on fewer systems or components for the calendar year of the report and four previous model years. Child restraint manufacturers must report on four (4) systems or components: buckle and restraint harness, seat shell, handle and base. Tire manufacturers must report on four (4) systems or components: tread, sidewall, bead and other.

numerical tallies, by specified system and component. These data are referred to as aggregate data. Reports on deaths or injuries contain specified data elements. In addition, certain manufacturers are required to submit copies of field reports, except field reports by dealers.

In contrast to the comprehensive reports provided by manufacturers in the first group, the second group of manufacturers reports only incidents relating to death and any injuries associated with the reported death incident.

All of the EWR information NHTSA receives is stored in a database called ARTEMIS (which stands for Advanced Retrieval, Tire, Equipment, and Motor Vehicle Information System), which also contains additional information (e.g., recall details and complaints filed directly by consumers) related to defects and investigations.

C. The Notice of Proposed Rulemaking

The September 1, 2006 NPRM proposed to create an exception to the requirement to submit copies of field reports that must be sent to NHTSA. We proposed to eliminate the requirement that manufacturers would submit a class of field reports denominated as “product evaluation reports” to NHTSA. We also proposed a definition for product evaluation type field reports. We did not propose to eliminate the requirement that manufacturers covered by the rule include in their quarterly submissions on field reports the numbers of product evaluation field reports received.

We also proposed to amend the regulatory definition of “fire.” The regulatory definition of fire includes fires and precursors of fires and illustrative examples of such precursors. We proposed to change the definition of a fire to eliminate two illustrative examples of precursors of fire—the terms “sparks” and “smoldering”—and add one term, “melt”, to the definition.

In addition, our NPRM included a proposal to amend the scope of a category of components addressed in reports the medium-heavy and bus vehicle category. We proposed to change the category “Fuel System Other” to “Fuel System Other/Unknown”. We anticipated that this expanded category would include vehicles for which the type of fuel system in the vehicle is not known.

Further, for reports on incidents involving a death or an injury, the NPRM proposed to limit the time period in which manufacturers are required to update missing vehicle identification numbers (VINs), tire identification

numbers (TINs) and codes indicating systems or components that allegedly contributed to an incident and whether the incident involved a fire or rollover, if this information is later identified by the manufacturer. We proposed to limit the requirement to submit updates to a period of no more than one year after NHTSA receives the initial report.

Finally, in the preamble to the NPRM, we noted that the scope of this rulemaking was limited to those issues proposed by the NPRM and any logical outgrowths of those proposals. We specifically noted that we planned to evaluate the reporting threshold issue, and other issues, in the second phase of our evaluation.

D. Overview of Public Comments to the NPRM

In response to the NPRM, we received comments from several sources. In general, the industry commenters supported the minor adjustments to the definitions in the proposal, with some exceptions. Motor vehicle manufacturers and associated trade organizations that commented were the Alliance of Automobile Manufacturers (Alliance), Association of International Automobile Manufacturers (AIAM), Harley-Davidson Motor Company (Harley-Davidson), Motorcycle Industry Council (MIC), Motor & Equipment Manufacturers Association (MEMA), National Truck Equipment Association (NTEA)², Rubber Manufacturers Association (RMA), and Truck Manufacturers Association (TMA).

We also received comments from consultants Safety Research & Strategies, Inc. (SRS) and Quality Control Systems Corporation (QCS). While SRS and QCS did not oppose the proposed amendments in the NPRM, they commented that NHTSA should delay any changes to the EWR rule until EWR data is available for review by the public.

III. Discussion

A. Field Reports

The EWR regulation requires manufacturers of light vehicles, medium-heavy vehicles and buses, motorcycles, trailers and child restraint systems to submit numerical tallies of field reports and submit copies of certain field reports. 49 CFR 579.21(d), 579.22(d), 579.23(d), 579.24(d) and

579.25(d).³ As originally promulgated, the EWR rule required more extensive reporting of field reports in aggregate data than submission of copies of field reports to NHTSA. In particular, within the aggregate data on field reports, manufacturers are required to report the number of dealer field reports received, but they are not required to submit copies of dealer field reports. *Id.* The EWR definition of dealer field report is a field report from a dealer or authorized service facility of a manufacturer of motor vehicles or motor vehicle equipment. 49 CFR 579.4. Manufacturers are not required to submit copies of dealer field reports because they are not as technically rich as field reports from a manufacturer's representative. 67 FR 45822, 45855.

The NPRM identified another subcategory of field reports referred to as “product evaluations” that the agency proposed to treat in the same manner as dealer field reports. We proposed to define product evaluation report as follows:

Product evaluation report means a field report prepared by, and containing the observations or comments of, a manufacturer's employee who is required to submit the report concerning the operation or performance of a vehicle or child restraint system as a condition of the employee's personal use of that vehicle or child restraint system, but who has no responsibility with respect to engineering or technical analysis of the subjects mentioned in the report.

Under the proposed approach, manufacturers would report the numbers of product evaluation reports in the submission of aggregate data on field reports, but would not submit copies of them. This would ensure that any significant trends in product evaluation reports would be reflected in the aggregate data, but would eliminate time-consuming review of these reports by NHTSA's staff. Our proposal to eliminate product evaluations was based in large part on our experience with product evaluation reports. As explained in the NPRM, a substantial majority of the product evaluations do

³ The EWR field report definition states: *Field report* means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to the manufacturer regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer and transported beyond the direct control of the manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include any document covered by the attorney-client privilege or the work product exclusion. 49 CFR 579.4(c).

² NTEA commented that it was concerned about the burden upon its members who are final stage manufacturers and produce more 500 or more vehicles per year. As we noted in the NPRM, the EWR reporting threshold is outside the scope of this rulemaking. NTEA recognized this in its comments. Accordingly, we do not address the reporting threshold in this rulemaking.

not contain sufficient information to identify a potential safety-related defect. In the rare instance where a product evaluation report has concerned a potential safety issue, NHTSA has had other available data related to the concern that in our view would have been sufficient for opening an investigation without the product evaluation reports. Thus, while these reports are valuable to manufacturers as part of their efforts to develop products that are well received by consumers they have not proven to be valuable to NHTSA in identifying potential defect trends. Moreover, the number of product evaluations submitted by manufacturers is substantial, as is the associated burden on the agency in reviewing them. About 50 to 60 percent of the approximately 40,000 field reports submitted each quarter fall within the product evaluation classification.

Comments were submitted by the AIAM, Alliance, Harley-Davidson, MIC, QCS, SRS and TMA. AIAM, Harley-Davidson, MIC and TMA supported the proposed change to the reporting requirement and the definition of product evaluation report as written. The Alliance agreed with eliminating the requirement that manufacturers submit copies of product evaluation reports to the agency, but proposed an alternate definition for product evaluation report. QCS and SRS noted the proposed changes the EWR rule regarding product evaluations and recommended that the agency delay any changes until the public had an opportunity to review the EWR data.

The Alliance focused in part on the clause "a manufacturer's employee who is required to submit the report * * * as a condition of the employee's personal use." The Alliance stated that not all product evaluation reports are required by manufacturers (some are merely requested rather than formally required) and that the exclusion of them from the general requirement that copies of field reports be submitted turns on the lack of technical content in the reports, rather than the existence of a manufacturer's requirement that employees submit them to the manufacturer. In addition, the Alliance addressed the clause "has no responsibility with respect to engineering or technical analysis of the subjects mentioned in the report." This language, according to the Alliance, would require manufacturers to determine whether the employee who submitted the report had duties that "coincidentally related" to one of the subject areas addressed in the report before determining whether to submit

the product evaluation report to NHTSA. Such language, therefore, would increase the manufacturers' reporting burden. To address its concerns, the Alliance suggested that the definition of product evaluation report be changed to read:

Product evaluation report means a field report prepared by, and containing the observations or comments of, a manufacturer's employee who submitted the report concerning the operation or performance of a vehicle or child restraint system as part of the employee's personal use of the vehicle or child restraint system under a manufacturer's program authorizing such use.

We agree with the Alliance's view that it is the limited technical content in product evaluations, rather than an internal corporate reporting requirement, that warrants their exclusion from the requirement that manufacturers submit copies of them to the agency. In other words, the fact that a report was merely requested from the employee but not required should not determine whether it is a product evaluation report. Thus, we are eliminating the phrases "is required to submit" and "as a condition of" from the definition we proposed and replacing them with, respectively, the word "submitted" and the phrase "as a part of".

While we agree in part with some of the Alliance's concerns regarding burdens associated with the phrase the employee "has no responsibility with respect to engineering or technical analysis of the subjects mentioned in the report," we do not agree that the solution is simply to eliminate it. We remain concerned that, were we to simply drop that language, the exclusion could be misapplied such that the manufacturer would not submit reports by employees who have actually been assigned to perform technical or engineering evaluation of a known or suspected problem with the vehicle. Such reports have technical merit and should not be excluded from EWR reporting merely because such employees submit such reports while the vehicle is available for the employee's personal use.

To preclude this, we believe that the revised definition should make clear that it does not cover reports by employees who have been granted personal use of a vehicle or child restraint system for the specific purpose of performing technical or engineering evaluation of a known or suspected problem with vehicle or child restraint system (CRS), even if such employees use the vehicle or CRS as part of a broader manufacturer program

authorizing personal use. The burden that would be imposed by the language contained in the proposed rule, as the Alliance persuasively explained in its comments, would be to try to determine "whether a particular evaluation report regarding a particular vehicle was submitted by an employee whose duties might be coincidentally related to one of the subject areas addressed in the report." The proposed language would have required the manufacturer to look for matches between the range of an employee's duties and the range of issues covered in a product evaluation report.

At the same time, the Alliance recognizes that NHTSA has a legitimate need for "a technical or analytical report undertaken in response to a consumer complaint or some other indication of a potential problem." What NHTSA is trying to ensure is that it does not lose access to such reports (which are likely to have technical value) that might be prepared in connection with the employee's personal use of the vehicle or CRS.

Accordingly, we have amended the definition to make this clear. Manufacturers could objectively apply this with a very limited additional burden, if any. While the proposed definition would have required the manufacturer to look for any commonalities between an employee's full range of duties and the issues covered in the evaluation report, the final rule definition does not impose that burden. Manufacturers certainly know what vehicles or equipment have been made available for personal use and whether the employee who has been granted that personal use has also been assigned the duty to provide a technical or engineering assessment of a known or suspected problem with that vehicle or equipment. This could occur either as part of a broad manufacturer program permitting personal use or a separate program in which technical personnel are granted personal use to assist his or her analysis of a particular problem. If a manufacturer never authorizes personal use of a vehicle or child restraint system by an employee to facilitate an employee's technical analysis of a previously known or suspected problem with that particular vehicle or system, this definition will present no burden at all. Similarly, if a manufacturer has completely separate programs involving personal use for product evaluation purposes and personal use to facilitate technical analysis of a particular issue, the manufacturer's existing distinctions between these programs mirror the new definition. If, however, a manufacturer

does permit personal use of a vehicle or child restraint system specifically to facilitate such technical analysis but such use is considered part of a broad personal use program, the reports concerning such use have a high likelihood of having technical merit and should not be excluded from submission to NHTSA as product evaluation reports.

Therefore, we are adopting the following definition:

Product evaluation report means a field report prepared by, and containing the observations or comments of, a manufacturer's employee who submitted the report concerning the operation or performance of a vehicle or child restraint system as part of the employee's personal use of the vehicle or child restraint system under a manufacturer's program authorizing such use, but does not include a report by an employee who has been granted personal use of a vehicle or child restraint system for the specific purpose of facilitating the employee's technical or engineering evaluation of a known or suspected problem with that vehicle or child restraint system.

With respect to SRS's and QCS's view that NHTSA should delay any changes to the EWR rule until EWR data is available for public review, we do not agree. The agency has an obligation to periodically review the EWR rule. 49 U.S.C. 30166(m)(5). Nothing in the statute states that this duty is contingent on EWR data becoming public. If the agency were to adopt a policy that delayed rulemakings until confidential data were available to the public, if ever, the agency would not be able to meet its statutory obligations. The public would be deprived of the benefits of our rules. Furthermore, there is no basis for assuming that the EWR data will become publicly available due to the availability of confidential treatment for confidential information and ongoing litigation concerning the EWR data.⁴ SRS and QCS confined their comments to the issue of public availability of EWR data, an issue not addressed in this rulemaking. They did not provide comments on the substantive issues dealt with here.

⁴ The EWR data is the subject of current litigation on the issue whether the provision in the TREAD Act relating to disclosure of early warning data, 49 U.S.C. 30166(m)(4)(C), is an exemption (b)(3) statute under the FOIA. 5 U.S.C. 552(b)(3). The question whether 49 U.S.C. 30166(m)(4)(C) precludes the release of early warning data is before the United States Court of Appeals for the District of Columbia Circuit. *Public Citizen, Inc. v. Peters*, No. 06-5304. In light of challenges, the agency has issued a stay on the release of EWR data. In addition, following a remand by the district court in the *Public Citizen* case, NHTSA has proposed amendments of its confidential business rule to include specified EWR data. See 71 FR 63738 (October 31, 2006).

B. Definition of Fire

The EWR regulation requires manufacturers of light vehicles, medium-heavy vehicles and buses, motorcycles and trailers to include in EWR reports incidents involving fires, as well as the underlying component or system where it originated if included in specified reporting elements. 49 CFR 579.21–24. The EWR regulation defines fire as:

Combustion or burning of material in or from a vehicle as evidence [sic] by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke, sparks, or smoldering, but does not include events and phenomena associated with a normally functioning vehicle, such as combustion of fuel within an engine or exhaust from an engine.

49 CFR 579.4(c). The definition was cast broadly to capture not only incidents involving actual fires, but also incidents that are indicative of a fire or potential fire. 67 FR 45822, 45861 (July 10, 2002). In a response to a petition for reconsideration of the EWR regulation, NHTSA added the last clause to exclude events or phenomena associated with a normally functioning vehicle. 68 FR 35132, 35134 (June 11, 2003).

The Alliance and TMA initially requested that we amend the fire definition because, in their view, it is inappropriately broad.⁵ Based upon its members' experience during the past few years, the Alliance contended that due to the scope of the definition, the numbers of fires reported in the aggregate property damage, consumer complaint, warranty, and field report data are artificially high. According to the Alliance, this has created an inaccurate picture of fire-related incidents and obscures relevant data.

Following our consideration of this request, in the NPRM, we proposed to amend the fire definition to read:

Fire means combustion or burning of material in or from a vehicle as evidenced by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke and melting, but does not include events and phenomena associated with a normally functioning vehicle such as combustion of fuel within an engine or exhaust from an engine.

We based this proposed revised definition of fire on a review of a

⁵ The Alliance suggested that NHTSA amend the fire definition to read: "Fire means combustion or burning of material in or from a vehicle as evidenced by flame. The term also includes thermal events that are precursors to fire and fire related phenomena that precursors of fires, such as smoldering but does not include events and phenomena associated with a normally function [sic] vehicle such as combustion of fuel within an engine or exhaust from an engine."

substantial number of field reports in which we looked at what key words were used, and we assessed whether the field reports presented one or more potential fire-related issues of concern, such as a precursor to a fire.⁶ Our review led us to propose to eliminate the terms "sparks" and "smoldering" and add the term "melt" to the fire definition because the preceding terms were used less often to describe a fire or precursor to fire, while the latter was used more often to describe a fire or precursor to fire.⁷

Harley-Davidson and the MIC agreed with the proposed definition. However, the Alliance, TMA and MEMA objected to the proposed definition. They commented that the proposed definition of fire would not alleviate the burden associated with the current fire definition. In their view, the terms used to describe precursors to fire in the proposed definition will increase the number of reports that manufacturers will have to review, potentially increasing the number of irrelevant reports to NHTSA. In addition, the Alliance commented that the changed definition may require some manufacturers to reprogram their text mining applications used in preparing EWR reports, thus increasing costs. However, none of the commenters that objected to the proposed definition offered an alternative definition, other than the one initially recommended by the Alliance, which we addressed in the NPRM. The Alliance, TMA and MEMA requested that NHTSA not adopt the proposed definition at this time.

We have decided to adopt the amended fire definition as proposed. Our review of fire-related field reports

⁶ We reviewed approximately 750 field reports under the fire category. Five words or parts thereof were used most often in these reports to describe a fire event or an incident that could be a precursor to a fire in the fire-related field report. These were: burn, flame, fire, melt and smoke. The definition of fire in the current regulation includes two terms describing precursors to fires that were seldom used when reporting fire-related events in field reports: "sparks" and "smoldering". Moreover, the word spark could relate to legitimate functions such as sparking of spark plugs, which would present a screening burden to manufacturers. Another term, "melt", is frequently used by manufacturers in descriptions of fire events or precursor to a fire. We also found that the terms "flame" and "burn" are used frequently, but it is unnecessary to add them to the second sentence since those terms are included in the first sentence of the definition.

⁷ We note that in the preamble to the NPRM we proposed to add the term "melt" to the EWR fire definition, yet the proposed regulatory text included the term "melting". Our intent was to propose the addition of the term "melt", not the term "melting". While we believe this to be a distinction without substance because most text mining applications expand root words to include the plural or various tenses, we have corrected the regulatory text to match our intent.

indicates that the amended fire definition will clarify and improve the focus of the EWR program. We added to the definition of fire, a term—"melt" (which would include all derivative forms of the word "melt")—that is used relatively frequently by manufacturers' representatives when describing a fire-related incident and have eliminated the terms—sparks or smoldering—that are used infrequently.

There may be a small, one-time burden on manufacturers associated with this amendment. The burden would arise in the formulation of amendments to the manufacturers' text mining tools so that the search function utilized by manufacturers captures the additional term "melt", if not already included. After adjusting the text mining tools, however, the burden in reporting fires under the new definition should be comparable to the burden under the definition that has applied to date. This follows from the structure of the definition of fire. Both before and after the amendments being adopted today, the first sentence and opening clause of the second sentence of the definition of fire provided that it means "combustion or burning of material in or from a vehicle as evidenced by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke * * *". Following the words "such as", the words "smoke", "sparks" and "smoldering" under the initial definition in the EWR rule and "smoke" and "melt" under the new definition are illustrative examples of "thermal events" and fire-related phenomena and are not all-inclusive terms. That phrase has required and continues to require a good faith review of fire-related reports to determine if the incident is within the scope of the fire definition. Of course, there is a burden associated with such a review, but the manufacturers have not shown that it would increase beyond this potential one-time text mining change.

C. Brake and Fuel System Subcategories

The EWR regulation requires manufacturers of medium-heavy vehicles and buses (MHB) to report the numbers of property damage claims, consumer complaints, warranty claims and field reports (aggregate data) regarding brake systems separately depending on the type of brake system. The types of brake systems identified by the EWR regulation are: "03 service brake system, hydraulic"; and "04 service brake system, air". 49 CFR 579.22(b)(2), (c). Similarly, MHB manufacturers must report EWR aggregate data on fuel systems

separately depending on the type of systems. The types of fuel systems identified by the EWR regulation are: "07 fuel system, gasoline, 08 fuel system, diesel, and 09 fuel system, other". Id.

The Alliance and TMA initially raised concerns of incorrect binning of reports in the MHB brake and fuel systems subcategories because of the inability to identify the particular brake or fuel system in documents on some vehicles. They placed claims and complaints on vehicles with unknown brake systems or fuel systems in the EWR component category with the most vehicle production, which they observed leads to comparisons that might not be accurate. They recommended that the two brake systems be combined into "Service Brake System" and the three fuel systems be combined into "Fuel System".

The NPRM explained that NHTSA is also concerned with the precise binning of the EWR data. Because of our concern, we declined to propose an amendment that combined the subcategories as requested due to the potentially less accurate reporting on MHB models with multiple brake or fuel systems. We stated that there is considerable value in knowing the nature of the underlying brake or fuel system. We pointed out that ODI's investigations related to brake and fuel systems frequently involve only one of the multiple brake or fuel systems offered on a particular model of vehicle. Combining the brake and fuel system categories would have diminished ODI's ability to identify trends because aggregating the data into a single category for brake or fuel systems could mask potential problems in one particular type of brake or fuel system. In addition, we noted that in virtually all of the EWR MHB aggregate data, the vehicle identification number (VIN) identifies the type of brake or fuel system on the vehicle.

In an attempt to improve the accuracy of the data that we are receiving, we proposed to amend the MHB fuel system subcategory. The agency proposed to amend the component category "09 fuel system, other" to "09 fuel systems, other/unknown". We also requested comment on whether the agency should add new subcategories to one or both of the brake and fuel component categories. The NPRM suggested that by segregating out the unknown fuel systems, the accuracy of the other fuel system categories could increase.

We received comments from the Alliance and TMA on the MHB vehicle brake and fuel subcategory proposals.

The Alliance agreed with our view that manufacturers can identify the particular type of brake and fuel systems in vehicles in the MHB category through the VIN in almost all the EWR aggregate data. The Alliance concurred with the agency's view that there is very little chance of inaccurate reporting under the current regulatory structure and recommended that the agency retain the existing system, without change. TMA commented that there is limited potential for erroneous reporting based on the current brake and fuel categories and opposed the proposed changes to the brake and fuel subcategories due to the burden associated with such changes.

We have decided not to adopt the proposed change to the MHB fuel subcategory or to change the MHB brake category. As noted in the NPRM and as the Alliance and TMA recognize, the frequency of inaccurate reporting due to an unknown brake or fuel system on a subject vehicle is very low because the VIN identifies the type of brake or fuel system on the vehicle. Therefore, the potential for inaccurate data and erroneous comparisons within the EWR aggregate data is negligible.

D. Updating of Reports on Death and Injury Incidents

The EWR rule requires manufacturers of light vehicles, medium-heavy vehicles and buses, motorcycles, trailers and child seats and tires to submit information on incidents involving death or injury identified in a notice or claim received by a manufacturer in the specified reporting period. 49 CFR 579.21(b), 579.22 (b), 579.23(b), 579.24(b), 579.25(b) and 579.26(b). For vehicles, these reports include the VIN; for tires they include the tire identification number (TIN). Generally, these reports include the system or component, by codes specified in the rule, that allegedly contributed to the incident. Manufacturers must submit reports on incidents involving death and injury even if they do not know the VIN, TIN or system or component. The EWR regulation requires manufacturers to update their reports on incidents involving death or injury if the manufacturer becomes aware of (i) the VIN/TIN that was previously unknown or (ii) one or more of the specified systems or components that allegedly contributed to the incident. 49 CFR 579.28(f)(2). The requirement to update is unlimited in time.

In the NPRM, we proposed to limit the requirement to update to four calendar quarters or less after the submission of the initial report. Based on over two years of EWR data, after one

year following the initial EWR report, the likelihood of obtaining missing information on the VINs/TINs and the systems and components that allegedly contributed to the incident diminished substantially. As indicated in the NPRM, under this approach, the EWR program would not be adversely affected by the absence of the information that would no longer be received after one year. The proposed amendment would reduce some of the burden on manufacturers to provide updates. We also stated that manufacturers that identify a missing VIN, TIN or component later than one (1) year after the submission of the initial report may submit an updated report of such incident at their option. In advancing this proposal, we declined to follow the initial recommendation of the Alliance to eliminate entirely the requirement to update after the initial report. As explained in the NPRM, updating information on deaths and injuries is important to provide complete and accurate information relating to death and injury incidents as an early indicant of a potential safety-related trend.

The Alliance, AIAM, Harley-Davidson, MIC, RMA and TMA all supported the proposed amendment limiting the requirement to update reports of incidents involving death or injury to a period of no more than one year after NHTSA receives the initial report. We did not receive any comments that opposed the proposal to limit temporally the requirement to update. NHTSA, therefore, is adopting the amendments to 49 CFR 579.28(f)(2)(i) and 49 CFR 579.28(f)(2)(ii) as proposed.

In addition to expressing support for limiting the requirement to update incidents involving death or injury, RMA recommended that manufacturers should have the ability to delete reported claims or notices of injury or death that erroneously included a tire that the manufacturer later learns from the TIN is outside the scope of EWR reporting. RMA contends that while this problem happens infrequently, a correction to the system is necessary to maintain the integrity of the EWR data.⁸

We decline to adopt RMA's recommendation to permit tire manufacturers to delete data from the ARTEMIS database. First, the magnitude of the alleged problem of errors is not

significant. RMA noted that it occurs infrequently. ODI is aware of only 12 tire incidents (less than 1 percent of all tire death and injury claims and notices) where the manufacturer initially submitted a death or injury incident in a quarterly report, but later learned that the tire allegedly was outside the reporting requirements of the rule. RMA's suggestion would open the door to questionable data deletions. The EWR data base is electronic; manufacturers transmit data without concurrent review by ODI. If manufacturers were given the ability to delete death and injury incidents, a manufacturer could potentially delete an incident from ARTEMIS without NHTSA knowing why it was deleted. ODI would expend substantial resources to determine which records were deleted from prior submissions and to ascertain the rationale. In addition, RMA's proposal would require a major change to ARTEMIS. Currently, ARTEMIS permits only updates to incidents of death and injury, not the ability to delete data. To change this protocol, NHTSA would have to undergo a costly systems change. We cannot justify the cost of such a change to ARTEMIS protocol when the need to delete an out of scope tire happens so infrequently. Finally, the change that RMA suggests is not within the scope of the agency's proposal, which did not touch on possible deletions from EWR data that have been submitted.

Accordingly, as stated above, NHTSA is adopting the proposal as written. Thus, 49 CFR 579.28(f)(2)(i) will be revised to read:

If a vehicle manufacturer is not aware of the VIN, or a tire manufacturer is not aware of the TIN, at the time the incident is initially reported, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the VIN or TIN is identified. A manufacturer need not submit an updated report if the VIN or TIN is identified by the manufacturer in a reporting period that is more than one year later than the initial report to NHTSA.

The agency also revises 49 CFR 579.28(f)(2)(ii) to read:

If a manufacturer indicated code 99 in its report because a system or component had not been identified in the claim or notice that led to the report, and the manufacturer becomes aware during a subsequent calendar quarter that one or more of the specified systems or components allegedly contributed to the incident, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the involved specified system(s) or component(s) is (are) identified. A manufacturer need not submit an updated report if the system(s) or component(s) is (are) identified by the manufacturer in a

reporting period that is more than one year later than the initial report to NHTSA.

IV. Lead Time

The Alliance correctly pointed out that we did not propose any effective date for the proposed amendments to the EWR rule. It suggested that for any changes that relax existing requirements, such as eliminating product evaluation reports, should be made effective immediately upon publication of the final rule. For changes that would require manufacturers to modify their existing EWR databases and/or IT systems, such as amending the fire definition, the Alliance recommended at least twelve (12) months of lead time. The Alliance did not explain why twelve (12) months lead time is necessary for the minor definitional changes proposed in the NPRM.

While lead time associated with changes to EWR reporting was implicitly part of our NPRM, we left it to commenters to provide information and justification. Some lead time is appropriate so manufacturers may modify their existing EWR databases and/or IT systems for the one amendment adopted by this final rule that may require such modifications. Manufacturers will have to modify their EWR databases and/or IT systems due to the amended fire definition. However, we do not believe twelve (12) months is appropriate for such a minor change. The change to the fire definition may require some manufacturers to amend their text-mining tools to include the term "melt". Some other minor modifications may be necessary. Moreover, manufacturers already review their field reports and aggregate data for incidents related to a fire, which include precursors to fire. Manufacturers should not have to modify their review of fire related incidents due to the adoption of the amended fire definition. Accordingly, the effective date for the amended definition of fire will be for the reporting period beginning on January 1, 2008.

V. Privacy Act Statement

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

⁸ RMA also recommended that the agency should amend the definition of "minimal specificity" for a tire in 49 CFR 579.4(c) to address the out of scope tire issue. In the NPRM, we did not propose any amendments to the definition of minimal specificity. These comments are outside the scope of this rulemaking.

VI. Rulemaking Analyses and Notices

A. 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 Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as "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 document was not reviewed under E.O. 12866 or the Department of Transportation's regulatory policies and procedures. This rulemaking action is not significant under Department of Transportation policies and procedures. The impacts of this final rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this rule would alleviate some of the burden on manufacturers to provide EWR reports by eliminating the requirement to submit copies of product evaluation field reports, modifying the definition of a fire, and temporally limiting the requirement to update reports on incidents of death and injury.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This final rule would affect all EWR manufacturers, of which there are currently about 540. NHTSA estimates that a majority of these EWR

manufacturers are small entities.

Therefore, NHTSA has determined that this final rule would have an impact on a substantial number of small entities.

However, NHTSA has determined that the impact on the entities affected by the final rule would not be significant. This final rule eliminates the reporting of product evaluation field reports, revises the definition of fire, and limits the time period for required updates to a few data elements in reports of deaths and injuries. The effect of these changes would be to reduce annual reporting costs to manufacturers. NHTSA expects the impact of the final rule would be a reduction in the paperwork burden for EWR manufacturers. NHTSA asserts that the economic impact of the reduction in paperwork, if any, would be minimal and entirely beneficial to small EWR manufacturers. Accordingly, I certify that this final rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). This action would not have "federalism implications" because it would not have "substantial direct effects on 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 section 1 of the Executive Order.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). The Final Rule implementing EWR did not have unfunded mandates implications. 67 FR 49263 (July 30, 2002). Today's final rule would alleviate some of the burden for manufacturers to provide EWR reports by eliminating the requirement to submit copies of product evaluation field reports, and temporally limiting the requirement to update reports on incidents of death and injury.

E. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988,

"Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

NHTSA notes that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

F. Paperwork Reduction Act

Today's final rule does not create new information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. If anything, it reduces the information collection burden of reporting EWR data by manufacturers of motor vehicles and motor vehicle equipment. To the extent that this final rule implicates the Paperwork Reduction Act, we rely upon our previous clearance from OMB. To obtain a three-year clearance for information collection for the EWR rule, NHTSA published a Paperwork Reduction Act notice on April 27, 2005 pursuant to the requirements of that Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on February 24, 2006, which will expire on February 29, 2008. The clearance number is 2127-0616.

G. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not economically significant.

H. Regulation Identifier Number (RIN)

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 or about 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.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. In the NPRM, we requested comments regarding our application of the principles of plain language in the proposal. We did not receive any comments on this issue.

J. Data Quality Act

Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the “quality,” “objectivity,” “utility,” and “integrity” of information that Federal agencies disseminate to the public. As noted in the EWR final rule (67 FR 45822), NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. The changes adopted by today’s document would alleviate some of the burden for manufacturers to provide EWR reports by eliminating the requirement to submit copies of product evaluation field reports, modifying the definition of a fire, and temporally limiting the requirement to update reports on incidents of death and injury.

VII. Proposed Regulatory Text

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 1. The authority citation for part 579 is amended to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

Subpart A—General

■ 2. Amend § 579.4(c) to revise the definition of “fire” and add the definition of “product evaluation report”, in alphabetical order, to read as follows:

§ 579.4 Terminology.

* * * * *

(c) *Other terms.* * * *

* * * * *

Fire means combustion or burning of material in or from a vehicle as evidenced by flame. The term also includes, but is not limited to, thermal events and fire-related phenomena such as smoke and melt, but does not include events and phenomena associated with a normally functioning vehicle such as combustion of fuel within an engine or exhaust from an engine.

* * * * *

Product evaluation report means a field report prepared by, and containing the observations or comments of, a manufacturer’s employee who submitted the report concerning the operation or performance of a vehicle or child restraint system as part of the employee’s personal use of the vehicle or child restraint system under a manufacturer’s program authorizing such use, but does not include a report by an employee who has been granted personal use of a vehicle or child restraint system for the specific purpose of facilitating the employee’s technical or engineering evaluation of a known or suspected problem with that vehicle or child restraint system.

* * * * *

Subpart C—Reporting of Early Warning Information

■ 3. Amend § 579.21 to revise the first sentence of paragraph (d) to read as follows:

§ 579.21 Reporting requirements for manufacturers of 500 or more light vehicles annually.

* * * * *

(d) *Copies of field reports.* For all light vehicles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report or a product evaluation report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment

(including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. * * *

■ 4. Amend § 579.22 to revise the first sentence of paragraph (d) to read as follows:

§ 579.22 Reporting requirements for manufacturers of 500 or more medium-heavy vehicles and buses annually.

* * * * *

(d) *Copies of field reports.* For all medium heavy vehicles and buses manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report or a product evaluation report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period.

* * *

■ 5. Amend § 579.23 to revise the first sentence of paragraph (d) to read as follows:

§ 579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.

* * * * *

(d) *Copies of field reports.* For all motorcycles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report or a product evaluation report) involving one or more of the systems or components identified in paragraph (b)(2) of this section or fire, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motorcycle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. * * *

■ 6. Amend § 579.24 to revise the first sentence of paragraph (d) to read as follows:

§ 579.24 Reporting requirements for manufacturers of 500 or more trailers annually.

* * * * *

(d) *Copies of field reports.* For all trailers manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report or a product evaluation report) involving one or more of the systems or components identified in paragraph (b)(2) of this section or fire, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a trailer or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. * * *

■ 7. Amend § 579.25 to revise the first sentence of paragraph (d) to read as follows:

§ 579.25 Reporting requirements for manufacturers of child restraint systems.

* * * * *

(d) *Copies of field reports.* For all child restraint systems manufactured during a production year covered by the reporting period and the four production years prior to the earliest production year in the reporting period, a copy of each field report (other than a dealer report or a product evaluation report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a child restraint system (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. * * *

■ 8. Amend § 579.28 to revise paragraphs (f)(2)(i) and (f)(2)(ii) to read as follows:

§ 579.28 Due date of reports and other miscellaneous provision.

* * * * *

(f) * * *

(2) * * *

(i) If a vehicle manufacturer is not aware of the VIN, or a tire manufacturer is not aware of the TIN, at the time the incident is initially reported, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the VIN or TIN is identified. A manufacturer need not submit an updated report if the VIN or TIN is identified by the manufacturer in a reporting period that is more than one year later than the initial report to NHTSA.

(ii) If a manufacturer indicated code 99 in its report because a system or component had not been identified in the claim or notice that led to the report, and the manufacturer becomes aware during a subsequent calendar quarter that one or more of the specified systems or components allegedly contributed to the incident, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the involved specified system(s) or component(s) is (are) identified. A manufacturer need not submit an updated report if the system(s) or component(s) is(are) identified by the manufacturer in a reporting period that is more than one year later than the initial report to NHTSA.

* * * * *

Issued on: May 21, 2007.

Nicole R. Nason,
Administrator.

[FR Doc. E7-10155 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043-4043-01]

RIN 0648-XA46

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2007 Deep-Water Grouper Commercial Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for deep-water grouper (misty grouper, snowy grouper, yellowedge grouper, warsaw grouper, and speckled hind) in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the deep-water grouper quota for the commercial fishery will have been reached by June 2, 2007. This closure is necessary to protect the deep-water grouper resource.

DATES: Closure is effective 12:01 a.m., local time, June 2, 2007, until 12:01 a.m., local time, on January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, telephone 727-824-5350, fax 727-824-5308, e-mail Jason.Rueter@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for deep-water grouper in the Gulf of Mexico at 1.02 million lb (463,636 kg) for the current fishing year, January 1 through December 31, 2007.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current statistics, NMFS has determined that the available commercial quota of 1.02 million lb (463,636 kg) for deep-water grouper will be reached on or before June 2, 2007. Accordingly, NMFS is closing the commercial deep-water grouper fishery in the Gulf of Mexico EEZ from 12:01 a.m., local time, on June 2, 2007, until 12:01 a.m., local time, on January 1, 2008. The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having deep-water grouper aboard must have landed and bartered, traded, or sold such deep-water grouper prior to 12:01 a.m., local time, June 2, 2007.

During the closure, the sale or purchase of deep-water grouper taken from the Gulf EEZ is prohibited and the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of deep-water grouper in or from the Gulf EEZ, except that no such bag limits may be possessed aboard a vessel with commercial quantities of Gulf reef fish (*i.e.*, Gulf reef fish in excess of applicable bag/possession limits). The prohibition on sale or purchase does not apply to sale or purchase of deep-water grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 2, 2007, and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available scientific information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice

and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf of Mexico deep-water grouper, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this

action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. For these same reasons, NMFS finds good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: May 22, 2007.

James P. Burgess,

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

[FR Doc. 07-2608 Filed 5-22-07; 2:39 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 72, No. 102

Tuesday, May 29, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-28308; Directorate Identifier 2007-NM-016-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon (Beech) Model 400, 400A, and 400T Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon (Beech) Model 400, 400A, and 400T series airplanes. This proposed AD would require modifying the attachment fasteners on the engine cowl panels. This proposed AD results from several reports of loose attachment fasteners found on the engine cowl panels, and subsequently the panels either peeling back or separating from the airplane during flight. We are proposing this AD to prevent failure of the attachment fasteners on the engine cowl panels, which could result in separation of a panel from the airplane, and consequent damage to airplane structure. These conditions could adversely affect continued safe flight and landing of the airplane, or cause injury to people or damage to property on the ground.

DATES: We must receive comments on this proposed AD by July 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *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.

Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas, 67201-0085, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT:

William Griffith, Aerospace Engineer, Airframe and Services Branch, ACE-118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4116; fax (316) 946-4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28308; Directorate Identifier 2007-NM-016-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received several reports indicating loose attachment fasteners (1/4-turn fasteners not fully engaged) were found on the engine cowl panels on certain Raytheon (Beech) Model 400, 400A, and 400T series airplanes. Subsequently, the cowl panels either peeled back or separated from the airplane during flight. In one incident a cowl piece departed the airplane and landed within 50 feet of a residence. Investigation revealed that the loose fasteners are not detected during the pre-flight inspection and that aerodynamic loads may forcibly separate the panel from the airplane during flight. The separation forces could result in the panel causing damage to the engine or nacelle installation, in addition to other parts of the airplane. These conditions could adversely affect continued safe flight and landing of the airplane, or cause injury to people or damage to property on the ground.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 54-3788, dated December, 2006. The service bulletin describes procedures for modifying the attachment fasteners on the engine cowl panels. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in

the service information described previously.

Costs of Compliance

There are about 757 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 575 airplanes of U.S. registry. The proposed actions would take about 10 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts would cost about \$400 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$690,000, or \$1,200 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Raytheon Aircraft Company (Formerly Beech): Docket No. FAA-2007-28308; Directorate Identifier 2007-NM-016-AD.

Comments Due Date

- (a) The FAA must receive comments on this AD action by July 13, 2007.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Raytheon (Beech) Model 400, 400A, and 400T series airplanes, certificated in any category; as identified in Raytheon Service Bulletin SB 54-3788, dated December, 2006.

Unsafe Condition

- (d) This AD results from several reports of loose attachment fasteners found on the engine cowl panels, and subsequently the panels either peeling back or separating from the airplane during flight. We are issuing this AD to prevent failure of the attachment fasteners on the engine cowl panels, which could result in separation of a panel from the airplane, and consequent damage to airplane structure. These conditions could adversely affect continued safe flight and landing of the airplane, or cause injury to people or damage to property on the ground.

Compliance

- (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

- (f) Within 200 flight hours after the effective date of this AD: Modify the attachment fasteners on the engine cowl panels by doing all the actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 54-3788, dated December, 2006.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10216 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-28301; Directorate Identifier 2007-NM-061-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11, MD-11F, DC-10-10, DC-10-10F, DC-10-15, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD-11 and MD-11F airplanes and certain Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes. This proposed AD would require rerouting system 3 hydraulic piping, installing new pipe assemblies and unions, and installing redesigned support brackets for the system 3 hydraulic piping. This proposed AD results from a report of damage to the hydraulic system that occurred when pieces of a ruptured tire from the left main landing gear penetrated the wing trailing edge access panel during takeoff. We are proposing this AD to prevent damage to the system 3 hydraulic piping, which could result in loss of the hydraulic system.

DATES: We must receive comments on this proposed AD by July 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.
- *Fax:* (202) 493-2251.
- *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.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, CA 90846, *Attention:* Data and Service Management, Dept. C1-L5A (D800-0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM-150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; telephone (562) 627-5353; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “FAA-2007-28301; Directorate Identifier 2007-NM-061-AD” at the beginning of your comments. We specifically invite comments on the

overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report of damage to the hydraulic system that occurred when pieces of a ruptured tire from the left main landing gear (MLG) penetrated the wing trailing edge access panel during takeoff. During the incident, hydraulic piping routed in the wing trailing edge was damaged, which

resulted in the loss of two of the three hydraulic systems. Boeing’s analysis of the hydraulic piping for systems 1, 2, and 3, in the area above the left and right wing MLG tires, revealed the need to enhance the protection of the system 3 hydraulic pipes. Rerouting and installing thicker-walled system 3 hydraulic piping in the wing trailing edge areas will enhance the protection of the hydraulic pipes in the event of an MLG tireburst. If not corrected, damage to the system 3 hydraulic piping could result in possible loss of the hydraulic system.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin DC10-29A147, dated February 9, 2007; and Boeing Alert Service Bulletin MD11-29A068, Revision 1, dated February 9, 2007. The service bulletins describe procedures for rerouting system 3 hydraulic piping, installing new pipe assemblies and unions, and installing redesigned support brackets for the system 3 hydraulic piping. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA’s Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 430 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
60	\$80	\$14,020 to \$14,620	\$18,820 to \$19,420	260	\$4,893,200 to \$5,049,200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General requirements.” Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA-2007-28301; Directorate Identifier 2007-NM-061-AD.

Comments Due Date

- (a) The FAA must receive comments on this AD action by July 13, 2007.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to the following McDonnell Douglas airplanes, certificated in any category:

- (1) All Model MD-11 and MD-11F airplanes.
- (2) DC-10-10, DC-10-10F, DC-10-15, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes; as identified in Boeing Alert Service Bulletin DC10-29A147, dated February 9, 2007.

Unsafe Condition

(d) This AD results from a report of damage to the hydraulic system that occurred when pieces of a ruptured tire from the left main landing gear penetrated the wing trailing edge access panel during takeoff. We are issuing this AD to prevent damage to the system 3 hydraulic piping, which could result in loss of the hydraulic system.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 24 months after the effective date of this AD, reroute system hydraulic piping, install new pipe assemblies and unions, and install redesigned support brackets for system 3 hydraulic piping. Do these actions in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11-29A068, Revision 1, dated February 9, 2007 (for Model MD-11 and MD-11F airplanes), or McDonnell Douglas Service Bulletin DC10-29A147, dated February 9, 2007 (for Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes).

(g) Accomplishment before the effective date of this AD of the modification required by paragraph (f) of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11-29A068, dated January 23, 2007, is acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10215 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-28300; Directorate Identifier 2006-NM-292-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The Chromic Acid Anodising (CAA) Lead Fleet Program was established in 1989 to observe corrosion/debonding behaviour of CAA-treated panels. CAA lead fleet includes the inspection of lap joints, circumferential joints, stringers and doublers on selected aircraft.

The findings in combination with analytical corrosion investigations have been analysed by the TC (type certificate) holder and an appropriate inspection program for debonding has been developed.

This airworthiness directive requires inspection of the concerned areas to detect any corrosion and/or debonding which could affect the structural integrity. * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 28, 2007.

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

- **DOT Docket Web Site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Fax:** (202) 493-2251.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *Hand Delivery*: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-28300; Directorate Identifier 2006-NM-292-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will

consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006-0369, dated December 12, 2006 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The Chromic Acid Anodising (CAA) Lead Fleet Program was established in 1989 to observe corrosion/debonding behaviour of CAA-treated panels. CAA lead fleet includes the inspection of lap joints, circumferential joints, stringers and doublers on selected aircraft.

The findings in combination with analytical corrosion investigations have been analysed by the TC (type certificate) holder and an appropriate inspection program for debonding has been developed.

This airworthiness directive requires inspection of the concerned areas [including repetitive inspections of certain areas] to detect any corrosion and/or debonding which could affect the structural integrity. * * *

If any discrepancies are found, repair and follow-up actions (additional inspections for debonding and corrosion depth) are required. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A300-53-0378, dated September 4, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. The compliance times for the initial inspections range between 36,800 to 44,600 total flight cycles and between 18 and 20 years since new. The grace period for the initial inspections is 2,000 flight cycles or 2 years, whichever occurs first. The compliance times for the repairs range from before further flight to within 2,000 flight cycles after doing the inspection. The repetitive inspection intervals range from 500 flight cycles to 3 years.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our

bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 12 products of U.S. registry. We also estimate that it would take 102 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$97,920, or \$8,160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA-2007-28300; Directorate Identifier 2006-NM-292-AD.

Comments Due Date

- (a) We must receive comments by June 28, 2007.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to Airbus Model A300 series aircraft, certificated in any category, manufacturing serial numbers (MSN) 0105 through 0107, 0116, 0117, 0121, 0123 through 0126, 0128, 0129, 0133 through 0141, 0146 through 0152, 0154 through 0157, 0160, 0163, 0170, 0173, 0175 through 0177, and 0180 through 0183.

Subject

- (d) Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states: The Chromic Acid Anodising (CAA) Lead Fleet Program was established in 1989 to observe corrosion/debonding behaviour of CAA-treated panels. CAA lead fleet includes the inspection of lap joints, circumferential joints, stringers and doublers on selected aircraft.

The findings in combination with analytical corrosion investigations have been analysed by the TC (type certificate) holder and an appropriate inspection program for debonding has been developed.

This airworthiness directive requires inspection of the concerned areas [including repetitive inspections of certain areas] to detect any corrosion and/or debonding which could affect the structural integrity. * * *

If any discrepancies are found, repair and follow-up actions (additional inspections for debonding and corrosion depth) are required.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Except as provided by paragraphs (f)(2), (f)(3), and (f)(4) of this AD: Do the initial and repetitive inspections (including follow-up actions), as applicable; and do all applicable repairs; of the areas specified in paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-53-0378, dated September 4, 2006, and within the timescales specified in paragraph 1.E.(2), the Accomplishment Instructions, and the figures of the service bulletin.

(i) The bonded doubler in the longitudinal lap joint area between frame (FR)18 and FR80 (configurations 01 and 02 inspect FR18 through FR40; configuration 03 inspects FR18 through FR80).

(ii) The bonded wing doublers between stringer (STGR)22 LH/RH (left-hand/right-hand) and STGR43 LH/RH for debonding (configuration 01 of the service bulletin only).

(iii) The bonded doublers in the circumferential joint area between FR26 and FR80 (configurations 01 and 02 inspect FR26 through FR40; configuration 03 inspects FR26 through FR80).

(iv) The bonded doublers in the manhole area between FR23 RH and FR24 RH and between FR38.1 RH and FR38.2 RH.

(2) Where paragraph 1.E.(2) of Airbus Service Bulletin A300-53-0378, dated September 4, 2006, specifies a grace period from CN (Consigne de Navigabilité) issuance, this AD requires a grace period relative to the effective date of this AD.

(3) Where paragraph 1.E.(2) of Airbus Service Bulletin A300-53-0378, dated September 4, 2006, specifies a threshold, this AD requires that the inspections be done within the specified threshold relative to the first flight of the airplane.

(4) Where the Accomplishment Instructions and figures of Airbus Service Bulletin A300-53-0378, dated September 4, 2006, specify that inspections be done yearly, this AD requires those inspections to be done at intervals not to exceed 1 year.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Tom Stafford, Aerospace Engineer; 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006-0369, dated December 12, 2006; and Airbus Service Bulletin A300-53-0378; dated September 4, 2006, for related information.

Issued in Renton, Washington, on May 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10218 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-28299; Directorate Identifier 2005-NM-139-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP Series Airplanes; and Model 767-200 and -300 Series Airplanes; Equipped with Certain Goodrich Evacuation Systems

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes; and Model 767-200 and -300 series airplanes equipped with certain Goodrich evacuation systems. For certain airplanes, this proposed AD would require replacing the evacuation systems shear-pin restraints with new ones. For certain other airplanes, this proposed AD would require an inspection for manufacturing lot numbers; and a general visual inspection of the shear-pin restraints for discrepancies, and corrective actions if necessary. This proposed AD results from several reports of corroded shear-pin restraints that prevented Goodrich evacuation systems from deploying properly. We are proposing this AD to prevent failure of the evacuation system, which could impede an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation.

DATES: We must receive comments on this proposed AD by July 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL-401, Washington, DC 20590.

- **Fax:** (202) 493-2251.

- **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.

Contact Goodrich, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040-1169, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT:

Tracy Ton, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM-150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5352; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number "FAA-2007-28299; Directorate Identifier 2005-NM-139-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in

the AD docket shortly after the Docket Management System receives them.

Discussion

We have received several reports indicating that Goodrich evacuation systems have not deployed properly on certain Boeing Model 747 and 767 airplanes due to corroded shear-pin restraints. The corrosion problem arose concurrently with a 1998 change in the anodize specification for restraint bodies. Corrosion of the shear-pin restraints, if not corrected, could lead to higher than designed release values, and in severe cases, could cause the two halves of the restraints to freeze up, which could lead to improper deployment and/or loss of use of the evacuation system. That loss could impede passengers during an emergency evacuation and increase the chance of injury to passengers and flightcrew during an evacuation.

Other Relevant Rulemaking

Although there have been no reported deployment difficulties of certain Goodrich evacuation systems installed as a technical standard order (TSO) appliance on certain Airbus and McDonnell Douglas transport category airplanes, and certain Boeing Model 737 and 777 airplanes, the Goodrich evacuation systems installed on those airplanes use the same shear-pin restraints as those affected evacuation systems installed on the Boeing Model 747 and 767 airplanes affected by this proposed AD. Therefore, all technical standard ordered and type certificated Goodrich evacuation systems are subject to the identified unsafe condition. We are planning to issue similar rulemaking (Directorate Identifier 2003-NM-239-AD) for certain Goodrich units installed as a TSO appliance on certain Airbus, McDonnell Douglas, and Boeing Model 737 and 777 transport category airplanes.

Relevant Service Information

We have reviewed Goodrich Service Bulletin 25-343, Revision 3, dated January 12, 2007. For certain evacuation systems, the service bulletin describes procedures for replacing the shear-pin restraints with new, improved restraints. For certain other evacuation systems, the service bulletin describes procedures for an inspection to verify the manufacturing lot number of the restraints; and a general visual inspection of the restraints for discrepancies (*i.e.*, corrosion, security of pin retainer/label, overall condition, and lack of play), and corrective action if necessary. The corrective action is replacing the shear-pin restraints with

new shear-pin restraints. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and the Service Bulletin."

Difference Between the Proposed AD and the Service Bulletin

Although the service bulletin recommends accomplishing the replacement or inspection "at the next shop visit," we have determined that this imprecise compliance time would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. In light of all of these

factors, we find that a compliance time of 36 months represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. We have coordinated this difference with the manufacturer.

Costs of Compliance

There are about 1,063 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 144 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours per slide unit	Average labor rate per hour	Parts	Number of slide units per airplane	Cost per airplane	Fleet cost
Replacement	Between 2 and 9.	\$80	Between \$58 and \$638, depending on number of restraints.	Between 1 and 12	Between \$218 and \$16,296.	Between \$31,392 and \$2,346,624.
Inspection	Between 2 and 9.	\$80	None	Between 1 and 12	Between \$160 and \$8,640.	Between \$23,040 and \$1,244,160.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the

national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA-2007-28299; Directorate Identifier 2005-NM-139-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes; and Model 767-200 and -300 series airplanes; certificated in any category; equipped with any Goodrich evacuation system listed in Table 1 of this AD.

TABLE 1.—GOODRICH EVACUATION SYSTEMS

Goodrich evacuation systems part No.	Serial No. (S/N)	Component/part name
(1) 101651–303	PA2475 through PA2955 inclusive	Slide/Raft, forward/aft doors.
(2) 7A1412–3 through 7A1412–8 inclusive.	GU0154 through GU0325 inclusive	Slide, upper deck.
(3) 101651–109 through 101651–303 inclusive.	All S/Ns with a B51 prefix, and S/Ns PA0001 through PA2474 inclusive.	Slide/Raft, forward/aft doors.
(4) 7A1101–20 through 7A1101–24 inclusive.	All S/Ns with a single letter G prefix, and S/Ns GL0001 through GL0099 inclusive.	Slide, doors 1 and 2.
(5) 7A1102–20 through 7A1102–24 inclusive.	All S/Ns with a single letter G prefix, and S/Ns GN001 through GN121 inclusive.	Slide, door 4.
(6) Even dash numbers 7A1103–46 through 7A1103–52.	All even S/Ns with a single letter G prefix, and even S/Ns GC0002 through GC0128.	Slide, door 5, right-hand (RH) side.
(7) Odd dash numbers 7A1103–45 through 7A1103–51.	All odd S/Ns with a single letter G prefix, and odd S/Ns GC0001 through GC0127.	Slide, door 5, left-hand (LH) side.
(8) 7A1104–14 through 7A1104–24 inclusive.	All S/Ns with a single letter G prefix, and S/Ns GM0001 through GM0138 inclusive.	Slide, crew door.
(9) Odd dash numbers 7A1105–35 through 7A1105–43.	All	Slide, off-wing, LH side.
(10) Even dash numbers 7A1105–36 through 7A1105–44.	All	Slide, off-wing, RH side.
(11) Odd dash numbers 7A1238–3 through 7A1238–69.	All odd S/Ns with a single letter G prefix, and odd S/Ns GE0001 through GE2091.	Slide/Raft, doors 1, 2, and 4, LH side.
(12) Even dash numbers 7A1238–4 through 7A1238–70.	All even S/Ns with a single letter G prefix, and even S/Ns GE0002 through GE2076.	Slide/Raft, doors 1, 2, and 4, RH side.
(13) Odd dash numbers 7A1239–3 through 7A1239–33.	All odd S/Ns with a single letter G prefix, and odd S/Ns GF0001 through GF0649.	Slide/Raft, door 5, LH side.
(14) Even dash numbers 7A1239–4 through 7A1239–34.	All even S/Ns with a single letter G prefix, and even S/Ns GF0002 through GF0650.	Slide/Raft, door 5, RH side.
(15) Odd dash numbers 7A1248–1 through 7A1248–35.	All odd S/Ns with a single letter G prefix, and odd S/Ns GU001 through GU321.	Slide, upper deck, LH side.
(16) Even dash numbers 7A1248–2 through 7A1248–36.	All even S/Ns with a single letter G prefix, and even S/Ns GU002 through GU662.	Slide, upper deck, RH side.
(17) Odd dash numbers 7A1252–1 through 7A1252–9.	All odd S/Ns with a single letter G prefix, and odd S/Ns GO001 through GO505.	Slide, off-wing, LH side.
(18) Even dash numbers 7A1252–2 through 7A1252–10.	All even S/Ns with a single letter G prefix, and even S/Ns GO002 through GO506.	Slide, off-wing, RH side.
(19) Odd dash numbers 7A1255–1 through 7A1255–29.	All odd S/Ns with a single letter G prefix, and odd S/Ns WH0001 through WH0139.	Slide/Raft, door 2, LH side.
(20) Even dash numbers 7A1255–2 through 7A1255–30.	All even S/Ns with a single letter G prefix, and even S/Ns WH0002 through WH0136.	Slide/Raft, door 2, RH side.
(21) Odd dash numbers 7A1256–1 through 7A1256–29.	All odd S/Ns with a single letter G prefix, and odd S/Ns with WI0001 through WI0143.	Slide/Raft, door 3, LH side.
(22) Even dash numbers 7A1256–2 through 7A1256–30.	All even S/Ns with a single letter G prefix, and even S/Ns WI0002 through WI0144.	Slide/Raft, door 3, RH side.
(23) Odd dash numbers 7A1257–1 through 7A1257–29.	All odd S/Ns with a single letter G prefix, and odd S/Ns WJ0001 through WJ0167.	Slide/Raft, door 4, LH side.
(24) Even dash numbers 7A1257–2 through 7A1257–30.	All even S/Ns with a single letter G prefix, and even S/Ns WJ0002 through WJ0160.	Slide/Raft, door 4, RH side.
(25) Odd dash numbers 7A1261–1 through 7A1261–33.	All odd S/Ns with a single letter G prefix, and odd S/Ns WG0001 through WG0165.	Slide/Raft, door 1, LH side.
(26) Even dash numbers 7A1261–2 through 7A1261–34.	All even S/Ns with a single letter G prefix, and even S/Ns WG0002 through WG0162.	Slide/Raft, door 1, RH side.
(27) 7A1412–1 through 7A1412–8 inclusive.	All S/Ns with a single letter G prefix, and S/Ns GU001 through GU153.	Slide, upper deck.

Unsafe Condition

(d) This AD results from several reports of corroded shear-pin restraints that prevented Goodrich evacuation systems from deploying properly. We are issuing this AD to prevent failure of the evacuation system, which could impede an emergency evacuation and increase the chance of injury to passengers and flightcrew during the evacuation.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term “service bulletin,” as used in this AD, means the Accomplishment Instructions of Goodrich Service Bulletin 25–343, Revision 3, dated January 12, 2007.

Replacement, or Inspections and Corrective Action

(g) Within 36 months after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD in accordance with the service bulletin.

(1) For airplanes equipped with any Goodrich evacuation system identified in paragraph (c)(1) or (c)(2) of this AD: Replace the shear-pin restraints with new restraints.

(2) For airplanes equipped with any Goodrich evacuation system identified in paragraphs (c)(3) through (c)(27) of this AD: Do an inspection to verify the manufacturing lot number of the shear-pin restraint. A review of airplane maintenance records is acceptable in lieu of this inspection if the manufacturing lot number of the shear-pin restraint can be conclusively determined from that review.

(i) If a manufacturing lot number from 3375 through 5551 inclusive is found, before further flight, replace the shear-pin restraint with a new restraint.

(ii) If a manufacturing lot number from 3375 through 5551 inclusive is not found, do a general visual inspection of the shear-pin restraints for discrepancies (i.e., corrosion, security of pin retainer/label, overall condition, and lack of play). If any discrepancy is found, before further flight, replace the shear-pin restraint with a new restraint.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Parts Installation

(h) As of the effective date of this AD, no Goodrich evacuation system with a part number and serial number identified in paragraph (c)(1) or (c)(2) of this AD may be installed on any airplane, unless the shear-pin restraints have been replaced with new restraints in accordance with paragraph (g)(1) of this AD.

(i) As of the effective date of this AD, no Goodrich evacuation system with a part number and serial number identified in paragraphs (c)(3) through (c)(27) of this AD may be installed on any airplane, unless the shear-pin restraints have been inspected and found acceptable in accordance with paragraph (g)(2) of this AD.

Credit for Actions Done Using Previous Service Information

(j) Replacements and inspections done before the effective date of this AD in accordance with Goodrich Service Bulletin 25-343, dated October 15, 2003; Revision 1, dated January 31, 2005; or Revision 2, dated October 11, 2006; are acceptable for compliance with the requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on May 21, 2007.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. E7-10239 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2007-28139; Airspace
Docket No. 07-AWP-3]

RIN 2120-AA66

Proposed Modification of Class D Airspace; Castle Airport, Atwater, CA

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class D airspace at Castle Airport, Atwater, CA. This proposal would reduce the ceiling of the Atwater, CA, Class D airspace to below 2,000 feet mean sea level (MSL), change the southern boundary of the airspace and add an extension to the north to provide controlled airspace for the safety of aircraft executing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at Castle Airport.

DATES: Comments must be received on or before July 13, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590; *telephone:* (202) 366-9826. You must identify FAA Docket No. FAA-2007-28139 and Airspace Docket No. 07-AWP-3, at the beginning of your comments. You may also submit comments through the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Kathryn Higgins, Team Manager, System Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; *telephone* (425) 917-6715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA-2007-28139/Airspace Docket No. 07-AWP-3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://dms.dot.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2007-28139 and Airspace Docket No. 07-AWP-3." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the **Federal Register's** Web page at <http://www.gpoaccess.gov/fr/index.html>.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify Class D airspace at Castle Airport, Atwater, CA. Local communities and aviation concerns met with the FAA on April 26, 2007, at Atwater, CA, to present alternative airspace designs for the existing Class D airspace at Atwater, CA, Castle Airport. The various airspace alternatives presented were designed to accommodate IFR and Visual Flight Rules (VFR) operations in and out of Merced Airport located 6 miles to the south. The FAA, local communities, and aviation concerns agreed on an alternative that would reduce the ceiling of the Class D airspace, modify the southern border, and add an extension on the north side of the Class D for the safety of aircraft executing SIAP's and other IFR operations at Castle Airport. Class D airspace will be effective during specified dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be published in the Airport/Facility Directory.

Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Castle Airport, Atwater, CA [Revised]

Castle Airport, Atwater, CA
(Lat. 37°22'50" N, long. 120°34'05" W.)

That airspace extending upward from the surface to but not including 2,000 feet MSL beginning at lat. 37°20'22" N., long. 120°38'49" W. and extending clockwise around the 4.5 nautical mile radius of the Castle Airport to lat. 37°20'02" N., long. 120°29'39", thence to the point of beginning and within 1.9 miles each side of the El Nido VORTAC 320° radial from the 4.5 nautical mile radius to 17.6 miles from the El Nido VORTAC. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on May 11, 2007.

Clark Desing,

Manager, System Support Group Western Service Center.

[FR Doc. E7–10257 Filed 5–25–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143601–06]

RIN 1545–BG30

Mortality Tables for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing mortality tables to be used in determining present value or making any computation for purposes of applying certain pension funding requirements. These regulations affect sponsors, administrators, participants, and beneficiaries of certain retirement plans.

DATES: Written or electronic comments and requests for a public hearing must be received by August 27, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–143601–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–143601–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS–REG–143601–06).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bruce Perlin, Lauson C. Green, or Linda S.F. Marshall at (202) 622–6090; concerning submissions and requests for a public hearing, Kelly Banks at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 412 provides minimum funding requirements for defined benefit pension plans. The Pension Protection Act of 2006 (PPA), Public Law 109–280 (120 Stat. 780), makes extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA, specifies the minimum funding requirements that apply to defined benefit plans that are not multiemployer plans pursuant to

section 412.¹ Section 430(a) defines the minimum required contribution for a defined benefit plan that is not a multiemployer plan by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Those tables are to be based on the actual experience of pension plans and projected trends in such experience. In prescribing those tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans. This standard for issuing the mortality table under section 430(h)(3)(A) is the same as the standard for issuing updated mortality tables pursuant to the review under section 412(l)(7)(C)(ii)(III) of the mortality table used in determining a plan's current liability pursuant to section 412(l)(7)(C)(ii)(I) for plan years before the effective date of the PPA changes.

Section 430(h)(3)(C) provides rules for a plan sponsor's use of substitute mortality tables. Upon the request of a plan sponsor and approval by the Secretary, mortality tables that meet the requirements for substitute mortality tables are used in determining present value or making any computation under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request. Substitute mortality tables cease to be in effect as of the earliest of the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or the date on which the plan actuary determines that those tables do not meet the requirements for substitute mortality

tables. The plan sponsor's request to use substitute mortality tables is to be made at least 7 months before the first day of the first plan year for which substitute mortality tables are to apply. A request to use substitute mortality tables is deemed approved unless the Secretary denies approval for the use of those mortality tables within 180 days of the request (subject to extension of this period by mutual agreement).

Mortality tables meet the requirements for substitute mortality tables if the pension plan has a sufficient number of plan participants and the plan has been maintained for a sufficient period of time in order to have credible mortality experience, and such tables reflect the actual experience of the plan and projected trends in general mortality experience of participants in pension plans. Except as provided by the Secretary, a plan sponsor cannot use substitute mortality tables for any plan unless substitute mortality tables are established and used for each other plan maintained by the plan sponsor and the plan sponsor's controlled group.

Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to section 430(h)(3)(A) or the substitute mortality tables under section 430(h)(3)(C). The Secretary is to establish separate tables for individuals with disabilities occurring in plan years beginning before January 1, 1995, and in later plan years, with the mortality tables for individuals with disabilities occurring in those later plan years applying only to individuals who are disabled within the meaning of Title II of the Social Security Act.

Section 431, which was added by PPA, specifies the minimum funding requirements that apply to multiemployer plans. Under section 431(c)(6)(B), a plan's full funding limitation cannot be less than the excess (if any) of 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year) over the value of the plan's assets. Section 431(c)(6)(D)(iv)(II) provides that the Secretary may by regulation prescribe mortality tables to be used in determining a plan's current liability for purposes of section 431(c)(6). The standards for these mortality tables are the same as the standards for mortality tables to be prescribed under section 430(h)(3)(A). Section 431(c)(6)(D)(iv)(I) provides that, until mortality tables are

prescribed under section 431(c)(6)(D)(iv)(II), the mortality table used in determining a plan's current liability for purposes of section 431(c)(6) is the table prescribed by the Secretary that is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

Notice 2003-62 (2003-2 CB 576) was issued as part of the periodic review pursuant to section 412(l)(7)(C)(ii)(III) of the mortality tables used in determining current liability pursuant to section 412(l)(7)(C)(ii)(I). At the time Notice 2003-62 was issued, the IRS and the Treasury Department were aware of two reviews of mortality experience for pension plan participants undertaken by the Retirement Plans Experience Committee of the Society of Actuaries (the UP-94 Study and the RP-2000 Mortality Tables Report),² and commentators were invited to submit any other independent studies of pension plan mortality experience. Notice 2003-62 also requested the submission of studies regarding projected trends in mortality experience. With respect to projecting mortality improvements, the IRS and the Treasury Department requested comments regarding the advantages and disadvantages of reflecting these trends on an ongoing basis through the use of generational, modified generational, or sequentially static mortality tables. See § 601.601(d)(2)(ii)(b) of this chapter.

On December 2, 2005, the IRS issued proposed regulations under section 412(l)(7) (REG-124988-05, 70 FR 72260-01) setting forth mortality tables to be used for nondisabled pension plan participants (the 2005 proposed regulations). Those proposed regulations would have required plans of 500 or more participants (including both active and inactive participants) to use separate mortality tables for nonannuitant and annuitant periods. Those separate tables were derived from the RP-2000 mortality tables, with different projection periods for annuitants and nonannuitants based on an estimate of the duration of the respective liabilities. Small plans, defined as those with fewer than 500 participants, would have been permitted to use a combined table that applied the

¹ Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) sets forth funding rules that are parallel to those in section 412 of the Internal Revenue Code (Code), and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

² The UP-94 Study, prepared by the UP-94 Task Force of the Society of Actuaries, was published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), p. 819. The RP-2000 Mortality Table Report was released in July, 2000. Society of Actuaries, RP-2000 Mortality Tables Report, at <http://www.soa.org/ccm/content/research-publications/experience-studies-tools/the-rp-2000-mortality-tables/>.

same mortality rates to both annuitants and nonannuitants under the 2005 proposed regulations. Those proposed regulations provided for updated tables to be issued annually using the current year as the new base year and using a specified set of projection factors to reflect expected improvements in mortality.

The 2005 proposed regulations were finalized in the **Federal Register** on February 2, 2007 (TD 9310, 72 FR 4955). Those final regulations permit all plans to use a blended table for 2007 rather than require that large plans use separate annuitant and nonannuitant tables (as would have been required under the 2005 proposed regulations). The IRS and the Treasury Department believe that using separate annuitant and nonannuitant tables results in a more accurate measure of a plan's current liability. However, in view of the sweeping PPA changes and the resulting need to overhaul actuarial valuation systems, it was determined that all plans (and not just small plans) should be permitted to use the combined mortality tables for the 2007 plan year.

Explanation of Provisions

Generally Applicable Mortality Tables

These proposed regulations set forth the methodology the IRS and the Treasury Department would use to establish mortality tables as provided under section 430(h)(3)(A) to be used for participants and beneficiaries to determine present value or make any computation under section 430. These mortality tables would apply as well for purposes of determining the current liability of a multiemployer plan pursuant to section 431(c)(6)(D)(iv)(II). In addition, pursuant to § 1.412(l)(7)-1(a), these proposed regulations would apply for purposes of determining the current liability of a plan for which application of the PPA changes to section 412 is delayed (see sections 104 through 106 of PPA). Under the proposed regulations, mortality tables to be used with respect to disabled individuals would be provided in guidance published in the Internal Revenue Bulletin (IRB).

The new mortality tables under section 430(h)(3)(A) would be based on the tables contained in the RP-2000 Mortality Tables Report. In response to Notice 2003-62, commentators generally recommended that the RP-2000 mortality tables be the basis for the mortality tables used under section 412(l)(7)(C)(ii). The IRS and the Treasury Department reviewed the RP-2000 mortality tables and the

accompanying report published by the Society of Actuaries, and determined to use the RP-2000 mortality tables as the basis for final regulations under section 412(l)(7)(C)(ii) because the RP-2000 mortality tables form the best available basis for predicting mortality of pension plan participants and beneficiaries (other than disabled individuals) based on pension plan experience, including expected trends. Because section 430 applies this same standard, the mortality tables set forth in these proposed regulations under section 430 are also based on the RP-2000 mortality tables. Like the mortality tables provided in the final section 412(l) regulations, the mortality tables set forth in these proposed regulations are gender-distinct because of significant differences between expected male mortality and expected female mortality. See § 601.601(d)(2)(ii)(b) of this chapter.

The mortality tables set forth in these proposed regulations would provide separate mortality rates for annuitants and nonannuitants. This distinction has been made because the RP-2000 Mortality Tables Report indicates that these two groups have significantly different mortality experience. This is particularly true at typical ages for early retirees, where the number of health-induced early retirements results in a population that has higher mortality rates than the population of currently employed individuals. While the use of separate mortality rates for these groups of individuals will likely entail changes in programming of actuarial software, the IRS and the Treasury Department believe that the improvement in accuracy resulting from the use of separate mortality tables for annuitants and nonannuitants more than offsets the added complexity.

Under these proposed regulations, the annuitant mortality tables would be applied to determine the present value of benefits for annuitants. The annuitant mortality tables are also used for nonannuitants (active employees and terminated vested participants) for the periods beginning when the nonannuitants are projected to commence receiving benefits, while the nonannuitant mortality tables are applied for the periods before nonannuitants are projected to commence receiving benefits. For any period in which an annuitant is projected to be receiving benefits, the mortality table applicable to any beneficiary of that annuitant is the annuitant mortality table.

The RP-2000 Mortality Tables Report sets forth mortality tables that reflect expected mortality as of 2000, along

with projection factors that are used to reflect the impact of expected improvements in mortality. Similarly, the mortality tables set forth in the proposed regulations are based on expected mortality as of 2000 and reflect the impact of expected improvements in mortality. Commentators to prior guidance generally stated that the projection of mortality improvement is desirable because it reflects expected mortality more accurately than using mortality tables that do not reflect such projection. The IRS and the Treasury Department agree with these comments, and believe that failing to project mortality improvement in determining the funding target would tend to result in underfunding. The proposed regulations permit plan sponsors to apply the projection of mortality improvement in either of two ways: Through use of static tables that are updated annually to reflect expected improvements in mortality, or through use of generational tables.

The proposed regulations set forth base tables for annuitants and nonannuitants, as well as a set of projection factors. The base tables set forth in the proposed regulations generally provide the same rates as the RP-2000 mortality tables, except that they have been extended so that the annuitant and nonannuitant tables have mortality rates available at each age. The RP-2000 Mortality Tables Report did not develop annuitant rates before age 50 or nonannuitant rates after age 70. The extended nonannuitant tables in these proposed regulations were created by (1) using nonannuitant rates through age 70, (2) using annuitant rates for ages over 80, and (3) blending the rates to produce a smooth transition between the two tables, using increasing fractions. The total difference between the rates at ages 70 and 80 is divided by 55; the rate at age 71 is set equal to the rate at age 70 plus 1/55 of the total difference, the age 72 rate is equal to the rate at age 71 plus 2/55 of the total difference, etc.

A similar approach was used to develop the base tables for annuitants. For male annuitants, annuitant rates from the RP-2000 Mortality Tables Report were used for ages 50 and over, nonannuitant rates from the RP-2000 Mortality Tables Report were used through age 40, and rates between ages 41 and 49 were smoothed to create a smooth transition using the same methodology as was used for the nonannuitant tables. For female annuitants, annuitant rates from the RP-2000 Mortality Tables Report were used for ages 50 and over. However, to avoid anomalous results, female nonannuitant

rates were used through age 46 (rather than age 40) and, accordingly, rates were smoothed between ages 47 and 49. The smoothing methodology for the female annuitant tables was the same as that used for the male tables but, because a shorter transition period was used, the difference between the age 46 and the age 50 mortality rates was smoothed using a denominator of 10 instead of 55.

For a plan sponsor that chooses to use the generational mortality tables, the mortality rate for each particular age would be projected for each individual participant to reflect projected improvement for the period of time until the participant reaches the particular age using the applicable base table along with the projection factors provided under the proposed regulations. These projection factors are from Mortality Projection Scale AA, which was recommended for use in the UP-94 Study and in the RP-2000 Mortality Tables Report. For example, to obtain the age 54 mortality rate for a male annuitant born in 1974 using the generational mortality tables, the age 54 male annuitant table rate is projected 28 years using the age 54 male Projection Scale AA rate set forth in the proposed regulations. The projection period is 28 years because a participant born in 1974 would attain age 54 in 2028, 28 years after the base year of the tables set forth in the proposed regulations. In this instance, because the male age 54 annuitant rate is .005797 under the base table, and the male age 54 Projection Scale AA rate set forth in paragraph (d) of § 1.430(h)(3)-1 is .020, the age 54 male annuitant rate for participants born in 1974 is $.003293 (.005797 * (1-.020)^{28})$.

The static mortality tables that would be permitted to be used under the proposed regulations are constructed from the base table used for purposes of the generational mortality tables. The static mortality tables are projected from the base table for the year 2000 through the year of valuation with further projection to reflect the approximate expected duration of liabilities. The static mortality tables for annuitants under the proposed regulations reflect projection through the year of valuation with a further projection period of 7 years, and the static mortality tables for nonannuitants under the proposed regulations reflect projection through the year of valuation with a further projection period of 15 years. These projection periods were selected as the expected average duration of liabilities and are consistent with projection periods suggested by commentators. To be consistent with the original construction of the RP-2000 mortality

tables, both the static annuitant and nonannuitant tables use the rates from the projected annuitant table for ages 80 and over and from the projected nonannuitant table for ages 40 and younger (ages 44 and younger for females). For a smooth transition between the different projection periods for annuitants versus nonannuitants, the rates for ages 71 through 79 and for ages 41 through 49 (ages 45 through 49 for females) were smoothed using the same technique as that used in constructing the base tables.

The static mortality tables that would apply with respect to valuation dates occurring during 2008 are set forth in the proposed regulations. The mortality tables to be used for valuation dates in subsequent years would be published in the IRB. Comments are requested regarding whether it would be desirable to publish a series of tables for each of a number of years (such as five years) along with final regulations, with tables for subsequent years to be published in the IRB.

As an example of the use of the static tables for the 2008 calendar plan year, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target would be determined using the applicable nonannuitant mortality table for the period before the participant attains age 55 (so that the probability of an active male participant living from age 45 to the age of 55 using the mortality table that would apply in 2008 is 98.61%) and the applicable annuitant mortality table after the participant attains age 55. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, the funding target would be determined using the applicable nonannuitant mortality table for the period before the participant attains age 65 and the applicable annuitant mortality table for ages 65 and above.

These proposed regulations would provide an option for smaller plans (plans where the total of active and inactive participants is less than 500) that choose to use static mortality tables to use a single blended static table for all participants—in lieu of the separate tables for annuitants and nonannuitants—in order to simplify the actuarial valuation for these plans. This blended table would be constructed from the separate nonannuitant and annuitant tables using the nonannuitant/annuitant weighting factors published in the RP-2000 Mortality Tables Report. However, because the RP-2000 Mortality Tables Report does not provide weighting

factors before age 51 or after age 69, the IRS and the Treasury Department would extend the table of weighting factors (using straight-line interpolation) for ages 41 through 50 (ages 45–50 for females) and for ages 70 through 79 in order to develop the blended table.

Substitute Mortality Tables

These proposed regulations would set forth the framework for the development and use of substitute mortality tables in connection with present value determinations and other computations under section 430(h)(3)(C). The provision generally provides for the use of substitute mortality tables by a plan that is subject to section 430, in lieu of the mortality tables provided under section 430(h)(3)(A) and § 1.430(h)(3)-1, upon written request of the plan sponsor and approval of the Commissioner.

Substitute mortality tables must reflect the actual mortality experience of the pension plan maintained by the plan sponsor for which the tables are to be used and that mortality experience must be credible. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality experience with respect to that gender. If the mortality experience for one gender is credible but the mortality experience for the other gender is not credible, the substitute mortality tables are used for the gender that has credible mortality experience, and the mortality tables under § 1.430(h)(3)-1 are used for the gender that does not have credible mortality experience. If separate mortality tables under section 430(h)(3)(D) are used for certain disabled individuals under a plan, then those individuals are disregarded for all purposes with respect to substitute mortality tables under section 430(h)(3)(C). Thus, if the mortality tables under section 430(h)(3)(D) are used for certain disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in determining mortality rates for substitute mortality tables with respect to a plan.

Under the proposed regulations, a substitute mortality table is based on credible mortality experience for a gender within a plan if and only if the mortality experience is based on at least 1,000 deaths within that gender over the period covered by the experience study. The experience study must be based on mortality experience data over a 2, 3, or 4-consecutive year period, the last day of which must be less than 3 years

before the first day of the first plan year for which the substitute mortality tables are to apply. The 1,000 deaths threshold is set at a level so that there is a high degree of confidence that the plan's past mortality experience will be predictive of its future mortality, and is consistent with relevant actuarial literature (see, for example, Thomas N. Herzog, *Introduction to Credibility Theory* (1999); Stuart A. Klugman, *et al.*, *Loss Models: From Data to Decisions* (2004)).

Development of a substitute mortality table under the proposed regulations requires creation of a base table and identification of a base year, which are then used to determine a substitute mortality table. The base table would be developed from a study of the mortality experience of the plan using amounts-weighted data. The proposed regulations set forth rules regarding development of amounts-weighted mortality rates for an age and the determination of the base year. The proposed regulations provide that amounts-weighted mortality rates may be derived from amounts-weighted mortality rates for age groups. Guidance issued by the Commissioner may specify grouping rules (for example, 5-year age groups, except for extreme ages) and methods for developing amounts-weighted mortality rates for individual ages from amounts-weighted mortality rates initially determined for each age group. In addition, the proposed regulations would provide that base tables may be constructed either directly through graduation of amounts-weighted mortality rates or indirectly by applying a level percentage to tables prescribed by section 430(h)(3)(A), provided that the resulting tables sufficiently reflect the plan's mortality experience. The Commissioner may permit the construction of base tables through application of a level percentage to other recognized mortality tables, applying similar standards to ensure that the resulting tables are sufficiently reflective of the plan's mortality experience.

In general, substitute mortality tables are permitted to be used for a plan only if the use of substitute mortality tables is approved for each other pension plan subject to the requirements of section 430 that is maintained by the plan sponsor or by a member of the sponsor's controlled group. However, under the proposed regulations, the use of substitute mortality tables for one plan would not be prohibited merely because another plan subject to section 430 that is maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) cannot use substitute

mortality tables because neither the males nor the females under that plan have credible mortality experience for a plan year. Thus, if a sponsor's controlled group contains two pension plans subject to section 430, each of which has credible mortality experience for at least one gender, either both plans must obtain approval from the Commissioner to use substitute mortality tables or neither plan may use substitute mortality tables. By contrast, if for one of those plans neither males nor females have credible mortality experience, then the plan without credible mortality experience will not interfere with the ability of the plan with credible mortality experience to use substitute mortality tables.

Under the proposed regulations, the requirement that the plan sponsor demonstrate the lack of credible mortality experience for both the male and female populations in other plans maintained by the plan sponsor (and by members of the plan sponsor's controlled group) must be satisfied annually. For each plan year in which a plan uses substitute mortality tables, the demonstration that both genders of another plan maintained by the plan sponsor do not have credible mortality experience (that is, there are less than 1,000 deaths within each gender) must be made using a 4-year period for mortality experience that ends less than 3 years before the first day of that plan year.

For example, a plan sponsor that requests to use substitute mortality tables for a plan for the plan year that begins January 1, 2008, would have to show, as part of its submission to the Commissioner, that both the male and female populations in all other defined benefit plans of the plan sponsor (and in the plan sponsor's controlled group) that are subject to section 430 and that do not use substitute mortality tables do not have credible mortality experience using a 4-year period that ends no earlier than January 2, 2005 (that is, each gender in those plans did not experience 1,000 deaths during that 4-year period). If the plan sponsor chooses to use the 4-year period from January 1, 2003, through December 31, 2006, to demonstrate the lack of credible mortality experience for the other plans, then the plan can rely on this same data to demonstrate the lack of credible mortality experience for 2009 as well because the less-than-3-years requirement is still met with respect to the 2009 plan year. However, the plan would not be able to use this same data to demonstrate lack of credibility for the 2010 plan year because the last day of the experience study used for the

demonstration (the January 1, 2003–December 31, 2006 period) is too distant in time (3 or more years) from the first day of the plan year (January 1, 2010).

Although the proposed regulations permit a plan sponsor to use an experience study to demonstrate a lack of credible mortality experience for a plan population for multiple years, plan sponsors are encouraged to update experience studies annually as new mortality data become available for the plan population. In such a case, if an updated test reveals 1,000 or more deaths for the more recent 4-year period, the plan sponsor nonetheless will be able to continue to use substitute mortality tables for one plan year by demonstrating that the other plans in the controlled group do not have credible mortality experience based on the earlier experience study. This will give the plan sponsor sufficient time to develop substitute mortality tables for the plan population with newly credible mortality experience and to obtain the Commissioner's approval to use those tables prior to the first year substitute mortality tables are to be used for that population.

Under the proposed regulations, a plan's substitute mortality tables must be generational mortality tables. Substitute mortality tables are determined using the base mortality tables developed from the experience study and the projection factors provided in Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable base mortality rate from the base mortality table for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period (that is, the number of years between the base year for the base mortality table and the year for which the probability of death is being determined).

The proposed regulations would require separate tables to be established for males and females under a plan. Under the proposed regulations, separate substitute mortality tables would be permitted (but not required) to be established for separate populations within a gender, such as annuitants and nonannuitants or hourly and salaried individuals. The proposed regulations would provide that separate substitute mortality tables are permitted to be used for a separate population within a gender under a plan only if all

individuals of that gender in the plan are divided into separate populations, each separate population has credible mortality experience (determined in the same manner as determining whether a gender has credible mortality experience), and the separate substitute mortality table for each separate population is developed using mortality experience data for that population. For example, in the case of a plan that has credible mortality experience data for both its male hourly and male salaried populations, separate substitute mortality tables could be used for those two separate populations. However, if the plan does not have credible mortality experience for its male salaried population, it would not be permissible to use substitute mortality tables for its male hourly population and the standard mortality tables described in § 1.430(h)(3)–1 for its male salaried population.

The requirement that each separate population have credible mortality experience does not apply in the case of separate mortality tables that are developed for annuitant and nonannuitant populations within a gender. Thus, the proposed regulations would provide that substitute mortality tables for separate annuitant and nonannuitant populations may be used within a gender even if only one of those separate populations has credible mortality experience. Similarly, if separate populations with credible mortality experience are established within a gender, then any of those populations may be further subdivided into separate annuitant and nonannuitant subpopulations, provided that at least one of the two resulting subpopulations has credible mortality experience. In such a case, the standard mortality tables under § 1.430(h)(3)–1 must be used for a resulting subpopulation that does not have credible mortality experience. For example, in the case of a plan that has credible mortality experience for both its male hourly and salaried individuals, if the male salaried annuitant population has credible mortality experience, it may use substitute mortality tables with respect to that population even if the male salaried nonannuitant population uses the standard mortality tables under § 1.430(h)(3)–1 (because that nonannuitant population does not have credible mortality experience). For purposes of demonstrating that an annuitant or nonannuitant population within a gender or within a separate population does not have credible mortality experience, the demonstration

of lack of credible mortality experience is made on the same basis as for purposes of demonstrating a lack of credible mortality experience for a gender.

The proposed regulations would provide a limited time period during which a newly acquired plan that does not use substitute mortality tables does not prevent another plan from using substitute mortality tables. Under the proposed regulations, the use of substitute mortality tables for a plan is not prohibited merely because a newly acquired plan does not use substitute mortality tables, but only through the last day of the plan year of the plan using substitute mortality tables that contains the end of the period described in section 410(b)(6)(C). For the following plan year, the mortality tables prescribed under § 1.430(h)(3)–1 would apply with respect to the plan (and all other plans within the plan sponsor's controlled group, including the acquired plan) unless approval to use substitute mortality tables has been obtained with respect to the acquired plan, or the acquired plan cannot use substitute mortality tables because neither the males nor the females under the plan have credible mortality experience. For example, if the employer acquires a plan in September 2009 that does not use substitute mortality tables and that has a plan year that ends June 30, the acquisition of that plan will not impair the continued use of substitute mortality tables by a pre-existing calendar year plan of the employer through the end of the 2011 calendar year. This is because the section 410(b)(6)(C) transition period for the newly acquired plan will end on June 30, 2011. Under the proposed regulations, a plan is treated as a newly acquired plan if it is acquired or otherwise becomes maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f). The proposed regulations would provide that a plan is also treated as a newly acquired plan if it is established in connection with a transfer in accordance with section 414(l) of assets and liabilities from another employer's plan in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f).

In the case of a newly acquired plan, the demonstration of whether credible mortality experience exists for the plan may be made by either including or excluding mortality experience data for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group. If a plan sponsor excludes mortality

experience data prior to the date the plan became maintained within the new plan sponsor's controlled group, the exclusion must apply for all populations within the plan. For example, it is impermissible to include the data for hourly individuals for the pre-acquisition period but exclude the data for salaried individuals for that same period.

In order to demonstrate a lack of credible mortality experience with respect to a gender for a plan year, a special rule applies if the plan's mortality experience demonstration for a plan year is made by excluding mortality experience for the period prior to the date the newly acquired plan becomes maintained within the new plan sponsor's controlled group. In such a case, an employer is permitted to demonstrate a plan's lack of credible mortality experience using an experience study period of less than four years, provided that the experience study period begins with the date the plan becomes maintained within the employer's controlled group and ends not more than one year and one day before the first day of the plan year with respect to which the lack of credible mortality experience demonstration is made.

The proposed regulations would provide rules for aggregating plans for purposes of using substitute mortality tables. Under the proposed regulations, in order to use a set of substitute mortality tables for two or more plans, the applicable rules are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used for all such plans and must be based on data collected with respect to all such plans. Although plans generally are not required to be aggregated, the proposed regulations would require a plan to be aggregated with any plan that was previously spun off from that plan if one purpose of the spinoff was to avoid the use of substitute mortality tables for any of the plans involved in the spinoff.

Under the proposed regulations, in order to use substitute mortality tables with respect to a plan, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables comply with applicable requirements. A request to use substitute mortality tables must state the first plan year and the term of years (not more than 10) that the tables are requested to be used. In general, substitute mortality tables cannot be used for a plan year unless the plan sponsor submits the written request to use substitute mortality tables at least 7 months prior to the first day of the first

plan year for which the substitute mortality tables are to apply. However, the timing of the written request to use substitute mortality tables does not prevent a plan from using substitute mortality tables for a plan year if the written request is submitted no later than October 1, 2007. This special rule allows plan sponsors sufficient time to review the proposed regulations and other guidance and prepare requests to use substitute mortality tables for use in 2008.

Under the proposed regulations, experience data cannot be used to develop a base table if the number of individuals in the population covered by the table (for example, the male annuitants) as of the last day of the plan year before the year the request to use substitute mortality tables is made (or a reasonable estimate of that number), compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based, reflects a difference of 20 percent or more, unless it is demonstrated to the satisfaction of the Commissioner that the experience data is accurately predictive of future mortality of that plan population (taking into account the effect of the change in individuals) after appropriate adjustments to the data are made (for example, excluding data from individuals with respect to a spun-off portion of the plan).

Under the proposed regulations, the Commissioner may, in revenue rulings and procedures, notices and other guidance published in the IRB (see § 601.601(d)(2)(ii)(b) of this chapter), provide additional guidance regarding the approval and use of substitute mortality tables under section 430(h)(3)(C) and related matters. The IRS will shortly issue a revenue procedure that will set forth the requirements related to requests to use substitute mortality tables.

In general, the Commissioner has a 180-day period to review a request for the use of substitute mortality tables. If the Commissioner does not issue a denial within this 180-day period, the request is deemed to have been approved unless the Commissioner and the plan sponsor have agreed to extend that period. The Commissioner may request additional information with respect to a submission. Failure to provide that information on a timely basis is grounds for denial of the plan sponsor's request. In addition, the Commissioner will deny a request if the request fails to meet the requirements to use substitute mortality tables or if the Commissioner determines that a

substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population.

The proposed regulations would provide rules regarding the duration of use of substitute mortality tables. Under the proposed regulations, substitute mortality tables generally are used with respect to a plan for the term of consecutive plan years specified in the plan sponsor's written request to use such tables and approved by the Commissioner, or such shorter period prescribed by the Commissioner in the approval to use substitute mortality tables. If the term of use of a substitute mortality table ends for any reason, the mortality tables specified in § 1.430(h)(3)–1 will apply with respect to the plan unless the plan sponsor has obtained approval to use substitute mortality tables for a further term. The proposed regulations would provide that a plan's substitute mortality tables cannot be used as of the earliest of the following: the second plan year following the plan year in which there is a significant change in the population covered by the substitute mortality table (generally, a change of at least 20% from the average number of individuals included in the experience study); or the plan year following the plan year in which a substitute mortality table for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner. In addition, the proposed regulations would provide that a plan's substitute mortality tables cannot be used after the date specified in guidance published in the IRB (see § 601.601(d)(2)(ii)(b) of this chapter) pursuant to a replacement of mortality tables specified under section 430(h)(3)(A) (other than annual updates to the static mortality tables).

Applicability Date

These regulations are proposed to apply to plan years beginning on or after January 1, 2008.

Mortality Tables Used Under Section 417(e)

Section 417(e)(3)(B)(i), as amended by PPA, provides that the applicable mortality table (which is used to determine the minimum present value of certain distributions as required by section 417(e)(3)) is a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under section 430(h)(3)(A) (without regard to the option to use substitute mortality

tables under section 430(h)(3)(C) or the separate mortality tables for disabled individuals under section 430(h)(3)(D)). This change is effective for plan years beginning after December 31, 2007. Comments are requested regarding how the mortality tables provided under proposed § 1.430(h)(3)–1 should be modified for use in applying the minimum present value rules of section 417(e)(3).³ Issues to be addressed include whether to use annuitant mortality rates or combined mortality rates and whether use of generational mortality tables is appropriate.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Bruce Perlin, Lauson C. Green, and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government

³ Substitute mortality tables described in Code section 430(h)(3)(C) and § 1.430(h)(3)–2 of these proposed regulations do not apply for purposes of the requirements of section 417(e).

Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.430(h)(3)–1 is added to read as follows:

§ 1.430(h)(3)–1 Mortality tables used to determine present value.

(a) *Basis for mortality tables*—(1) *In general.* This section sets forth rules for the mortality tables to be used in determining present value or making any computation under section 430. Generally applicable mortality tables for participants and beneficiaries are set forth in this section pursuant to section 430(h)(3)(A). In lieu of using the mortality tables provided under this section with respect to participants and beneficiaries, plan-specific substitute mortality tables are permitted to be used for this purpose pursuant to section 430(h)(3)(C) provided that the requirements of § 1.430(h)(3)–2 are satisfied. Mortality tables that may be used with respect to disabled individuals are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(2) *Static tables or generational tables permitted.* The generally applicable mortality tables provided under section 430(h)(3)(A) are the static tables described in paragraph (a)(3) of this section and the generational mortality tables described in paragraph (a)(4) of this section. A plan is permitted to use either of those sets of mortality tables with respect to participants and beneficiaries pursuant to this section.

(3) *Static tables.* The static mortality tables that are permitted to be used pursuant to paragraph (a)(2) of this section are updated annually to reflect expected improvements in mortality experience as described in paragraph (c)(2) of this section. Static mortality tables that are to be used with respect to valuation dates occurring during 2008 are provided in paragraph (e) of this section. The mortality tables to be used with respect to valuation dates

occurring in later years are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(4) *Generational mortality tables*—(i) *In general.* The generational mortality tables that are permitted to be used pursuant to paragraph (a)(2) of this section are determined pursuant to this paragraph (a)(4) using the base mortality tables and projection factors set forth in paragraph (d) of this section. Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable mortality rate from the table set forth in paragraph (d) of this section for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period. For this purpose, the projection period is the number of years between 2000 and the year for which the probability of death is being determined.

(ii) *Examples of calculation.* As an example of the use of generational mortality tables under paragraph (a)(4)(i) of this section, for purposes of determining the probability of death at age 54 for a male annuitant born in 1974, the base mortality rate is .005797, the projection factor is .020, and the projection period (the period from the year 2000 until the year the participant will attain age 54) is 28 years, so that the mortality improvement factor is .567976, and the probability of death at age 54 is .003293. Similarly, under these generational mortality tables, the probability of death at age 55 for the same male annuitant would be determined by using the base mortality rate and projection factor at age 55, and a projection period of 29 years (the period from the year 2000 until the year the participant will attain age 55). Thus, the base mortality rate is .005905, the projection factor is .019, so that the mortality improvement factor is .573325 $((1 - .019)^{29})$, and the probability of death at age 55 is .003385 (.573325 times .005905). Because these generational mortality tables reflect expected improvements in mortality experience, no periodic updates are needed.

(b) *Use of the tables*—(1) *Separate tables for annuitants and nonannuitants*—(i) *In general.* Separate tables are provided for use for annuitants and nonannuitants. The nonannuitant mortality table is applied to determine the probability of survival

for a nonannuitant for the period before the nonannuitant is projected to commence receiving benefits. The annuitant mortality table is applied to determine the present value of benefits for each annuitant, and for each nonannuitant for the period beginning when the nonannuitant is projected to commence receiving benefits. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits and a nonannuitant means a plan participant who has not yet commenced receiving benefits (for example, an active employee or a terminated vested participant). A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit which has commenced and a nonannuitant with respect to the balance of the benefit. In addition, for any period in which an annuitant is projected to be receiving benefits, any beneficiary with respect to that annuitant is also treated as an annuitant for purposes of this paragraph (b)(1).

(ii) *Examples of calculation.* As an example of the use of separate annuitant and nonannuitant tables under paragraph (b)(1)(i) of this section, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (so that, if the static mortality tables are used pursuant to paragraph (a)(3) of this section, the probability of an active male participant living from age 45 to age 55 using the table that applies for a plan year beginning in 2008 is 98.61%) and the annuitant mortality table for the period ages 55 and above. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, the funding target would be determined using the nonannuitant mortality table for the period before the participant attains age 65 and the annuitant mortality table for ages 65 and above.

(2) *Small plan tables.* If static mortality tables are used pursuant to paragraph (a)(3) of this section, as an alternative to the separate static tables specified for annuitants and nonannuitants pursuant to paragraph (b)(1) of this section, a combined static table that applies the same mortality rates to both annuitants and nonannuitants is permitted to be used for a small plan. For this purpose, a small plan is defined as a plan with fewer than 500 participants (including both active and inactive participants).

(c) *Construction of static tables*—(1) *Source of basic rates.* The static mortality tables that are used pursuant to paragraph (a)(3) of this section are based on the base mortality tables set forth in paragraph (d) of this section.

(2) *Projected mortality improvements.* The mortality rates under the base mortality tables are projected to improve using the projection factors provided in Projection Scale AA, as set forth in paragraph (d) of this section. Using these projection factors, the mortality rate for an individual at each age is determined as the individual's base mortality rate (that is, the applicable base mortality rate from the table set forth in paragraph (d) of this section for the individual at that age) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period. The annuitant mortality rates for a plan year are determined using a projection period that runs from the calendar year 2000 until 7 years after

the calendar year that contains the valuation date for the plan year. The nonannuitant mortality rates for a plan year are determined using a projection period that runs from the calendar year 2000 until 15 years after the calendar year that contains the valuation date for the plan year. Thus, for example, for a plan year with a January 1, 2012, valuation date, the annuitant mortality rates are determined using a projection period that runs from 2000 until 2019 (19 years) and the nonannuitant mortality rates are determined using a projection period that runs from 2000 until 2027 (27 years).

(3) *Construction of combined tables for small plans.* The combined mortality tables that are permitted to be used for small plans pursuant to paragraph (b)(2) of this section are constructed from the separate nonannuitant and annuitant tables using the weighting factors for small plans that are set forth in paragraph (d) of this section. The weighting factors are applied to develop these mortality tables using the

following equation: Combined mortality rate = [nonannuitant rate * (1 - weighting factor)] + [annuitant rate * weighting factor].

(d) *Base mortality tables and projection factors.* The following base mortality tables and projection factors are used to determine generational mortality tables for purposes of determining present value or making any computation under section 430 as set forth in paragraph (a)(4) of this section. In addition, the following base mortality tables and projection factors are used to determine the static mortality tables that are used for purposes of determining present value or making any computation under section 430 as set forth in paragraphs (a)(3) and (c) of this section. See § 1.430(h)(3)-2(c)(3) for rules regarding the required use of the projection factors set forth in this paragraph (d) in connection with a plan-specific substitute mortality table.

Age	Male				Female			
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
1	0.000637	0.000637	0.020	.....	0.000571	0.000571	0.020	.....
2	0.000430	0.000430	0.020	.....	0.000372	0.000372	0.020	.....
3	0.000357	0.000357	0.020	.....	0.000278	0.000278	0.020	.....
4	0.000278	0.000278	0.020	.....	0.000208	0.000208	0.020	.....
5	0.000255	0.000255	0.020	.....	0.000188	0.000188	0.020	.....
6	0.000244	0.000244	0.020	.....	0.000176	0.000176	0.020	.....
7	0.000234	0.000234	0.020	.....	0.000165	0.000165	0.020	.....
8	0.000216	0.000216	0.020	.....	0.000147	0.000147	0.020	.....
9	0.000209	0.000209	0.020	.....	0.000140	0.000140	0.020	.....
10	0.000212	0.000212	0.020	.....	0.000141	0.000141	0.020	.....
11	0.000219	0.000219	0.020	.....	0.000143	0.000143	0.020	.....
12	0.000228	0.000228	0.020	.....	0.000148	0.000148	0.020	.....
13	0.000240	0.000240	0.020	.....	0.000155	0.000155	0.020	.....
14	0.000254	0.000254	0.019	.....	0.000162	0.000162	0.018	.....
15	0.000269	0.000269	0.019	.....	0.000170	0.000170	0.016	.....
16	0.000284	0.000284	0.019	.....	0.000177	0.000177	0.015	.....
17	0.000301	0.000301	0.019	.....	0.000184	0.000184	0.014	.....
18	0.000316	0.000316	0.019	.....	0.000188	0.000188	0.014	.....
19	0.000331	0.000331	0.019	.....	0.000190	0.000190	0.015	.....
20	0.000345	0.000345	0.019	.....	0.000191	0.000191	0.016	.....
21	0.000357	0.000357	0.018	.....	0.000192	0.000192	0.017	.....
22	0.000366	0.000366	0.017	.....	0.000194	0.000194	0.017	.....
23	0.000373	0.000373	0.015	.....	0.000197	0.000197	0.016	.....
24	0.000376	0.000376	0.013	.....	0.000201	0.000201	0.015	.....
25	0.000376	0.000376	0.010	.....	0.000207	0.000207	0.014	.....
26	0.000378	0.000378	0.006	.....	0.000214	0.000214	0.012	.....
27	0.000382	0.000382	0.005	.....	0.000223	0.000223	0.012	.....
28	0.000393	0.000393	0.005	.....	0.000235	0.000235	0.012	.....
29	0.000412	0.000412	0.005	.....	0.000248	0.000248	0.012	.....
30	0.000444	0.000444	0.005	.....	0.000264	0.000264	0.010	.....
31	0.000499	0.000499	0.005	.....	0.000307	0.000307	0.008	.....
32	0.000562	0.000562	0.005	.....	0.000350	0.000350	0.008	.....
33	0.000631	0.000631	0.005	.....	0.000394	0.000394	0.009	.....
34	0.000702	0.000702	0.005	.....	0.000435	0.000435	0.010	.....
35	0.000773	0.000773	0.005	.....	0.000475	0.000475	0.011	.....
36	0.000841	0.000841	0.005	.....	0.000514	0.000514	0.012	.....
37	0.000904	0.000904	0.005	.....	0.000554	0.000554	0.013	.....
38	0.000964	0.000964	0.006	.....	0.000598	0.000598	0.014	.....

Age	Male				Female			
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
39	0.001021	0.001021	0.007	.....	0.000648	0.000648	0.015	.....
40	0.001079	0.001079	0.008	.....	0.000706	0.000706	0.015	.....
41	0.001142	0.001157	0.009	0.0045	0.000774	0.000774	0.015	.....
42	0.001215	0.001312	0.010	0.0091	0.000852	0.000852	0.015	.....
43	0.001299	0.001545	0.011	0.0136	0.000937	0.000937	0.015	.....
44	0.001397	0.001855	0.012	0.0181	0.001029	0.001029	0.015	.....
45	0.001508	0.002243	0.013	0.0226	0.001124	0.001124	0.016	0.0084
46	0.001616	0.002709	0.014	0.0272	0.001223	0.001223	0.017	0.0167
47	0.001734	0.003252	0.015	0.0317	0.001326	0.001335	0.018	0.0251
48	0.001860	0.003873	0.016	0.0362	0.001434	0.001559	0.018	0.0335
49	0.001995	0.004571	0.017	0.0407	0.001550	0.001896	0.018	0.0419
50	0.002138	0.005347	0.018	0.0453	0.001676	0.002344	0.017	0.0502
51	0.002288	0.005528	0.019	0.0498	0.001814	0.002459	0.016	0.0586
52	0.002448	0.005644	0.020	0.0686	0.001967	0.002647	0.014	0.0744
53	0.002621	0.005722	0.020	0.0953	0.002135	0.002895	0.012	0.0947
54	0.002812	0.005797	0.020	0.1288	0.002321	0.003190	0.010	0.1189
55	0.003029	0.005905	0.019	0.2066	0.002526	0.003531	0.008	0.1897
56	0.003306	0.006124	0.018	0.3173	0.002756	0.003925	0.006	0.2857
57	0.003628	0.006444	0.017	0.3780	0.003010	0.004385	0.005	0.3403
58	0.003997	0.006895	0.016	0.4401	0.003291	0.004921	0.005	0.3878
59	0.004414	0.007485	0.016	0.4986	0.003599	0.005531	0.005	0.4360
60	0.004878	0.008196	0.016	0.5633	0.003931	0.006200	0.005	0.4954
61	0.005382	0.009001	0.015	0.6338	0.004285	0.006919	0.005	0.5805
62	0.005918	0.009915	0.015	0.7103	0.004656	0.007689	0.005	0.6598
63	0.006472	0.010951	0.014	0.7902	0.005039	0.008509	0.005	0.7520
64	0.007028	0.012117	0.014	0.8355	0.005429	0.009395	0.005	0.8043
65	0.007573	0.013419	0.014	0.8832	0.005821	0.010364	0.005	0.8552
66	0.008099	0.014868	0.013	0.9321	0.006207	0.011413	0.005	0.9118
67	0.008598	0.016460	0.013	0.9510	0.006583	0.012540	0.005	0.9367
68	0.009069	0.018200	0.014	0.9639	0.006945	0.013771	0.005	0.9523
69	0.009510	0.020105	0.014	0.9714	0.007289	0.015153	0.005	0.9627
70	0.009922	0.022206	0.015	0.9740	0.007613	0.016742	0.005	0.9661
71	0.010912	0.024570	0.015	0.9766	0.008309	0.018579	0.006	0.9695
72	0.012892	0.027281	0.015	0.9792	0.009700	0.020665	0.006	0.9729
73	0.015862	0.030387	0.015	0.9818	0.011787	0.022970	0.007	0.9763
74	0.019821	0.033900	0.015	0.9844	0.014570	0.025458	0.007	0.9797
75	0.024771	0.037834	0.014	0.9870	0.018049	0.028106	0.008	0.9830
76	0.030710	0.042169	0.014	0.9896	0.022224	0.030966	0.008	0.9864
77	0.037640	0.046906	0.013	0.9922	0.027094	0.034105	0.007	0.9898
78	0.045559	0.052123	0.012	0.9948	0.032660	0.037595	0.007	0.9932
79	0.054469	0.057927	0.011	0.9974	0.038922	0.041506	0.007	0.9966
80	0.064368	0.064368	0.010	1.0000	0.045879	0.045879	0.007	1.0000
81	0.072041	0.072041	0.009	1.0000	0.050780	0.050780	0.007	1.0000
82	0.080486	0.080486	0.008	1.0000	0.056294	0.056294	0.007	1.0000
83	0.089718	0.089718	0.008	1.0000	0.062506	0.062506	0.007	1.0000
84	0.099779	0.099779	0.007	1.0000	0.069517	0.069517	0.007	1.0000
85	0.110757	0.110757	0.007	1.0000	0.077446	0.077446	0.006	1.0000
86	0.122797	0.122797	0.007	1.0000	0.086376	0.086376	0.005	1.0000
87	0.136043	0.136043	0.006	1.0000	0.096337	0.096337	0.004	1.0000
88	0.150590	0.150590	0.005	1.0000	0.107303	0.107303	0.004	1.0000
89	0.166420	0.166420	0.005	1.0000	0.119154	0.119154	0.003	1.0000
90	0.183408	0.183408	0.004	1.0000	0.131682	0.131682	0.003	1.0000
91	0.199769	0.199769	0.004	1.0000	0.144604	0.144604	0.003	1.0000
92	0.216605	0.216605	0.003	1.0000	0.157618	0.157618	0.003	1.0000
93	0.233662	0.233662	0.003	1.0000	0.170433	0.170433	0.002	1.0000
94	0.250693	0.250693	0.003	1.0000	0.182799	0.182799	0.002	1.0000
95	0.267491	0.267491	0.002	1.0000	0.194509	0.194509	0.002	1.0000
96	0.283905	0.283905	0.002	1.0000	0.205379	0.205379	0.002	1.0000
97	0.299852	0.299852	0.002	1.0000	0.215240	0.215240	0.001	1.0000
98	0.315296	0.315296	0.001	1.0000	0.223947	0.223947	0.001	1.0000
99	0.330207	0.330207	0.001	1.0000	0.231387	0.231387	0.001	1.0000
100	0.344556	0.344556	0.001	1.0000	0.237467	0.237467	0.001	1.0000
101	0.358628	0.358628	0.000	1.0000	0.244834	0.244834	0.000	1.0000
102	0.371685	0.371685	0.000	1.0000	0.254498	0.254498	0.000	1.0000
103	0.383040	0.383040	0.000	1.0000	0.266044	0.266044	0.000	1.0000
104	0.392003	0.392003	0.000	1.0000	0.279055	0.279055	0.000	1.0000
105	0.397886	0.397886	0.000	1.0000	0.293116	0.293116	0.000	1.0000
106	0.400000	0.400000	0.000	1.0000	0.307811	0.307811	0.000	1.0000
107	0.400000	0.400000	0.000	1.0000	0.322725	0.322725	0.000	1.0000

Age	Male				Female			
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
108	0.400000	0.400000	0.000	1.0000	0.337441	0.337441	0.000	1.0000
109	0.400000	0.400000	0.000	1.0000	0.351544	0.351544	0.000	1.0000
110	0.400000	0.400000	0.000	1.0000	0.364617	0.364617	0.000	1.0000
111	0.400000	0.400000	0.000	1.0000	0.376246	0.376246	0.000	1.0000
112	0.400000	0.400000	0.000	1.0000	0.386015	0.386015	0.000	1.0000
113	0.400000	0.400000	0.000	1.0000	0.393507	0.393507	0.000	1.0000
114	0.400000	0.400000	0.000	1.0000	0.398308	0.398308	0.000	1.0000
115	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
116	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
117	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
118	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
119	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
120	1.000000	1.000000	0.000	1.0000	1.000000	1.000000	0.000	1.0000

(e) *Static mortality tables with respect to valuation dates occurring during 2008.* The following static mortality

tables are used pursuant to paragraph (a)(3) of this section for determining present value or making any

computation under section 430 with respect to valuation dates occurring during 2008.

Age	Male			Female		
	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans
1	0.000400	0.000400	0.000400	0.000359	0.000359	0.000359
2	0.000270	0.000270	0.000270	0.000234	0.000234	0.000234
3	0.000224	0.000224	0.000224	0.000175	0.000175	0.000175
4	0.000175	0.000175	0.000175	0.000131	0.000131	0.000131
5	0.000160	0.000160	0.000160	0.000118	0.000118	0.000118
6	0.000153	0.000153	0.000153	0.000111	0.000111	0.000111
7	0.000147	0.000147	0.000147	0.000104	0.000104	0.000104
8	0.000136	0.000136	0.000136	0.000092	0.000092	0.000092
9	0.000131	0.000131	0.000131	0.000088	0.000088	0.000088
10	0.000133	0.000133	0.000133	0.000089	0.000089	0.000089
11	0.000138	0.000138	0.000138	0.000090	0.000090	0.000090
12	0.000143	0.000143	0.000143	0.000093	0.000093	0.000093
13	0.000151	0.000151	0.000151	0.000097	0.000097	0.000097
14	0.000163	0.000163	0.000163	0.000107	0.000107	0.000107
15	0.000173	0.000173	0.000173	0.000117	0.000117	0.000117
16	0.000183	0.000183	0.000183	0.000125	0.000125	0.000125
17	0.000194	0.000194	0.000194	0.000133	0.000133	0.000133
18	0.000203	0.000203	0.000203	0.000136	0.000136	0.000136
19	0.000213	0.000213	0.000213	0.000134	0.000134	0.000134
20	0.000222	0.000222	0.000222	0.000132	0.000132	0.000132
21	0.000235	0.000235	0.000235	0.000129	0.000129	0.000129
22	0.000247	0.000247	0.000247	0.000131	0.000131	0.000131
23	0.000263	0.000263	0.000263	0.000136	0.000136	0.000136
24	0.000278	0.000278	0.000278	0.000142	0.000142	0.000142
25	0.000298	0.000298	0.000298	0.000150	0.000150	0.000150
26	0.000329	0.000329	0.000329	0.000162	0.000162	0.000162
27	0.000340	0.000340	0.000340	0.000169	0.000169	0.000169
28	0.000350	0.000350	0.000350	0.000178	0.000178	0.000178
29	0.000367	0.000367	0.000367	0.000188	0.000188	0.000188
30	0.000396	0.000396	0.000396	0.000210	0.000210	0.000210
31	0.000445	0.000445	0.000445	0.000255	0.000255	0.000255
32	0.000501	0.000501	0.000501	0.000291	0.000291	0.000291
33	0.000562	0.000562	0.000562	0.000320	0.000320	0.000320
34	0.000626	0.000626	0.000626	0.000345	0.000345	0.000345
35	0.000689	0.000689	0.000689	0.000368	0.000368	0.000368
36	0.000749	0.000749	0.000749	0.000389	0.000389	0.000389
37	0.000806	0.000806	0.000806	0.000410	0.000410	0.000410
38	0.000839	0.000839	0.000839	0.000432	0.000432	0.000432
39	0.000869	0.000869	0.000869	0.000458	0.000458	0.000458
40	0.000897	0.000897	0.000897	0.000499	0.000499	0.000499
41	0.000928	0.000955	0.000928	0.000547	0.000547	0.000547
42	0.000964	0.001070	0.000965	0.000602	0.000602	0.000602

Age	Male			Female		
	Non-annu- itant mor- tality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annu- itant mor- tality rates	Annuitant mortality rates	Optional combines table for small plans
43	0.001007	0.001243	0.001010	0.000662	0.000662	0.000662
44	0.001058	0.001474	0.001066	0.000727	0.000727	0.000727
45	0.001116	0.001763	0.001131	0.000776	0.000779	0.000776
46	0.001168	0.002109	0.001194	0.000824	0.000882	0.000825
47	0.001225	0.002513	0.001266	0.000873	0.001037	0.000877
48	0.001284	0.002975	0.001345	0.000944	0.001244	0.000954
49	0.001345	0.003495	0.001433	0.001021	0.001502	0.001041
50	0.001408	0.004072	0.001529	0.001130	0.001812	0.001164
51	0.001472	0.004146	0.001605	0.001252	0.001931	0.001292
52	0.001538	0.004168	0.001718	0.001422	0.002142	0.001476
53	0.001647	0.004226	0.001893	0.001617	0.002415	0.001693
54	0.001767	0.004281	0.002091	0.001842	0.002744	0.001949
55	0.001948	0.004428	0.002460	0.002100	0.003130	0.002295
56	0.002177	0.004663	0.002966	0.002400	0.003586	0.002739
57	0.002446	0.004983	0.003405	0.002682	0.004067	0.003153
58	0.002758	0.005413	0.003926	0.002933	0.004565	0.003566
59	0.003046	0.005876	0.004457	0.003207	0.005130	0.004045
60	0.003366	0.006435	0.005095	0.003503	0.005751	0.004617
61	0.003802	0.007175	0.005940	0.003818	0.006418	0.005327
62	0.004180	0.007904	0.006825	0.004149	0.007132	0.006117
63	0.004680	0.008864	0.007986	0.004490	0.007893	0.007049
64	0.005082	0.009807	0.009030	0.004838	0.008715	0.007956
65	0.005476	0.010861	0.010232	0.005187	0.009613	0.008972
66	0.005994	0.012218	0.011795	0.005531	0.010586	0.010140
67	0.006363	0.013527	0.013176	0.005866	0.011632	0.011267
68	0.006557	0.014731	0.014436	0.006189	0.012774	0.012460
69	0.006876	0.016273	0.016004	0.006495	0.014055	0.013773
70	0.007009	0.017702	0.017424	0.006784	0.015529	0.015233
71	0.007888	0.019586	0.019312	0.007411	0.016975	0.016683
72	0.009646	0.021747	0.021495	0.008666	0.018881	0.018604
73	0.012283	0.024223	0.024006	0.010548	0.020673	0.020433
74	0.015799	0.027024	0.026849	0.013058	0.022912	0.022712
75	0.020195	0.030622	0.030486	0.016195	0.024916	0.024768
76	0.025470	0.034131	0.034041	0.019959	0.027451	0.027349
77	0.031624	0.038547	0.038493	0.024351	0.030694	0.030629
78	0.038657	0.043489	0.043464	0.029370	0.033835	0.033805
79	0.046569	0.049071	0.049064	0.035017	0.037355	0.037347
80	0.055360	0.055360	0.055360	0.041291	0.041291	0.041291
81	0.062905	0.062905	0.062905	0.045702	0.045702	0.045702
82	0.071350	0.071350	0.071350	0.050664	0.050664	0.050664
83	0.079534	0.079534	0.079534	0.056255	0.056255	0.056255
84	0.089800	0.089800	0.089800	0.062565	0.062565	0.062565
85	0.099680	0.099680	0.099680	0.070761	0.070761	0.070761
86	0.110516	0.110516	0.110516	0.080120	0.080120	0.080120
87	0.124300	0.124300	0.124300	0.090716	0.090716	0.090716
88	0.139683	0.139683	0.139683	0.101042	0.101042	0.101042
89	0.154366	0.154366	0.154366	0.113903	0.113903	0.113903
90	0.172706	0.172706	0.172706	0.125879	0.125879	0.125879
91	0.188113	0.188113	0.188113	0.138232	0.138232	0.138232
92	0.207060	0.207060	0.207060	0.150672	0.150672	0.150672
93	0.223365	0.223365	0.223365	0.165391	0.165391	0.165391
94	0.239646	0.239646	0.239646	0.177391	0.177391	0.177391
95	0.259578	0.259578	0.259578	0.188755	0.188755	0.188755
96	0.275506	0.275506	0.275506	0.199303	0.199303	0.199303
97	0.290981	0.290981	0.290981	0.212034	0.212034	0.212034
98	0.310600	0.310600	0.310600	0.220611	0.220611	0.220611
99	0.325288	0.325288	0.325288	0.227940	0.227940	0.227940
100	0.339424	0.339424	0.339424	0.233930	0.233930	0.233930
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015

Age	Male			Female		
	Non-annu- itant mor- tality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annu- itant mor- tality rates	Annuitant mortality rates	Optional combines table for small plans
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

(f) *Applicability date.* This section applies for plan years beginning on or after January 1, 2008.

Par. 3. Section 1.430(h)(3)–2 is added to read as follows:

§ 1.430(h)(3)–2 Plan-specific substitute mortality tables used to determine present value.

(a) *In general.* This section sets forth rules for the use of substitute mortality tables under section 430(h)(3)(C) in determining any present value or making any computation under section 430 in accordance with § 1.430(h)(3)–1(a)(1). In order to use substitute mortality tables, a plan sponsor must obtain approval to use substitute mortality tables for the plan in accordance with the procedures set forth in paragraph (b) of this section. Paragraph (c) of this section sets forth rules for the development of substitute mortality tables, including guidelines for determining whether a plan has sufficient credible mortality experience to use substitute mortality tables. Paragraph (d) of this section sets forth special rules regarding the use of substitute mortality tables. The Commissioner may, in revenue rulings and procedures, notices and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), provide additional guidance regarding approval and use of substitute mortality tables under section 430(h)(3)(C) and related matters.

(b) *Procedures for obtaining approval to use substitute mortality tables—(1) Written request to use substitute mortality tables—(i) General requirements.* In order to use substitute mortality tables, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables meet the requirements of section 430(h)(3)(C) and this section. This request must state the first plan year and the term of years (not more than 10) that the tables are requested to be used.

(ii) *Time for written request—(A) In general.* Except as provided in paragraph (b)(1)(ii)(B) of this section, substitute mortality tables cannot be used for a plan year unless the plan sponsor submits the written request described in paragraph (b)(1)(i) of this section at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply.

(B) *Special rule for requests submitted on or before October 1, 2007.*

Notwithstanding the rule of paragraph (b)(1)(ii)(A) of this section, the timing of the written request described in paragraph (b)(1)(i) of this section does not prevent a plan from using substitute mortality tables for a plan year provided that the written request is submitted no later than October 1, 2007.

(2) *Commissioner's review of request—(i) In general.* During the 180-day period that begins on the date the plan sponsor submits a request to use substitute mortality tables for a plan pursuant to this section, the Commissioner will determine whether the request to use substitute mortality tables satisfies the requirements of this section (including any published guidance issued pursuant to paragraph (a) of this section), and will either approve or deny the request. The Commissioner will deny a request if the request fails to meet the requirements of this section or if the Commissioner determines that a substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population.

(ii) *Request for additional information.* The Commissioner may request additional information with respect to the submission. Failure to provide that information on a timely basis constitutes grounds for denial of the request.

(iii) *Deemed approval.* Except as provided in paragraph (b)(2)(iv) of this section, if the Commissioner does not issue a denial within the 180-day review

period, the request is deemed to have been approved.

(iv) *Extension of time permitted.* The Commissioner and a plan sponsor may, before the expiration of the 180-day review period, agree in writing to extend that period, provided that any such agreement also specifies any revisions in the plan sponsor's request, including any change in the requested term of use of the substitute mortality tables.

(c) *Development of substitute mortality tables—(1) Mortality experience requirements—(i) In general.* Substitute mortality tables must reflect the actual mortality experience of the pension plan maintained by the plan sponsor for which the tables are to be used and that mortality experience must be credible mortality experience as described in paragraph (c)(1)(ii) of this section. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality experience with respect to that gender.

(ii) *Credible mortality experience.* There is credible mortality experience for a gender within a plan if and only if, over the period covered by the experience study described in paragraph (c)(2)(ii) of this section, there are at least 1,000 deaths within that gender.

(iii) *Gender without credible mortality experience—(A) In general.* If, for the first year for which a plan uses substitute mortality tables, one gender has credible mortality experience but the other gender does not have credible mortality experience, the substitute mortality tables are used for the gender that does have credible mortality experience and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality experience. For a subsequent plan year, the plan sponsor may continue to use substitute mortality tables for the gender with credible mortality experience without using substitute mortality tables for the other

gender only if the other gender continues to lack credible mortality experience for that subsequent plan year.

(B) *Demonstration of lack of credible mortality experience for a gender.* In order to demonstrate that a gender within a plan does not have credible mortality experience for a plan year, the mortality experience of that population must be analyzed using a 4-year experience study that ends less than 3 years before the first day of that plan year. For example, if a plan uses substitute mortality tables based on credible mortality experience for its male population and the standard mortality tables under § 1.430(h)(3)–1 for its female population, there must be an experience study which shows that the plan's female population does not have at least 1,000 deaths in a 4-year period that ends less than 3 years before the first day of that plan year.

(iv) *Disabled individuals.* Under section 430(h)(3)(D), separate mortality tables are permitted to be used for certain disabled individuals. If such separate mortality tables are used for those disabled individuals, then those individuals are disregarded for all purposes under this section. Thus, if the mortality tables under section 430(h)(3)(D) are used for disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in developing mortality rates for substitute mortality tables under this section.

(2) *Base table and base year—(i) In general.* Development of a substitute mortality table under this section requires creation of a base table and identification of a base year under this paragraph (c)(2). The base table and base year are then used to determine a substitute mortality table under paragraph (c)(3) of this section.

(ii) *Experience study and base table requirements—(A) In general.* The base table for a plan population must be developed from an experience study of the mortality experience of that plan population that generates amounts-weighted mortality rates based on experience data for the plan over 2, 3, or 4 consecutive years. The last day of the final year reflected in the experience data must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply. For example, if July 1, 2008, is the first day of the first plan year for which the substitute mortality tables will be used, then an experience study using calendar year data must include data collected for a period that ends no earlier than December 31, 2005.

(B) *Amounts-weighted mortality rates.* The amounts-weighted mortality rate for an age is equal to the quotient determined by dividing the sum of the accrued benefits (or payable benefits, in the case of individuals in pay status) for all individuals at that age at the beginning of the year who died during the year, by the sum of the accrued benefits (or payable benefits, in the case of individuals in pay status) for all individuals at that age at the beginning of the year, with appropriate adjustments for individuals who left the relevant plan population during the year for reasons other than death. Because amounts-weighted mortality rates for a plan cannot be determined without accrued (or payable) benefits, the mortality experience study used to develop a base table cannot include periods before the plan was established.

(C) *Grouping of ages.* Amounts-weighted mortality rates may be derived from amounts-weighted mortality rates for age groups. The Commissioner, in revenue rulings and procedures, notices, and other guidance, may specify grouping rules (for example, 5-year age groups, except for extreme ages such as ages above 100 or below 20) and methods for developing amounts-weighted mortality rates for individual ages from amounts-weighted mortality rates initially determined for each age group.

(D) *Base table construction.* The base tables must be constructed from the amounts-weighted mortality rates determined in paragraph (c)(2)(ii)(B) of this section. The base tables must be constructed either directly through graduation of the amounts-weighted mortality rates or indirectly by applying a level percentage to the applicable mortality table set forth in § 1.430(h)(3)–1, provided that the adjusted table sufficiently reflects the mortality experience of the plan. The Commissioner also may permit the use of other recognized mortality tables in the construction of base tables, applying a similar mortality experience standard.

(iii) *Base year requirements.* Where there are 2 years of experience data, the base year is the calendar year in which the first year of the experience data begins. Where there are 3 or 4 years of experience data, the base year is the calendar year in which the second year of the experience data begins. If the base table is constructed by applying a level percentage to a table set forth in § 1.430(h)(3)–1, then the percentage must be applied to the table under § 1.430(h)(3)–1 after it has been projected to the base year using Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Thus, for example, if

the base year of the mortality experience study is 2004, the applicable base (year 2000) mortality rates must be projected four years prior to determining the level percentage to be applied to the applicable projected base (year 2000) mortality rates.

(iv) *Change in number of individuals covered by table.* Experience data cannot be used to develop a base table if the number of individuals in the population covered by the table (for example, the male annuitant population) as of the last day of the plan year before the year the request to use substitute mortality tables is made, compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based, reflects a difference of 20 percent or more, unless it is demonstrated to the satisfaction of the Commissioner that the experience data is accurately predictive of future mortality of that plan population (taking into account the effect of the change in individuals) after appropriate adjustments to the data are made (for example, excluding data from individuals with respect to a spun-off portion of the plan). For this purpose, a reasonable estimate of the number of individuals in the population covered by the table may be used, such as the estimated number of participants and beneficiaries used for purposes of the PBGC Form 1–ES.

(3) *Determination of substitute mortality tables—(i) In general.* A plan's substitute mortality tables must be generational mortality tables. Substitute mortality tables are determined using the base mortality tables developed pursuant to paragraph (c)(2) of this section and the projection factors provided in Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable mortality rate from the base mortality table for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period (the number of years between the base year for the base mortality table and the calendar year in which the individual attains the age for which the probability of death is being determined).

(ii) *Example of calculation.* As an example of the use of generational mortality tables under paragraph (c)(3)(i) of this section, if approved

substitute mortality tables are based on data collected during 2005 and 2006, the base year would be the first year of experience (2005) because the substitute tables are based on two years of experience data. If the tables show a base mortality rate of .006000 for male annuitants at age 54, the probability of death at age 54 for a male annuitant born in 1974 would be determined using the base mortality rate of .006000, the age-54 projection factor of .020 (pursuant to the Scale AA Projection Factors set forth in § 1.430(h)(3)–1(d)) and a projection period of 23 years. The projection period is the number of years between the base year of 2005 and the calendar year in which the individual reaches age 54. Accordingly, the mortality improvement factor would be .628347 and the probability of death at age 54 would be .003770.

(4) *Separate tables for specified populations*—(i) *In general.* Except as provided in this paragraph (c)(4), separate substitute mortality tables are permitted to be used for separate populations within a gender under a plan only if—

(A) All individuals of that gender in the plan are divided into separate populations;

(B) Each separate population has credible mortality experience as provided in paragraph (c)(4)(iii) of this section; and

(C) The separate substitute mortality table for each separate population is developed using mortality experience data for that population.

(ii) *Annuitant and nonannuitant separate populations.* Notwithstanding paragraph (c)(4)(i)(B) of this section, substitute mortality tables for separate populations of annuitants and nonannuitants within a gender may be used even if only one of those separate populations has credible mortality experience. Similarly, if separate populations that satisfy paragraph (c)(4)(i)(B) of this section are established, then any of those populations may be further subdivided into separate annuitant and nonannuitant subpopulations, provided that at least one of the two resulting subpopulations has credible mortality experience. The standard mortality tables under § 1.430(h)(3)–1 are used for a resulting subpopulation that does not have credible mortality experience. For example, in the case of a plan that has credible mortality experience for both its male hourly and salaried individuals, if the male salaried annuitant population has credible mortality experience, it may use substitute mortality tables with respect to that population even if the male salaried

nonannuitant population uses the standard mortality tables under § 1.430(h)(3)–1 (because that nonannuitant population does not have credible mortality experience).

(iii) *Credible mortality experience for separate populations.* In determining whether a separate population within a gender has credible mortality experience, the requirements of paragraph (c)(1)(ii) of this section must be satisfied but, in applying that paragraph, the separate population should be substituted for the particular gender. In demonstrating that an annuitant or nonannuitant population within a gender or within a separate population does not have credible mortality experience, the requirements of paragraph (c)(1)(iii) of this section must be satisfied but, in applying that paragraph, the annuitant (or nonannuitant) population should be substituted for the particular gender.

(d) *Special rules*—(1) *All plans in controlled group must use substitute mortality tables*—(i) *In general.* Except as otherwise provided in this paragraph (d)(1), substitute mortality tables are permitted to be used for a plan only if the use of substitute mortality tables is approved under this section for each other pension plan subject to the requirements of section 430 that is maintained by the sponsor and by each member of the plan sponsor's controlled group. For purposes of this section, the term *controlled group* means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

(ii) *Plans without credible experience*—(A) *In general.* For the first year for which a plan uses substitute mortality tables, the use of substitute mortality tables for the plan is not prohibited merely because another plan described in paragraph (d)(1)(i) of this section cannot use substitute mortality tables because neither the males nor the females under that other plan have credible mortality experience for a plan year. For each subsequent plan year, the plan sponsor may continue to use substitute mortality tables for the plan with credible mortality experience without using substitute mortality tables for the other plan only if neither the males nor the females under that other plan have credible mortality experience for that subsequent plan year.

(B) *Analysis of mortality experience.* For each plan year in which a plan uses substitute mortality tables, in order to demonstrate that the male and female populations of another plan maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) do not have credible mortality experience,

the requirements of paragraph (c)(1)(iii)(B) of this section must be satisfied for that plan year. Thus, a plan is not prohibited from using substitute mortality tables for a plan year merely because another plan in the controlled group of the plan sponsor does not have at least 1,000 male deaths and does not have at least 1,000 female deaths in a 4-year period that ends less than 3 years before the first day of that plan year.

(iii) *Newly acquired plans not using substitute mortality tables*—(A) *In general.* The use of substitute mortality tables for a plan is not prohibited merely because a newly acquired plan does not use substitute mortality tables, but only through the last day of the plan year of the plan using substitute mortality tables that contains the end of the period described in section 410(b)(6)(C). Thus, for the following plan year, the mortality tables prescribed under § 1.430(h)(3)–1 apply with respect to the plan (and all other plans within the plan sponsor's controlled group, including the acquired plan) unless—

(1) Approval to use substitute mortality tables has been obtained with respect to the acquired plan pursuant to paragraph (b)(1) of this section; or

(2) The acquired plan cannot use substitute mortality tables because neither the males nor the females under the plan have credible mortality experience as described in paragraph (c)(1)(ii) of this section (as determined in accordance with the rules of paragraph (d)(1)(iv) of this section).

(B) *Definition of newly acquired plan.* For purposes of this section, a plan is treated as a newly acquired plan if it becomes maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f). In addition, a plan also is treated as a newly acquired plan for purposes of this section if a plan is established in connection with a transfer in accordance with section 414(l) of assets and liabilities from another employer's plan in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f).

(iv) *Demonstration of credible mortality experience for newly acquired plan*—(A) *In general.* In the case of a newly acquired plan described in paragraph (d)(1)(iii) of this section, the demonstration of whether credible mortality experience exists for the plan for a plan year may be made by either including or excluding mortality experience data for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's

controlled group. If a plan sponsor excludes mortality experience data for the period prior to the date the plan becomes maintained within the new plan sponsor's controlled group, the exclusion must apply for all populations within the plan.

(B) *Demonstration of credible mortality experience.* Regardless of whether mortality experience data for the period prior to the date a newly acquired plan becomes maintained within the new plan sponsor's controlled group is included or excluded for a plan year, the provisions of this section, including the demonstration of credible mortality experience in accordance with paragraph (c)(1)(ii) of this section, must be satisfied before substitute mortality tables may be used with respect to the plan. Thus, for example, the plan must meet the rule in paragraph (c)(2)(ii)(A) of this section that the base table be based on mortality experience data for the plan over a 2, 3, or 4-consecutive year period that ends less than 3 years before the first day of the plan year for which substitute mortality tables will be used.

(C) *Demonstration of lack of credible mortality experience.* In the case of a newly acquired plan described in paragraph (d)(1)(iii) of this section, in order to demonstrate a lack of credible mortality experience with respect to a gender for a plan year, the rules of paragraph (c)(1)(iii)(B) of this section generally will apply. However, a special rule applies if the plan's mortality experience demonstration for a plan year is made by excluding mortality experience for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group. In such a case, an employer is permitted to demonstrate a plan's lack of credible mortality experience using an experience study period of less than four years, provided that the experience study period begins with the date the plan becomes maintained within the sponsor's controlled group and ends not more than one year and one day before the first day of the plan year with respect to which the lack of credible mortality experience demonstration is made. Thus, if the transaction occurred on July 1, 2010, in order to demonstrate a lack of credible mortality experience for males and females for the plan year beginning January 1, 2012 (the first day of the plan year following the section 410(b)(6)(C) transition period), there must be an experience study which shows that the plan's male and female populations each do not have 1,000 deaths during the period from July 1,

2010—December 31, 2010. Similarly, in order to perform the demonstration to show a lack of credible mortality experience for the plan year beginning January 1, 2013, there must be an experience study which shows that the plan's male and female populations each do not have 1,000 deaths during the period from July 1, 2010—December 31, 2011.

(2) *Duration of use of tables.* Except as provided in paragraph (d)(4) of this section, substitute mortality tables are used with respect to a plan for the term of consecutive plan years specified in the plan sponsor's written request to use such tables under paragraph (b)(1) of this section and approved by the Commissioner, or such shorter period prescribed by the Commissioner in the approval to use substitute mortality tables. Following the end of such term of use, or following any early termination of use described in paragraph (d)(4) of this section, the mortality tables specified in § 1.430(h)(3)–1 apply with respect to the plan unless approval under paragraph (b)(1) of this section has been received by the plan sponsor to use substitute mortality tables for a further term.

(3) *Aggregation—(i) Permissive aggregation of plans.* In order for a plan sponsor to use a set of substitute mortality tables with respect to two or more plans, the rules of this section are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used for the aggregated plans and must be based on data collected with respect to those aggregated plans.

(ii) *Required aggregation of plans.* In general, plans are not required to be aggregated for purposes of applying the rules of this section. However, for purposes of this section, a plan is required to be aggregated with any plan that was previously spun off from that plan for purposes of this section if the Commissioner determines that one purpose of the spinoff is to avoid the use of substitute mortality tables for any of the plans that were involved in the spinoff.

(4) *Early termination of use of tables—(i) General rule.* A plan's substitute mortality tables cannot be used as of the earliest of—

(A) The plan year in which the plan fails to satisfy the requirements of paragraph (c)(1) of this section (regarding credible mortality experience requirements and demonstrations);

(B) The plan year in which the plan fails to satisfy the requirements of paragraph (d)(1) of this section (regarding use of substitute mortality tables by controlled group members);

(C) The second plan year following the plan year in which there is a significant change in individuals covered by the plan as described in paragraph (d)(4)(ii) of this section;

(D) The plan year following the plan year in which a substitute mortality table used for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner; or

(E) The date specified in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) pursuant to a replacement of mortality tables specified under section 430(h)(3)(A) and § 1.430(h)(3)–1 (other than annual updates to the static mortality tables issued pursuant to § 1.430(h)–1(a)(3)).

(ii) *Significant change in coverage—*

(A) *Change in coverage from time of experience study.* For purposes of applying the rules of paragraph (d)(4)(i)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals of at least 20 percent compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

(B) *Change in coverage from time of certification.* For purposes of applying the rules of paragraph (d)(4)(i)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals covered by a substitute mortality table of at least 20 percent compared to the number of individuals in a plan year for which a certification described in paragraph (d)(4)(ii)(A) of this section was made on account of a prior change in coverage. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used by the plan with respect to the covered population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the plan population).

(e) *Applicability date.* This section applies for plan years beginning on or after January 1, 2008.

Par. 4. Section 1.431(c)(6)–1 is added to read as follows:

§ 1.431(c)(6)–1 Mortality tables used to determine current liability.

The mortality assumptions that apply to a defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and § 1.430(h)(3)–1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the rules of section 431(c)(6). A multiemployer plan is permitted to apply either the static mortality tables used pursuant to § 1.430(h)(3)–1(a)(3) or generational mortality tables used pursuant to § 1.430(h)(3)–1(a)(4) for this purpose. However, for this purpose, a multiemployer plan is not permitted to use substitute mortality tables under § 1.430(h)(3)–2.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 07–2631 Filed 5–23–07; 9:35 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA–2007–27871]

RIN 2126–AB09

Fees for Unified Carrier Registration Plan and Agreement

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish annual fees and a fee bracket structure for the Unified Carrier Registration Agreement as required under the Unified Carrier Registration Act of 2005, enacted as Subtitle C of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

DATES: You must submit comments on or before June 13, 2007.

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FMCSA–2007–27871, 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.*

- *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.

Instructions: All submissions must include the agency name and docket number (FMCSA–2004–27871) or Regulatory Identification Number (RIN) for this rulemaking (RIN 2126–AB09). 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 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 for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>. Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Parks, Regulatory Development Division, (202) 366–5370, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 or by e-mail at: FMCSAregs@DOT.gov.

SUPPLEMENTARY INFORMATION

I. Legal Basis for the Rulemaking

This proposed rule involves the fees to be set for the Unified Carrier Registration Agreement established by 49 U.S.C. 14504a, enacted by section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity

Act: A Legacy for Users (SAFETEA–LU) (119 Stat. 1144, 1764 (2005)). New section 14504a establishes the Unified Carrier Registration Plan, “an organization * * * responsible for developing, implementing, and administering the unified carrier registration agreement” (49 U.S.C. 14504a(a)(9)). The Unified Carrier Registration Agreement is “an interstate agreement governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies * * *” (49 U.S.C. 14504a(a)(8)).

Congress also repealed the statutory provisions of 49 U.S.C. 14504 governing the Single State Registration System (SSRS) (SAFETEA–LU section 4305(a)).¹ The legislative history indicates that the purpose of the UCR Plan and Agreement is both to “replace the existing outdated system [SSRS]” for registration of interstate motor carrier entities with the States and to “ensure that States don't lose current revenues derived from SSRS” (S. Rep. 109–120, at 2 (2005)).²

The statute provides for a 15–member Board of Directors for the UCR Plan and Agreement to be appointed by the Secretary of Transportation. The establishment of the UCR Board (“Board”) was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). Among its responsibilities, the Board must submit to the Secretary of Transportation³ a recommendation for the initial annual fees to be assessed motor carriers, motor private carriers, freight forwarders, brokers and leasing companies under the UCR Agreement (49 U.S.C. 14504a(d)(7)(A)). FMCSA then is directed to set the fees within 90 days after receiving the Board's recommendation and after notice and opportunity for public comment (49 U.S.C. 14504a(d)(7)(B)).

II. Statutory Requirements for UCR Fees

The statute specifies several relevant factors that must be considered by the Board and FMCSA in setting the fees (see 49 U.S.C. 14504a(d)(7)(A), (f)(I) and (g)). It specifies that fees are to be determined by FMCSA based upon the recommendation of the Board. In

¹ This repeal became effective on January 1, 2007, in accordance with section 4305(a).

² The Senate bill's provisions were enacted “with modifications.” H. Conf. Rep. No. 109–203, at 1020 (2005).

³ The Secretary's functions under section 14504a have been delegated to the Administrator of the Federal Motor Carrier Safety Administration. 49 CFR 1.73(a)(7), as amended, 71 FR 30833 (May 31, 2006).

recommending the level of fees to be assessed in any agreement year, and in setting the fee level, both the Board and FMCSA shall consider the following factors:

1. Administrative costs associated with the Unified Carrier Registration Plan and Agreement.

2. Whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the participating States to achieve the revenue levels set by the Board.

3. Provisions governing fees in 49 U.S.C. 14504a(f)(1).

Subsection (f)(1) provides that the fees charged must satisfy the following criteria:

a. Fees charged to a motor carrier, motor private carrier, or freight forwarder in connection with the filing of proof of financial responsibility under the UCR Agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder.⁴

b. Fees charged to a broker or leasing company in connection with the filing of proof of financial responsibility under the UCR Agreement shall be equal to the smallest fee charged to a motor carrier, motor private carrier, and freight forwarder, or to the smallest fee charged under the UCR Agreement.

Section 14504a(f)(1) also stipulates that for the purpose of charging fees the Board shall develop no more than 6 and no less than 4 brackets of carriers (including motor private carriers) based on the size of the fleet, i.e., the number of commercial motor vehicles owned or operated. Finally, the fee scale is required to be progressive in the amount of the fee.

Overall, the fees assessed under the UCR Agreement must produce a level of revenues established by the statute. Section 14504a(g) establishes the revenue entitlements for States that choose to participate in the UCR Plan. That section provides that a participating State, which participated in the SSRS in the registration year prior to the enactment of the Unified Carrier Registration Act of 2005 (i.e., the 2004 registration year), is entitled to receive revenues under the UCR Agreement equivalent to the revenues it received in 2004. Participating States that also collected intrastate registration fees from interstate motor carrier entities (whether or not they participated in SSRS) are also entitled to receive

revenues of this type under the UCR Agreement equivalent to the amount received in the 2004 registration year. The section also requires that States which did not participate in SSRS in 2004, but which choose to participate in the UCR Plan, will receive revenues not to exceed \$500,000 per year.

III. UCR Board Fee Recommendation

As mentioned in I. above, the statute provides for a 15-member Board of Directors for the UCR Plan and Agreement to be appointed by the Secretary of Transportation. Section 14504a(d) specifies that the UCR Board of Directors must consist of representatives from the following groups:

U.S. Department of Transportation: One individual, either the FMCSA Deputy Administrator or another Presidential appointee from the Department as selected by the Secretary. The FMCSA Deputy Administrator was selected to represent the Department.

State Chief Administrative Officers: Four directors, one from each of the FMCSA service areas (as defined by FMCSA on January 1, 2005⁵) from among the chief administrative officers of the State agencies responsible for administering the UCR Agreement. Directors appointed in this category include: Mr. Charles "Buddy" Covert, Director, Transportation Administrative Division, West Virginia Public Service Commission for the FMCSA Eastern Service Center; Ms. Angel O. Oliver, Supervisor, Credentialing Unit, Motor Carrier Division, Texas Department of Transportation (TXDOT) for the FMCSA Southern Service Center; Ms. Ruth Sluzacek, Director of Motor Carrier Services, Iowa Motor Vehicle Division, Iowa Department of Transportation, for the FMCSA Midwestern Service Center; and Mr. Frank Laqua, Administrator of Motor Carrier Services, North Dakota Department of Transportation for the Western Service Center.

State Agencies: Five directors from among the professional staffs of State

agencies responsible for overseeing the administration of the UCR Agreement who must be nominated by the National Conference of State Transportation Specialists (NCSTS), a non-profit organization founded in 1959 and consisting of State agencies involved in transportation safety, insurance and consumer protection. Directors appointed in this category include: Mr. Avelino A. Gutierrez, Staff Counsel, New Mexico Public Regulation Commission (NMPRC); Ms. Barbara Hague, Special Projects Coordinator, Missouri Department of Transportation Motor Carrier Services (MODOT); Mr. Dave Lazarides, Director of Processing and Information, Illinois Commerce Commission, Transportation Bureau; Mr. William Leonard, Director of the Freight Compliance and Safety Bureau, New York Department of Transportation (NYDOT); and Mr. Terry Willert, Chief, Transportation Section, Colorado Public Utility Commission (COPUC).

Motor Carrier Industry: Five directors must represent the motor carrier industry. At least one of the five motor carrier industry representatives must be from "a national trade association representing the general motor carrier of property industry" and one of them must be from "a motor carrier that falls within the smallest fleet fee bracket." FMCSA recognizes the American Trucking Associations, Inc. (ATA) as the national trade association representing the general motor carrier of property industry. ATA is a national affiliation of State trucking organizations representing the national, State and local interests of the 50 affiliated State trucking associations; and the interests of specialized areas of the trucking industry through conferences and councils. The ATA representative is Mr. Robert Pitcher, Vice President, State Laws Division. The agency has selected the Owner-Operator Independent Drivers Association (OOIDA) as the organization from which to appoint an individual to represent motor carriers comprising the smallest fleet fee bracket. OOIDA is a national trade association representing the interests of small trucking companies and drivers. The OOIDA representative is Mr. Rick Craig, Treasurer and Director of Regulatory Affairs. The statute gives the Secretary discretion to appoint the remaining three industry representatives. In order to ensure participation on the Board by segments of the industry newly subject to the SSRS replacement system, the Secretary appointed three members as follows: (1) One director from the Transportation Intermediaries Association (TIA), Mr.

⁴ The statute generally defines "commercial motor vehicles" for this purpose as including both self-propelled and towed vehicles (49 U.S.C. 14504a(a)(1)(A) and 31101(1)).

⁵ FMCSA has designated four Service Center areas. The Eastern Service Center includes: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, New Jersey, New York, Maryland, Delaware, West Virginia, Virginia, Puerto Rico and the District of Columbia. The Southern Service Center includes: North Carolina, South Carolina, Tennessee, Arkansas, Oklahoma, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, and Kentucky. The Midwestern Service Center includes: Iowa, Illinois, Indiana, Kansas, Michigan, Missouri, Minnesota, Nebraska, Ohio, and Wisconsin. The Western Service Center includes: American Samoa, Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, New Mexico, Nevada, North Dakota, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, and Wyoming.

Robert Voltmann, President and CEO, (2) one director from the National Private Truck Council (NPTC), Mr. Richard P. Schweitzer, General Counsel, and (3) one director from Wal-Mart Stores, Inc. (Wal-Mart), Mr. Craig Sharkey, Associate General Counsel, Logistics Division. TIA represents transportation intermediaries such as brokers, freight forwarders, and shippers doing business in domestic and international commerce. NPTC is a national trade association representing private motor carrier fleets. With nearly 7,000 tractors, over 40,000 trailers, and annual sales over \$285 billion, Wal-Mart is the nation's largest private motor carrier.

As required by section 14504a(d)(7), the UCR Board prepared and submitted to FMCSA a recommendation of initial fee brackets and annual fees for calendar year 2007. The Board assigned a Revenue and Fees Subcommittee to calculate the overall revenue requirement and to recommend fees and brackets. The Board then reviewed the analysis conducted by the Revenue and Fees Subcommittee and selected a bracket structure and fees that it recommended to FMCSA.⁶ The Board's fee recommendation is available in the Department's DMS.

A. Participating Jurisdictions

The Board first canvassed the States to determine how many States would participate in the UCR Agreement. The Board set a deadline of November 1, 2006, for the submission of plans by the States with their intent to participate in 2007. Although the State of Tennessee submitted its plan on November 6, 2006, the Board, on November 7, 2006, voted to allow Tennessee to participate for 2007.

Of the 38 States that participated in SSRS in 2006, all but two, California and North Carolina, agreed to participate in the UCR in registration year 2007.⁷ Of the thirteen States⁸ that did not participate in SSRS, only

Oregon agreed to participate in the UCR for registration year 2007.

B. Certification of State Revenues

To develop a nationwide figure for the replacement revenues needed under the UCR Agreement, the Board next asked SSRS States to provide information on the revenues they received for the registration year 2004, the year specified in the statute as mentioned above. In their responses, the SSRS States that agreed to participate under the UCR Agreement for 2007 certified their revenue figures for 2004. The total certified SSRS State revenue figure was \$101,272,400, as shown in Appendix E to the Board's recommendation.

SAFETEA-LU caps the maximum revenue figure for UCR States that did not participate in SSRS at \$500,000 per year (49 U.S.C. 14504a(g)(3)). Because only one non-SSRS State agreed to participate in the UCR for registration year 2007 (Oregon), the Board added \$500,000 to the total entitlement figure, bringing the total State revenue requirement under the UCR to \$101,772,400.

C. Administrative Costs

Under section 14504a(d)(7) of the statute, the costs incurred by the Board to administer the UCR Agreement are eligible for inclusion in the total revenue to be collected. The Board considered that these administrative costs would include, but would not be limited to, meeting costs and start up costs of a web-based registration system that will allow the motor carrier industry to register and pay required fees on-line. In addition, the administrative costs would include costs of a repository for the administration of the Board and a depository for the revenues generated under the UCR Agreement to be distributed among the participating States. The Board estimated \$5,000,000 for administrative expenses for the first year of the UCR Plan and Agreement, as shown in Appendix F to the Board's recommendation.

D. Revenue Target

The Board's revenue target for 2007 is \$107,306,262, which is composed of \$101,772,400 for State revenue as discussed above in "III.B. Certification of State Revenues," plus the Board's estimate of \$5,000,000 for administrative expenses as discussed above in "III.C. Administrative Costs". The Board also included in its revenue target recommendation to FMCSA an additional amount of \$533,862, equal to one-half of one percent of the State revenue total and administrative

expenses. The Board stated that it added this additional amount as a reserve to offset the risk of faulty data.

E. Carrier Population

The Board's recommendation is based on the premise that revenues will be generated "from all motor carrier entities involved in interstate commerce." Each of the five categories of motor carrier entities is defined by statute (in some cases with modifications or additions found in section 14504a) as shown in Table 1 below.

TABLE 1.—CATEGORIES OF MOTOR CARRIER ENTITIES

Category	Definition in 49 U.S.C.
Motor Carrier	13102(14) and 14504a(a)(5).
Motor Private Carrier	13102(15).
Freight Forwarder	13102(8) [Freight forwarders that operate motor vehicles are treated as motor carriers. 13903(b) and 14504a(b)].
Broker	13102(2).
Leasing Company ...	14504a(a)(4).

To estimate the number of carriers subject to the UCR Agreement, the Board sought an approach that would provide a number of carriers for which active status could be estimated to allow for a conservative universe of interstate carriers. FMCSA maintains the most comprehensive databases describing the entities that are subject to the UCR Agreement. The Motor Carrier Management Information System (MCMIS) and the License and Insurance System (L&I) maintained by FMCSA house information about the known universe of the motor carrier industry (in MCMIS) and brokers and freight forwarders (in L&I). Carriers that operate commercial motor vehicles in interstate commerce are required to register with FMCSA by providing carrier census data and acquiring a USDOT number. The carrier census data resides in MCMIS, and similar information on brokers and freight forwarders is in the L&I System. The States have access to data derived from MCMIS through the SafetyNet system. To determine an estimate of the active population of motor carriers, the Board used the SafetyNet system maintained by New York State to identify carriers. The Board filtered data from the SafetyNet data base to exclude carriers that neither had updated their MCS-150 census file nor had an inspection, crash, safety audit, or compliance review recorded within the past 12 months (March 1, 2006, through

⁶ The FMCSA Deputy Administrator recused himself from the Board's deliberations regarding the fee recommendation to prevent any real or potential conflict of interest due to his position within FMCSA in reviewing the Board's recommendation and setting the fees under the statute.

⁷ Participating SSRS States include: Alabama, Arkansas, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

⁸ The District of Columbia, which is not participating, is considered a State for this purpose. 49 U.S.C. 13102(21).

February 26, 2007). Applying the filters to approximately 730,000 carriers listed in the data base, the Board filtered out almost 380,000 carriers, leaving an estimated total number of active interstate carriers of 350,698. The Board then considered freight forwarders and brokers. The total number of these entities listed in the Licensing and Insurance (L&I) System, as provided by FMCSA, was approximately 19,000. Freight forwarders that also operate commercial motor vehicles were excluded to avoid double counting, because they are already included in SafetyNet. After excluding the entities with a USDOT number in the L&I System, the Board estimated the total number of freight forwarders and brokers as 14,575. Summing the 350,698 active interstate carriers and 14,575 freight forwarders and brokers, the Board arrived at a total affected population of 365,273.

F. Number of Fee Brackets

In establishing the number and composition of the brackets, under the statute the Board had the option of choosing among four, five, or six brackets for the distribution of the 365,273 entities it determined would be expected to pay the fee as set forth above in "III.E. Estimate of Carrier Population." Given the huge range of fleet sizes (from none to over 100,000 commercial motor vehicles), the Board decided to use the maximum allowable number of brackets, thereby helping to reduce the range of sizes within individual brackets. The Board decided to make the first bracket include no more than two CMV's, recognizing the large fraction of very small carriers, as shown in Table 2 below in "III.G. Fee Levels for Each Bracket." The Board's analysis of the population showed that 182,782 of the total of 365,273 carriers, or more than half of the carriers, operated just one or two commercial

motor vehicles (e.g., one tractor and one trailer). The Board also decided that a "high-end" bracket with more than 1,000 commercial motor vehicles was necessary. The Board performed a special analysis of carriers with more than 1,000 commercial motor vehicles and calculated the high-end (sixth) bracket under the assumption that, due to errors in reporting and uncertainty in the data, only 75 percent of the carriers indicating more than 1,000 commercial motor vehicles actually operate that many. Based on a survey it undertook, the Board estimated that only 85 percent of the number of carriers listed in MCMIS as having more than 1,000 power units actually operated that many vehicles. Addition of trailers to the universe of power units adds an additional degree of uncertainty and inaccuracy. The Board, therefore, decided to further reduce the reliability rate for the top bracket to 75 percent, to account for the inclusion of trailers. This adjustment reduced the total number of motor carrier entities to 365,071.

The Board assigned the second bracket to contain carriers having no more than five motor vehicles because it found, based on its analysis of the distribution of motor vehicles across carriers as shown in Table 2, that just over 70 percent of all carriers (182,782 + 72,910/365,071) have fewer than six motor vehicles. The remaining three brackets were assigned in such a way that they built a reasonable bridge between 6 and 1,000 motor vehicles: One bracket covered carriers with 6 through 20 motor vehicles, the next covered carriers with 21 through 100 motor vehicles, and the next covered carriers with 101 through 1000 motor vehicles.

G. Fee Levels for Each Bracket

As discussed above under "III. D. Revenue Target," the Board's target

revenue figure with administrative costs and reserve is \$107,306,262. To determine how to allocate that sum among the six brackets, the Board relied upon an interactive model that calculated the number of entities in each bracket; the revenues generated by each bracket at different fee amounts; total revenues; and any surplus or deficit from the \$107,306,262 target figure. The Board also considered fairness in terms of fees per motor vehicle while assigning the fees for each bracket. The Board agreed to make sure that the maximum fee per commercial motor vehicle in a given bracket would be no higher than the maximum fee per commercial motor vehicle in the next smaller bracket, a criterion that was unanimously regarded as fair by the Board. In addition, the Board obtained data from a few States on the average fees currently paid under SSRS to provide the Board with a benchmark figure. Using these tools and after deliberations and debate, the Board agreed upon the proposed fee amounts.

The fees recommended by the Board range from a low of \$39 for carriers in the lowest bracket (0 to 2 CMVs) to a high of \$37,500 (the 1001-or-greater CMVs bracket). The Board estimated that this fee structure would generate \$107,352,364 in revenues, meeting the target figure with a projected reserve of \$579,964 for the UCR registration year 2007. Table 2 provides the bracket and fee structure recommended by the Board to FMCSA on April 2, 2007. The table is based on Page 10 of the report submitted by the Board to USDOT and FMCSA dated March 23, 2007, entitled "Report of the Revenues and Fees Subcommittee Recommended Fee Structure Discussion Pursuant to the Unified Carrier Registration Agreement."

TABLE 2.—BRACKET AND FEE STRUCTURE RECOMMENDED BY THE BOARD

Bracket	Motor vehicles		Entities	Fee per entity	Revenue
	From	To			
B1	0	2	182,782	39	\$7,128,498
B2	3	5	72,910	116	8,457,560
B3	6	20	73,130	231	16,893,030
B4	21	100	27,946	806	22,524,476
B5	101	1,000	7,695	3,840	29,548,800
B6	1,001	200,000	608	37,500	22,800,000
Total .....	.....	.....	365,071	.....	107,352,364
				UCR Board's Target Surplus	107,306,262 46,102

IV. FMCSA Fee Determination

Section 14504a requires FMCSA and the Board to consider the relevant factors laid out in detail above in “II. Statutory Requirements for UCR Fees.” That statutory section also requires FMCSA to consider the recommendation of the UCR Board and the same statutory requirements in setting the UCR fees. FMCSA carefully examined the Board’s entire fee recommendation including the methodology and specific findings of the Board. FMCSA also independently considered the factors specified in SAFETEA–LU, and verified and utilized the data and analysis provided by the Board in its fee recommendation. As discussed in detail below, FMCSA has concluded that the Board’s recommendations are reasonable and that the Board considered all required factors specified by SAFETEA–LU. The Board satisfied the requirements for establishing the fees to be charged under the unified carrier registration agreement in the following areas:

A. Participating Jurisdictions

States may choose to participate in the UCR Plan and Agreement for 2007 by submitting the State plan that complies with section 14505a(e). The Board provided adequate opportunity for all States to participate in the UCR Plan and Agreement for registration year 2007, even going so far as to make an exception for the State of Tennessee when it filed its plan after the cutoff date set by the Board. The Board’s allowance of participation by Tennessee is permitted by section 14504a(e)(1), which establishes a final deadline of August 10, 2008 for participation by the States.

B. Certification of State Revenues

The Board’s calculation of the total revenue to be collected under the UCR was properly based upon the revenues collected by the participating States (both under SSRS and for intrastate registrations of interstate carriers) for the calendar year 2004. The Board provided FMCSA with the certifications from every participating State so FMCSA could independently verify the

amounts, as shown in Table 3. From Table 3, it can be seen that the Board included the revenue collected by the States that participated in the SSRS as well as the UCR Agreement while determining the revenue required from the UCR Agreement. The addition of \$500,000 for the inclusion of Oregon to the UCR Agreement is also in accordance with the revenue requirement. FMCSA has verified that the Board has accurately reflected in its recommendations the revenue entitlements certified by each participating State for 2007. In accordance with 49 U.S.C. 14504a(g)(4), FMCSA proposes to approve the amount of revenue under the UCR Agreement which each State participating in 2007 is entitled, as specified in Table 3. The Board’s addition of a revenue reserve, equal to one half of one percent of the State revenue entitlement and administrative costs, offsets the risk of faulty data, especially on trailers. The intent of this addition is to offset the risk of undercollection, rather than to accumulate excess revenues.

BILLING CODE 4910-EX-M

Table 3: State Revenues Under SSRS

(CY 2004)

State	CY 2004 SSRS Revenue	Exempt Registrations	Renewable Interstate For-Hire Operating Intrastate	Renewable Interstate Private Operating Intrastate	Broker Registrati ons	Single Trip Interstate	Total Recorded Revenue
Alabama	2,933,718.00	6,246.00	0.00	0.00	0.00	0.00	\$2,939,964.00
Arkansas	1,817,360.00						\$1,817,360.00
California	NA	NA	NA	NA	NA	NA	NA
Colorado	1,783,985.00	17,630.00	15,600.00	0.00	0.00	0.00	\$1,817,215.00
Connecticut	3,129,840.00	0.00	0.00	0.00	0.00	0.00	\$3,129,840.00
Georgia	2,581,560.00	78,500.00					\$2,660,060.00
Idaho	547,696.68	0.00	0.00	0.00	0.00	0.00	\$547,696.68
Illinois	3,083,064.00	58,264.00	373,940.00		1,725.00		\$3,516,993.00
Indiana	2,264,863.00	0.00	100,016.00				\$2,364,879.00
Iowa	432,042.00	42,700.00	0.00				\$474,742.00
Kansas	3,948,680.00	14,290.00	0.00	381,320.00	0.00	0.00	\$4,344,290.00
Kentucky	5,348,980.00	17,000.00					\$5,365,980.00
Louisiana	5,795,694.00	197,126.00	0.00	0.00	0.00	0.00	\$5,992,820.00
Maine	1,550,096.00	5,576.00					\$1,555,672.00
Massachusetts	2,053,714.00	2,550.00	226,623.00	0.00	0.00	0.00	\$2,282,887.00
Michigan	2,631,247.00	9,710.00	4,879,760.00				\$7,520,717.00
Minnesota	1,061,103.30	18,354.00	57,675.00				\$1,137,132.30
Missouri	2,323,370.00	11,810.00	6,820.00				\$2,342,000.00
Mississippi	4,322,100.00						\$4,322,100.00
Montana	1,049,063.00						\$1,049,063.00
Nebraska	635,970.00	106,004.00	0.00	0.00	0.00	0.00	\$741,974.00
New Hampshire	2,273,299.00	0.00	0.00	0.00	0.00	0.00	\$2,273,299.00
New Mexico	3,292,233.00	0.00	0.00	0.00	0.00	0.00	\$3,292,233.00
New York	4,414,538.00	0.00	0.00	0.00	0.00	0.00	\$4,414,538.00
North Carolina	NA	NA	NA	NA	NA	NA	NA
North Dakota	2,010,434.00	0.00	0.00	0.00	0.00	0.00	\$2,010,434.00
Ohio	2,675,367.74	5,580.00	2,132,930.00				\$4,813,877.74
Oklahoma	2,122,052.00	4,977.00	330,767.00	0.00	0.00	0.00	\$2,457,796.00
Rhode Island	2,144,217.00	1,769.00	139,500.00	0.00	0.00	0.00	\$2,285,486.00
South Carolina	2,411,345.00	8,775.00					\$2,420,120.00
South Dakota	805,167.00	14,816.00	0.00	0.00	0.00	35,640.00	\$855,623.00
Tennessee	4,734,977.00	24,352.00					\$4,759,329.00
Texas	2,132,501.06	0.00	586,127.00	0.00	0.00	0.00	\$2,718,628.06
Utah	1,861,454.00	0.00	0.00	236,954.00	0.00	0.00	\$2,098,408.00
Virginia	4,852,865.00						\$4,852,865.00
Washington	2,428,900.00	38,471.00	0.00	0.00	600.00	0.00	\$2,467,971.00
West Virginia	1,374,796.00		56,931.03				\$1,431,727.03
Wisconsin	2,196,680.00						\$2,196,680.00
Total	91,024,971.78	684,500.00	8,906,689.03	618,274.00	2,325.00	35,640.00	\$101,272,399.81

Oregon	\$500,000	\$500,000
Total State Entitlement - 2007		\$101,772,399.81
Add Adm. Costs	\$5,000,000	\$5,000,000
Total UCR Revenue Target - 2007		\$106,772,399.81

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C. Administrative Costs

The Board provided an estimate of the administrative costs associated with the unified carrier registration plan and agreement, as required by section 14504a(d)(7)(A)(i). The Board's estimate includes the following:

- The Board estimated the cost of setting a web-based registration and payment system as \$2,000,000. FMCSA believes, based upon our experience with development of information technology (IT) systems, that this amount may be within the range of

appropriate costs for the rapid development of IT systems. However, FMCSA requests comments on the reasonableness of the Board's estimate.

- The Board assumed that approximately half of the revenue will be collected online (\$50,000,000) and that credit card operating expenses would amount to 3 percent, or \$1,500,000. FMCSA believes this to be a reasonable estimate, based on its own investigation into the cost of credit card payments. FMCSA found that the expenses associated with accepting payments through credit cards arise from discount rate, fixed transaction fee, chargeback fee and other miscellaneous fees. A typical merchant

discount rate ranges from 1.5 to 3 percent, the fixed transaction fee can cost between 20 and 30 cents per transaction, and chargeback fees range from 10 to 25 dollars per chargeback. Given that the costs could be as high as 3 percent as a result of the discount rate alone, the Board's estimate of a total cost of 3 percent of the payments charged is within the normal range.

- The Board intends to send a UCR application package to all interstate carriers currently listed in MCMIS, approximately 700,000 carriers. Communication costs of \$650,000 for 700,000 mailings appears to be reasonable, given postage and printing costs.

• The Board estimated the travel cost to total \$100,000, based on the Board's projection of five meetings per year and 15 Board members. This total amounts to \$1,333 per member per meeting, which FMCSA agrees is a reasonable estimate.

• Help desk and assistance cost to address phone queries is projected at \$150,000 (5 full-time employees*40 hours/week*50 weeks*\$25 per hour). FMCSA considers this estimate to be somewhat high, but not unreasonable given uncertainty about the volume of inquiries.

• The Depository cost of \$500,000 is only 0.5% of the total revenue collected (\$100 million). Charging a fee of 0.5% of the total money managed is not unusual.

D. Revenue Target

The Board's calculation of the revenue target to be collected under the UCR was properly based upon the revenues collected by the participating States for the calendar year 2004, plus \$500,000 for each non-SSRS State as required by the statute, plus administrative costs. The Board also included a one half of one percent addition to all fees as a "reserve." Because the Board's fees recommendation pertains to the first year in which fees will be collected, the Board did not need to address whether revenues generated in the previous year and any surplus or shortage from that or prior years would enable the participating States to achieve the revenue levels set by the Board, as required by section 14504a(d)(7)(A)(ii).

E. Carrier Population

The Board based its fee recommendation on a reasonable estimate of the number of commercial motor vehicles owned or operated by motor carriers, motor private carriers, and freight forwarders, as specified by section 14504a(f)(1)(A)(i). The key question of whether the recommended fee structure would generate enough revenue to meet the statutory requirement depended on the Board's estimates of the number of motor carrier entities in each size category. FMCSA carefully reviewed the method the Board used to make these estimates and replicated to a high level of accuracy the

Board's estimates of the number of affected entities and the size distribution using its own data base. Using the same filters employed by the Board, FMCSA was able to generate the distribution and population of active carriers from the MCMIS database. The time frame for the filters in FMCSA's analysis was the calendar year 2006 while that of the Board was March 1, 2006 to February 26, 2007. In spite of this difference, FMCSA's estimate of the total affected population data differs from the Board's estimate by less than one percent. The high degree of correspondence between the two estimates gave FMCSA confidence that it understood the Board's analysis and that the Board's estimates are reasonable.

FMCSA worked with the Board to select the filters that were used to remove database entries that might not represent active interstate carriers, thereby ensuring that the filters used were reasonable: Carriers were included only if they showed recent evidence of activity. FMCSA also reviewed the Board's estimate of the total number of freight forwarders and brokers and concluded that it was likely to result in an accurate estimate. Though there was no attempt to filter them on the basis of signs of recent activity, FMCSA expects that even if any such measures were taken to determine whether they are active, the overall change that would occur in the total carrier population would be insignificant. FMCSA reached this conclusion based on the fact that the 14,575 freight forwarders and property brokers found in the L&I system represented only four percent of the total affected population, and (because they are included in the bracket with the smallest fee) an even smaller fraction of total revenue.

FMCSA notes that the Board did not separately consider the number of leasing companies when calculating the affected population or the revenues that the fees would raise. Because leasing companies that do not operate motor vehicles are assigned to the lowest bracket, and thus will pay no more than

\$39 per year, this omission is not significant. FMCSA estimates, on the basis of data from the US Census that there are only about 2,000 leasing companies that would be affected by the UCR rule. NAICS code 53212 (Truck, utility trailer, and recreational vehicle rental and leasing) represents the industry into which leasing companies fall. There are a total of 3,942 Truck rental (Product line code 52503) and 2,723 Truck leasing (Product line code 52504) establishments, for a total of 6,647 establishments. At most 6,647 leasing companies are affected by the rule. Because many firms have multiple establishments, the number of separate firms is considerably smaller. Although the Census does not show the exact number of firms, it does give enough information on firms with multiple establishments to determine a reasonable upper bound on total firms. The census data show that the largest 50 firms in this industry own a total of 4,115 establishments. The other firms must then own the remaining 2,532 establishments. Even assuming that all the remaining firms own only one establishment each, the total number of firms cannot be greater than the sum of 2,532 single-establishment firms and the 50 largest firms, or 2,582. At \$39 each, the total revenues owed by this sector would be about \$101,000. This amount is less than a tenth of one percent of total UCR revenues and would not change the fee in any bracket by more than the rounding error. Accordingly, inclusion of this amount would have a negligible or perhaps no impact on the proposed fee structure and fee levels. We do, however, invite comment on this point.

As Table 4 shows, FMCSA's estimates of the population of carriers in the various brackets corresponds closely to the estimates prepared by the Board. The high degree of correspondence between the two estimates, as shown in Table 4, gave FMCSA confidence that it understood the Board's analysis and that the Board's estimates are reasonable.

TABLE 4.—COMPARISON OF CARRIER SIZE DISTRIBUTION ESTIMATES

Bracket	FMCSA	Board	% Difference
B1	182,782	184,290	0.8
B2	72,910	74,070	1.6
B3	73,130	73,567	0.6
B4	27,946	27,969	0.1
B5	7,695	7,641	0.7
B6	810	797	1.6
Total	365,273	368,334	0.8

The Board used a 75 percent reliability factor while calculating the number of companies that own more than 1,000 motor vehicles. The Board determined the reliability rate to be 85 percent for carriers that own more than 1,000 power units based on their in-depth analysis. Though the Board provided no quantitative basis for lowering the reliability factor to 75 percent after the inclusion of trailers, FMCSA agrees that the addition of trailers to the universe of power units increases the degree of uncertainty and unreliability in the data, and that the change to 75 percent was reasonable.

F. Number of Fee Brackets

The Board's recommendation satisfied the requirements of section 14504a(f)(1)(C) by specifying no more than 6 brackets of carriers based on the size of the fleet. FMCSA adopts as reasonable the six brackets and the fleet size distribution among the brackets.

G. Fee Levels for Each Bracket

FMCSA found that the Board recommended a fee scale that is progressive in the amount of the fee, as required by section 14504a(f)(1)(D), when assessed from bracket to bracket. There are six brackets, each one defined by carrier size in terms of the numbers of CMVs. The fees per carrier clearly increase as the size of the carriers in the brackets increases, thereby meeting the Board's understanding of a fee scale that is progressive.

The fee levels for brokers and leasing companies are based on the smallest fee charged under the UCR agreement, as specified by section 14504a(f)(1)(A)(ii). As mentioned above under "IV.D. Revenue Target," the Board added one half of one percent to its revenue requirement to create what it termed a revenue reserve of \$533,862. FMCSA examined the rationale for adding this amount and determined that it had a reasonable basis. FMCSA noted that the Board provided for fees that would collect an extra \$533,862 because of the additional uncertainty resulting from data on trailers. Though it would be difficult to determine the true extent to which the accuracy of data on trailer use and ownership differs from that for power units, FMCSA did observe that the prevalence of trip-leasing of trailers is greater than that for trucks or tractors. The use of trip leases could create problems for the collection of revenues under UCR: The statute specifies that only commercial motor vehicles controlled under a long-term lease are to be included for the purpose of determining the applicable UCR fees (49 U.S.C. 14504a(f)(2)). However, the

MCS-150 form includes a category for trip-leased vehicles. That data may be included in the MCMIS database, but motor carrier entities may choose to exclude trip-leased vehicles when selecting their fee bracket. The statute also provides alternative methods by which motor carrier entities may calculate the number of commercial motor vehicles in their fleet for the purpose of determining the applicable fees (49 U.S.C. 14504a(f)(3)). These factors all introduce a degree of uncertainty in the fleet sizes upon which the fees are based, and, therefore, in the total amount of fees collected.

By examining data on a large subset of the carrier population, FMCSA determined that omitting all trip-leased vehicles from carriers' vehicle counts could reduce the UCR revenues collected from the first five brackets by on the order of \$1 million. Because carriers are not likely to omit all trip-leased vehicles, it appears that the Board would be justified in anticipating a loss of a half million for the first five brackets. There would be additional losses for the top bracket, but FMCSA considers those losses to be taken into account appropriately by the 75 percent factor used in projecting revenues from the top bracket. Thus, FMCSA concluded that the Board's 1/2 percent addition to the revenue requirement is a reasonable response to the risk of undercollection of revenues due to uncertainty about the treatment of trailers. FMCSA found that the Board's recommended fee structure, as modified, meets the requirements of the statute. As shown in Table 3, there are six brackets, each one defined by carrier size in terms of the numbers of commercial motor vehicles. The fees per carrier increase as the size of the carriers in the brackets increases, thereby meeting the statute's requirement that the fees be progressive. Finally, leasing companies and brokers are included in Bracket 1, which has the lowest fee per entity, as required.

To get a better sense of the distribution of the fees, FMCSA calculated the average fee per motor vehicle by carrier size. Table 5 shows these averages for six carrier size groups that correspond to the fee brackets in the recommended fee structure.

TABLE 5.—FEE PER MOTOR VEHICLE

Motor vehicles		Average fee per motor vehicle (\$)
From	To	
0	2	26
3	5	31
6	20	23
21	100	19

TABLE 5.—FEE PER MOTOR VEHICLE—Continued

Motor vehicles		Average fee per motor vehicle (\$)
From	To	
101	1,000	15
1,001	106,771	8
Mean for all carriers		15
Range		0.35–39.00

Based on a careful evaluation and a point-by-point comparison of the Board's process with the statutory requirements, and upon an independent analysis and consideration of the required statutory provisions, FMCSA proposes to adopt the Board's recommended fees and fee structure.

H. Fee Collection Process

The Board provided FMCSA with information on the process it anticipates following to collect the revenues under the UCR Plan and Agreement. The Board indicated that the participating States (see Table 3 above) will send a mailing to all active interstate carriers residing in FMCSA's Motor Carrier Management Information System (MCMIS) and to all brokers and freight forwarders found in FMCSA's Licensing and Insurance database. In the mailing the Board will provide contact numbers for all participating States, informational Web sites, and the Board may also establish a national call center to answer questions and direct covered entities to the appropriate State officials. The application form in the mailing will direct the entity to pay an amount based on the number of Commercial Motor Vehicles listed in their MCMIS data. The application will also allow carriers to amend that data for UCR purposes. The mailing will also direct covered entities that are domiciled in a participating State to register in that State and to pay the required fee to their State of registration or "base" State. Entities located in non-participating jurisdictions will be directed to register in the participating State that has the highest percentage of their operations. Entities that operate only in non-participating jurisdictions will be directed to choose a participating State located in their FMCSA Service Center Region. Canadian and Mexican entities will also be directed to choose the participating State with the highest percentage of their operations or to choose a contiguous State such as Maine, New York or Michigan for a Canadian entity. Covered entities will be given a set timeframe in which to register and enforcement will not begin for at least 90 days after the beginning

of registrations. The Board notes that this process is preliminary and final procedures will be worked out between the participating States and the UCR Board of Directors.

V. Regulatory Analyses and Notices

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

FMCSA has concluded that this action is a significant regulatory action within the meaning of Executive Order 12866 due to its subject matter.

This rule is not significant based on the size of the fees to be collected under the UCR. The costs of the rule are required pursuant to an explicit Congressional mandate in SAFETEA-LU. Because a majority of the fees under the proposed rule will replace fees currently being paid under the SSRS system, the total cost of the proposed rule will be substantially less than \$100 million per year. New entities paying fees under UCR that did not pay under SSRS are estimated to account for slightly less than half the fees, or about \$50 million in new costs per year. The Agency has prepared a preliminary regulatory analysis analyzing the rule. A copy of the preliminary analysis document is included in the docket referenced at the beginning of this notice.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

In compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), (5 U.S.C. 601–612), FMCSA has considered the effects of this proposed regulatory action on small entities. The fees being proposed in this rule would affect large numbers of small entities because the proposed rule sets fees for hundreds of thousands of carriers of all sizes, and small entities are defined to include all entities that are not dominant in their industries. In previous rulemakings, FMCSA identified for-hire carriers with fewer than 145 power units i.e., trucks or tractors) as small. FMCSA estimates that carrier size to be equivalent to about 300 CMVs. Thus, all of the for-hire carriers in Brackets 1 through 4 would be considered small, as would many of those in Bracket 5.

After careful consideration, however, FMCSA has determined that the recommended UCR fee will, in every case involving a viable small entity, be well below the threshold level of one percent of revenues used for

determining significant impacts. This conclusion is based on the observation that the maximum fee per vehicle is \$39, which is less than one percent of the annual salary of even a single employee working 40 hours per week for 50 weeks per year and earning the current Federal minimum wage of \$5.15. Because an entity without sufficient revenues to pay even one employee per vehicle would not be viable, it is clear that the recommended UCR fees will not reach the threshold of one percent of revenues. Additionally, more than 50 percent of the fees collected under the new UCR system were already being paid by many of these entities under the SSRS system, meaning the UCR fees will simply serve as substitutes for the SSRS fees these firms were previously being assessed. Thus, FMCSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose any unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*) that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120 million or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not create an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not affect 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 13132 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has preliminarily determined that this rulemaking would not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this proposal would preempt any State law or regulation. As detailed above, the UCR Board of Directors includes substantial State representation. The States have already had notice of this action and opportunity for input through their representatives. FMCSA also requests comments on any substantial direct effect on the States as outlined in Executive Order 13132.

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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no current new information collection requirements by FMCSA associated with this proposed rule.

National Environmental Policy Act

The agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 D.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraph 6.h of the Order from further environmental documentation. The CE under Appendix 2, paragraph 6.h relates to establishing regulations and actions taken pursuant to the regulations implementing procedures to collect fees that will be charged for motor carrier registrations and insurance.

We have also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 D.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it involves policy development.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or VSE. We have determined preliminarily that it would not be a "significant energy action" under that Executive Order because it would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 367

Commercial motor vehicle, Financial responsibility, Motor carriers, Motor vehicle safety, Registration, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration proposes to amend 49 CFR part 367 as follows:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

1. The authority citation for part 367 is amended to read as follows:

Authority: 49 U.S.C. 13301, 14504, 14504a; and 49 CFR 1.73.

2. Add a new Subpart A heading preceding § 367.1 to read as follows:

Subpart A—Single State Registration System

3. Add a new Subpart B to read as follows: Subpart B—Fees Under the Unified Carrier Registration Plan and Agreement

Subpart B—Fees Under the Unified Carrier Registration Plan and Agreement**Fees Under the Unified Carrier Registration Plan and Agreement for Registration Year 2007**

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per company for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per company for broker or leasing company
B1	0–2	\$39	\$39
B2	3–5	116.	
B3	6–20	231.	
B4	21–100	806.	
B5	101–1,000	3,840.	
B6	1,001 and above	37,500.	

Issued on: May 23, 2007.

John H. Hill,

Administrator.

[FR Doc. 07–2652 Filed 5–24–07; 10:37 am]

BILLING CODE 4910–EX–M

Notices

Federal Register

Vol. 72, No. 102

Tuesday, May 29, 2007

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Funding Opportunity: Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing (FLH) Grants for Off-Farm Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service is correcting a notice published in the **Federal Register** on Thursday, April 19, 2007. This action is taken to correct a State Office address referenced in the contact information of the application and submission portion of the notice. This correction will insure that the applicant receives the most current and

accurate information necessary for the submission of the proposal packages.

Accordingly, the notice published on April 19, 2007 (72 FR 19680–19684) is corrected as follows:

On page 19680, in the third column under the heading, “Submission Address,” the Idaho State Office address is added to read as follows: Idaho State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5627, Roni Atkins.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Henry Searcy, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC, 20250–0781, telephone (202) 720–1753 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service) or via e-mail at, Henry.Searcy@wdc.usda.gov, or FAX (202) 690–3444.

Dated: May 17, 2007.

Chadwick O. Parker,

Acting Administrator, Rural Housing Service.

[FR Doc. E7–10213 Filed 5–25–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD APRIL 21, 2007 THROUGH MAY 21, 2007

Firm	Address	Date petition accepted	Product
NanoScale Corporation	1310 Research park Drive Manhattan, KS 66502.	5/2/2007	specialty Nano products.
Agri-Inject, Inc	5500 East Highway 34 Yuma, CO 80759.	5/2/2007	pumps for agricultural fluid application technology.
Heritage Medical Products, Inc.	10380 County Rd 6310 West Plains, MO 65775–6331.	5/2/2007	exam tables used in echocardiography and vascular surgery.
Line Tool and Stamping Company DBA The Line Group, Inc.	539 West Algonquin Road Arlington Heights, IL 60005.	5/14/2007	Custom metal stampings and assemblies related to mounts and fittings for automotive, off-road, heavy duty, household appliance and shelving industries.
Chim Cap Corp	120 Schmitt Blvd. Farmingdale, NY 11735.	5/10/2007	Stainless steel chimney caps and liners.
Bufore Enterprises, INC dba Clark Engineering.	700 McMillan Owosso, MI 48867.	5/14/2007	steel rod, wire and tube products.
Gene Pearce Industries	25103 W. 41st Sand Springs, OK 74063.	5/10/2007	parts for winches.
Fiberglass Innovations, L.L.C. ..	2219 Kishwaukee St. Rockford, IL 61101–7008.	5/21/2007	Fiberglass pultruded products.
Fredericks Design, Inc.	6 Sherman Avenue Grand Haven, MI 49417.	5/14/2007	Short run plastic prototypes.

Any party having a substantial interest in these proceedings may request a public hearing on the matter.

A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic

Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10)

calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 21, 2007.

William P. Kittredge,
Program Officer for TAA.

[FR Doc. 07-2647 Filed 5-25-07; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Action Affecting Export Privileges; Data Physics Corporation; In the Matter of: Data Physics Corporation; 2025 Gateway Place, Suite 260, San Jose, CA 95110, Respondent.]

Order Relating to Data Physics Corporation

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has initiated an administrative proceeding against Data Physics Corporation (hereinafter referred to as "Data Physics"), case number 06-BIS-21, through the issuance of a charging letter, pursuant to Section 766.3 of the Export Administration Regulations (currently codified as 15 CFR parts 730-774 (2007)) ("Regulations")¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) ("Act").² BIS and Data Physics have agreed to settle case 06-BIS-21 based on the following five alleged violations of the Regulations. Specifically, the charges are:

Charge 1 15 CFR 764.2(a)—Unlicensed Export to Listed Entity in China

On or about December 20, 2001, Data Physics engaged in conduct prohibited by the Regulations when it exported a DP 550 Vibration Controller, an item subject to the Regulations, to the Chinese Academy of Launch Vehicle Technology ("CALT") in the

People's Republic of China ("China"), an organization on BIS's Entity List,³ without the license required by the Department of Commerce. A licensee was required for this export under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Data Physics committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 CFR 764.2(e)—Acting With Knowledge of a Violation

On or about December 20, 2001, in connection with the transaction described in Charge 1 above, Data Physics sold and/or forwarded a DP 550 Vibration Controller with knowledge that a violation of the Regulations would occur in connection with the item. At all times relevant hereto, Data Physics knew or should have known that an export license was required to ship a DP 550 Vibration Controller, an item subject to the Regulation, from the United States to CALT, an entity on BIS's Entity List. Data Physics had reason to know that a license was required for this export since, *inter alia* Office of Export Enforcement ("OEE") special agents visited Data Physics in May 1999 where they informed Data Physics' Chief Technology Officer and the Director of Manufacturing and Quality Systems, on the rules and requirements regarding exports to organizations on the BIS Entity list. The Chief Technology Officer then sent an e-mail to Sri Welaratna, company president, explaining the rules and included a link to BIS's Entity List. In so doing, Data Physics committed one violation of Section 764.2(e) of the Regulations.

Charge 3 15 CFR 764.2(a)—Unlicensed Export to Listed Entity in China

On or about March 15, 2002, Data Physics engaged in conduct prohibited by the Regulations when it exported a Signalstar Vector (DP 560) vibration controller, an item subject to the Regulations, to the Beijing Automation Equipment Institute ("BACEI") in China, an organization on BIS's Entity List,⁴ without the license required by the Department of Commerce. A license was required for this export under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Data Physics committed one violation of Section 764.2(a) of the Regulations.

Charge 4 15 CFR 764.2(e)—Acting With Knowledge of a Violation

On or about March 15, 2002, in connection with the transaction described in Charge 3 above, Data Physics sold and/or forwarded a Signalstar Vector (DP 560) vibration controller with knowledge that a violation of the Regulations would occur in connection with the item. At all times relevant hereto, Data Physics knew or should have known that an export license was required to ship a Signalstar Vector (DP 560) vibration controller, an item subject to the Regulations, from the United States to BACEI, an entity on BIS's Entity List. Data Physics had reason to know that a license was required for this

export since, *inter alia*, OEE special agents visited Data Physics in May 1999 where they informed Data Physics' Chief Technology Officer and the Director of Manufacturing and Quality Systems, on the rules and requirements regarding exports to organizations on the BIS Entity List. The Chief Technology Officer then sent an e-mail to Sri Welaratna, company president, explaining the rules and included a link to BIS's Entity List. In so doing, Data Physics committed one violation of Section 764.2(e) of the Regulations.

Charge 5 CFR 764.2(g)—False Statement on Shipper's Export Declaration

On or about March 15, 2002, in connection with the transaction described in Charges 3 and 4 above, Data Physics made a false statement to the U.S. Government in connection with the submission of an export control document. Specifically, Data Physics filed a Shipper's Export Declaration ("SED") with the U.S. Government stating that the items that were the subject of the SED qualified for export as "NLR," i.e., that no license was required. This representation was false, as a license was required for the Signalstar Vector (DP 560) vibration controller to be exported to the Beijing Automation Control Equipment Institute. In so doing, Data Physics committed one violation of Section 764.2(g) of the Regulations.

BIS and Data Physics having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is Therefore Ordered:

First, that Data Physics shall pay a civil penalty of \$55,000 to the U.S. Department of Commerce to be paid within 30 days from the date of entry of the Order. Payment shall be made in the manner specified in the attached instructions. Additionally:

A. Pursuant to the Debt Collection Act of 1982, as amended 31 U.S.C. 3701-3720E (1983 and Supp. 2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Data Physics will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

B. The timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Data Physics. Accordingly, if Data Physics should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order

¹ The violations charged occurred in 2001-2002. The Regulations governing the violations at issue are found in the 2001-2002 versions of the Code of Federal Regulations (15 CFR Parts 730-774 (2001-2002)). The 2007 Regulations govern the procedural aspect of the case.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA").

³ 15 CFR Supplemental No. 4 to Part 744.

⁴ *Id.*

denying all of Data Physics' export privileges for a period of one year from the date of entry of this Order.

C. Data Physics shall perform an audit of its internal compliance program within 12 months from the date of entry of this Order. Said audit shall be in substantial compliance with the Export Management Systems audit module, which is available from the BIS Web site at <http://www.bis.doc.gov/complianceandenforcement/ExportManagementSystems.htm>, which is incorporated by reference. A copy of said audit shall be transmitted to the Office of Export Enforcement, 96 North Third Street, Suite 250, San Jose, California 95112 no later than 13 months from the date of entry of the Order.

Second, that for a period of five years from the date of entry of the Temporary Denial Order against Data Physics on May 23, 2006, Data Physics Corporation, 2025 Gateway Place, Suite 260, San Jose, CA 95110, its subsidiaries, successors or assigns, and, when acting for or on behalf of Data Physics, its officers, representatives, agents or employees ("Denied Person(s)") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") that is subject to the Regulations and that is exported or to be exported from the United States to the People's Republic of China ("China"), or in any other activity subject to the Regulations that involves China, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document that involves export to China;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to China, or in any other activity subject to the Regulations that involves China; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States to China that is subject to the Regulations, or in any other activity subject to the Regulations that involves China.

Third, that no person may, directly or indirectly, do any of the actions described below with respect to an item that is subject to the Regulations and that has been, will be, or is intended to be exported or reexported to China:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations to China;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to China, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a denied person of any item subject to the Regulations that has been exported from the United States to China;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to China; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to China and that is owned, possessed or controlled by a Denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to China. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

F. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fourth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Data Physics by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order

Fifth, that the charging letter, amended charging letter, the Settlement Agreement, and this Order, and the record of the cases as defined by Section 766.20 of the Regulations shall be made available to the public. BIS shall notify the administrative law judge that case 06-BIS-21 is withdrawn from adjudication.

Sixth, that this Order shall be served on the Denied Person and on BIS, and

shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 15th day of May 2007.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 07-2629 Filed 5-25-07; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and procedures Technical Advisory Committee (RPTAC) will meet June 12, 2007, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the Public.
3. Opening remarks by the Bureau of Industry and Security.
4. Published regulation update.
5. Automated Export System (AES) update.
6. Working group reports.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Yvette Springer at Yspringer@bis.doc.gov.

The Assistant Secretary for Administration, with the concurrence of

the delegate of the General Counsel, formally determined on May 1, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (1)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482-2813.

Dated: May 22, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07-2643 Filed 5-25-07; 8:45 am]

BILLING CODE 3510-JT-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-401-806]

Stainless Steel Wire Rod From Sweden: Notice of Extension of Time Limit for 2005-2006 Administration Review

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

EFFECTIVE DATE: May 29, 2007.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1766 or (202) 482-3773, respectively.

Background

On October 31, 2006, the Department published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on stainless steel wire rod from Sweden, covering the period September 1, 2005, through August 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 63752 (October 31, 2006). The preliminary results for this administrative review are currently due no later than June 4, 2007.¹

¹ June 4, 2007, is the next business day after 245 days from the last day of the anniversary month of the order.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review and analyze the sales and cost information submitted by the respondent in this administrative review and, if necessary, issue an additional supplemental questionnaire. Thus, it is not practicable to complete this review within the original time limit. Therefore, the Department is partially extending the time limit for completion of the preliminary results by 90 days to 335 days, in accordance with section 751(a)(3)(A) of the Act. The preliminary results are now due no later than August 31, 2007. The final results continue to be due 120 days after publication of the preliminary results.

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

Dated: May 21, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-10251 Filed 5-25-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Organizing "Green Manufacturing Day" for U.S. Businesses; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The International Trade Administration proposes to organize a "Green Manufacturing Day", aimed at enhancing public-private interaction in the field of sustainable manufacturing. This notice seeks public input on areas of interest for discussion at the proposed "Green Manufacturing Day".

DATES: Submit comments no later than 30 days after the date of this notice.

ADDRESSES: Address all comments concerning this notice and requests to participate to William McElnea, U.S. Department of Commerce, Room 2213, 1401 Constitution Ave. NW., Washington, DC 20230 (or via the Internet at william.mcelnea@mail.doc.gov).

FOR FURTHER INFORMATION CONTACT: William McElnea, 202-482-2831.

SUPPLEMENTARY INFORMATION:

Sustainable manufacturing has garnered increasing attention among the manufacturing industry as firms have recognized its cost-effectiveness and profitability. For the purposes of this notice, "sustainable manufacturing" is defined as the creation of manufactured products that use processes that are non-polluting, conserve energy and natural resources, are economically sound, and safe for employees, communities, and consumers. At this early stage in sustainable manufacturing's development, increased public-private interaction can be an effective means for government and industry to (a) identify the opportunities and challenges faced by manufacturers in pursuing sustainable production practices and (b) promote capacity-building among individual firms and industry sectors as a whole.

The purpose of the proposed "Green Manufacturing Day", tentatively scheduled for September 2007, will be to: (1) Disseminate and promote best business practices in sustainable manufacturing, (2) assist small-and-medium-sized enterprises in identifying and implementing practical sustainable manufacturing solutions, (3) provide information on relevant emerging technologies, (4) educate participants on federal government efforts to promote sustainable manufacturing, and (5) provide information on international sustainable manufacturing initiatives, projects, and opportunities. The event will include presenters/speakers from a variety of stakeholder groups (*i.e.* private sector, government and academia) on a variety of topics relating to sustainable manufacturing.

Topic areas covered may include, but are not limited to, industrial recycling, natural resource conservation, water supply and waste-water treatment, solid-waste management, hazardous waste management, environmental assessment, environmental accounting, lean and clean manufacturing, regulatory compliance, renewable energy, remanufacturing, refurbishing/reconditioning, environmental technology research and development, and air pollution control.

In preparation for the proposed event, the U.S. Department of Commerce is requesting feedback from the public on the following:

- Topic areas of interest to U.S. businesses with regard to sustainable manufacturing (responses may reference those topic areas mentioned above or other related topic areas not mentioned);
- The types of information U.S. businesses seek in these topic areas (e.g. best and/or most cost-effective practices, government policies/programs, new technologies, international efforts/opportunities, metrics used for evaluation, etc.) Specific feedback on the following will also be welcome:
 - Sustainable manufacturing implementation issues affecting small and medium-sized enterprises;
 - Emerging technologies for clean manufacturing that are technologically-proven, but are not yet widely recognized or used;
 - Federal government practices or voluntary programs that have been particularly useful in promoting clean or sustainable manufacturing or business practices.

Dated: May 22, 2007.

William McElnea,

International Economist, Office of Trade Policy Analysis.

[FR Doc. E7-10249 Filed 5-25-07; 8:45 am]

BILLING CODE 3510-DR-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement); Correction

May 23, 2007.

In the notice published in the **Federal Register** on May 18, 2007 (72 FR 28032), in column 3, line 16, of the table, please move “**Filling:**”, to the 2nd column, same line, and unbold. Please also change the number in line 19 from “125” to read “126 metric spandex”

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7-10268 Filed 5-25-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of Federal Advisory Committee

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.65, The Department of Defense gives notice that it intends to establish the Department of Defense Audit Advisory Committee, as a discretionary Federal advisory committee.

This committee will provide the Secretary of Defense, through the Under Secretary of Defense (Comptroller)/Chief Financial Officer, independent advice on DoD's financial management, including the financial reporting process, systems of internal controls, audit process and processes for monitoring compliance with applicable laws and regulations. In accordance with DoD policy and procedures, the Under Secretary of Defense (Comptroller)/Chief Financial Officer is authorized to act upon the advice emanating from this advisory committee.

The Department of Defense Audit Advisory Committee shall be composed of no more than five members who are eminent authorities in the fields of financial management and audit. Committee members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109.

The Department of Defense Audit Advisory Committee, in keeping with DoD policy to make every effort to achieve a balanced membership, includes a cross section of experts directly affected, interested and qualified to advice on financial and audit matters. Committee members shall be appointed on an annual basis by the Secretary of Defense, and with the exception of travel and per diem for official travel, shall serve without compensation. The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall select the committee's chairperson from the committee's membership at large.

The Department of Defense Audit Advisory Committee shall meet at the call of the committee's Designated Federal Officer, in consultation with the Chairperson, and the estimated number

of committee meetings if four per year. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

The Department of Defense Audit Advisory Committee shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such committees or workgroups shall not work independently of the chartered committee, and shall report all their recommendations and advice to the Department of Defense Audit Advisory Committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Department of Defense or any Federal officers or employees who are not members of the Department of Defense Audit Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Frank Wilson, DoD Committee Management Officer, 703-601-2554.

Dated: May 22, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-2639 Filed 5-25-07; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

United States Marine Corps; Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete three systems of records.

SUMMARY: The U.S. Marine Corps is deleting three systems of records notices from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: Effective May 29, 2007.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC-ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380-1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614-4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records 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 U.S. Marine Corps proposes to delete three systems of records notices from its inventory of record systems subject to the privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: May 22, 2007.

L.M. Bynum,
*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

Deletions:

SYSTEM IDENTIFIER:

MMN00009

SYSTEM NAME:

Military Police Information System (MILPINS) (October 22, 1999, 64 FR 57071).

REASON:

Information is now filed under NM05580-1, Security Incident System; NM08370-1, Weapons Registration, NM05512-1, Vehicle Parking Permit and License Control System and A0040-905 DASG, Defense Privately Owned Animal Record Files.

SYSTEM IDENTIFIER:

MMN00014

SYSTEM NAME:

Work Measurement Labor Distribution Cards (November 4, 1999, 64 FR 60174).

REASON:

Information is now filed under NM12610-1, Hours of Duty Records (November 16, 2004, 69 FR 67138).

SYSTEM IDENTIFIER:

MMN00037

SYSTEM NAME:

Library Patron File (January 4, 2000, 65 FR 291).

REASON:

Information combined in NM05070-1, Library Patron File (August 15, 2006, 71 FR 46899).

[FR Doc. 07-2638 Filed 5-25-07 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Navy

[USN-2007-0033]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 28, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS-36), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 52a), as amended, which requires the submission of a new or altered system report.

Dated: May 22, 2007.

L.M. Bynum,
*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

NM07320-1

SYSTEM NAME:

Property Accountability Records (May 31, 2006, 71 FR 30894).

CHANGES:

* * * * *

SYSTEM LOCATION:

At end of first para delete <http://neds.daps.dla.mil/sndl.htm> and replace with "<http://doni.daps.dla.mil/sndl.aspx>."

* * * * *

PURPOSE(S):

Delete entry and replace with "To identify individuals to whom government property has been issued and provide a record of loss or deterioration of clothing and equipment assigned to each individual."

* * * * *

STORAGE:

Delete entry and replace with "Paper records in file folders and electronic media."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Property accounting records are destroyed when two years old. Custody receipts are destroyed when material or equipment is destroyed or individual is separated."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Command officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at <http://don.daps.dla.mil/sndl.aspx>."

NOTIFICATION PROCEDURE:

Delete first para and replace with "Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making applications must have an identification card. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at <http://doni.daps.dla.mil/sndl.aspx>."

RECORD ACCESS PROCEDURES:

Delete first para and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at <http://doni.daps.dla.mil/sndl.aspx>."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individual and command reports."

* * * * *

NM07320-1

SYSTEM NAME:

Property Accountability Records

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at <http://doni.daps.dla.mil/sndl.aspx>.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551-2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861-4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who receives and signs for government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

The receipts maintained are any of the following: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge cards, or any other statement of individual accountability for receipt of government property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To identify individuals to whom government property has been issued and provide a record of loss or deterioration of clothing and equipment assigned to each individual.

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" that appear at the beginning of the Navy'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 electronic media.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN), badge number, tool number, property serial number, or any

other locally determined method of property receipt accountability.

SAFEGUARDS:

Access is limited and provided on a need-to-know basis only. Computerized data bases are password protected.

RETENTION AND DISPOSAL:

Property accounting records are destroyed when two years old. Custody receipts are destroyed when material or equipment is destroyed or individual is separated.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at <http://doni.daps.dla.mil/sndl.aspx>.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making applications must have an identification card. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at <http://doni.daps.dla.mil/sndl.aspx>.

Written requests must contain individual's name, Social Security Number (SSN), and signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at <http://doni.daps.dla.mil/sndl.aspx>.

Written request must contain individual's name, Social Security number (SSN), and signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and command reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM.

None.

[FR Doc. 07-2640 Filed 5-25-07; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****State Energy Advisory Board**

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.
DATES: June 20, 2007 from 2 p.m. to 3 p.m. EDT

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Assistant Manager, Intergovernmental Projects & Outreach, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275-4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

Tentative Agenda: Update members on routine business matters.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to participate or to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business.

Notes: The notes of the teleconference will be available for public review and copying within 60 days at the Freedom of Information

Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The notes will also be made available for downloading on the STEAB Web site, <http://www.steab.org>, within 60 days.

Issued at Washington, DC, on May 21, 2007.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7-10221 Filed 5-25-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC07-574-000; FERC-574]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 21, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due July 31, 2007.

ADDRESSES: Copies of sample filings of the proposed collection of information

can be obtained from the Commission's Web site (<http://www.ferc.gov/docs-filings/elibrary.asp>) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED-34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC07-574-000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at <http://www.ferc.gov> and click on "Make an e-Filing" and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact FERConlinesupport@ferc.gov or toll-free at (866) 208-3676 or for TTY, contact (202) 502-8659.

FOR FURTHER INFORMATION CONTACT:

Michael Miller may be reached by telephone at (202) 502-8415, by fax at (202) 273-0873, and by e-mail at michael.miller@ferc.gov.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC-574 "Gas Pipeline Certificates: Hinshaw Exemption" (OMB No. 1902-0116) is used by the Commission to implement the statutory provisions of Sections 1(c), 4 and 7 of the Natural Gas Act (NGA) (Pub. L. 75-688) (15 U.S.C. 717-717w). Natural gas pipeline companies file applications with the Commission furnishing information in order for a determination to be made as to whether the applicant qualifies for an exemption under the provisions of the Natural Gas Act (Section 1(c)). If the exemption is granted, the pipeline is not required to file certificate applications, rate schedules, or any other applications or forms prescribed by the Commission.

The exemption applies to companies engaged in the transportation or sale for resale of natural gas in interstate commerce if: (a) If they receive gas at or within the boundaries of the state from another person; (b) such gas is transported, sold, consumed within such state; (c) the rates, service and facilities of such company are subject to regulation by a State Commission. The data required to be filed by pipeline companies for an exemption is specified by 18 Code of Federal Regulations (CFR) Part 152.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total Annual Burden Hours
(1)	(2)	(3)	(1) x (2) x (3)
1	1	245	245

The estimated total cost to respondents is \$14,386 (245 hours divided by 2,080 hours per employee per year times \$122,137 per year average salary (including overhead) per employee.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating,

verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct

and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

of the functions of the Commission, 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 e.g. permitting electronic submission of responses.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10190 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-448-000]

Alliance Pipeline L.P.; Notice of Tariff Filing

May 21, 2007.

Take notice that on May 15, 2007, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 256, the following tariff sheet, to become effective June 15, 2007.

Alliance states that the purpose of this tariff change is to modify the assignment provisions of Alliance's Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10189 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07-10-000]

Calnev Pipe Line LLC; Notice of Petition for Declaratory Order

May 21, 2007.

Take notice that on May 14, 2007, Calnev Pipe Line LLC (Calnev) pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2007) tendered for filing a petition to the Commission to issue a declaratory order confirming the proposed rate structure for Calnev's planned mainline expansion. Calnev requests a Commission decision on its petition by July 16, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant.

Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time June 11, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10182 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-391-001]

Central Kentucky Transmission Company; Notice of Compliance Filing

May 21, 2007.

Take notice that on May 15, 2007, Central Kentucky Transmission Company (Central Kentucky) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Third Revised Sheet No. 6, with a proposed effective date of April 1, 2007.

On April 2, 2007, Central Kentucky submitted a revised tariff sheet in accordance with Section 32 of its Tariff setting forth a retainage percentage reflecting the lost and unaccounted-for (LAUF) component of Columbia Gas Transmission Corporation's (Columbia) Transportation Retainage percentage. On April 30, the Commission accepted Central Kentucky's tariff filing, but directed that the effective date be changed from May 1, 2007 to April 1, 2007, "to accurately track Columbia's revised lost and unaccounted-for

component in Docket No. RP07-335-000." In compliance with the Commission's directive, Central Kentucky is submitting a revised tariff sheet that reflects an April 1, 2007 effective date for the revised retainage percentage.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10184 Filed 5-25-07; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-449-000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 21, 2007.

Take notice that on May 15, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff

sheets, with a proposed effective date of June 14, 2007:

Thirteenth Revised Sheet No. 262,
First Revised Sheet No. 489,
Original Sheet No. 490.

Columbia states that it is making this filing to provide tariff authority addressing operational purchases and sales of natural gas by Columbia.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10179 Filed 5-25-07; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-362-001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

May 21, 2007.

Take notice that on May 15, 2007, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised sheet No. 283A, with an effective date of April 26, 2007.

Columbia states that the filing is being made in compliance with the Commission's Order on April 25, 2007, in Docket No. RP07-362-000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10186 Filed 5-25-07; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER07-545-001]****Commonwealth Edison Company; Notice of Compliance Filing**

May 21, 2007.

Take notice that on May 4, 2007, Commonwealth Edison Company (ComEd) tendered for filing additional information to a Construction Agreement between ComEd and High Trail Wind Farm, LLC, as requested by FERC staff on April 4, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 25, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10191 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP07-452-000]****Eastern Shore Natural Gas Company; Notice of Interruptible Revenue Sharing Report**

May 21, 2007.

Take notice that on May 16, 2007, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its Interruptible Revenue Sharing Report pursuant to Section 37 of the General Terms and Conditions of its FERC Tariff and Article V, Paragraph 6 of the Stipulation and Agreement in Docket No. RP02-34-000.

Eastern Shore states that it intends to credit a total of \$144,925, inclusive of \$6,033 of interest, to its firm transportation customers on or about July 1, 2007.

Eastern states that the credit amount represents 90 percent of the net revenues received by Eastern Shore under Rate Schedule IT in excess of the cost of service allocated to such rate schedule for the period April 2006 through March 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time May 29, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10183 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP07-38-002]****Eastern Shore Natural Gas Company; Notice To Place Tariff Sheets Into Effect**

May 21, 2007.

Take notice that on May 14, 2007, Eastern Shore Natural Gas Company (Eastern Shore) tendered for as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets attached in Appendix A to the filing, to become effective May 15, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10187 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-450-000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 21, 2007.

Take notice that on May 15, 2007, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of June 14, 2007.

Second Revised Sheet No. 1
First Revised Sheet No. 139
First Revised Sheet No. 140
First Revised Sheet No. 141
First Revised Sheet No. 147

National Fuel states that the purpose of this filing is to eliminate its two merchant service rate schedules—FMS and IMS—from its tariff. National Fuel's occasional operational sales of gas are now addressed by new GT&C section 40.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10180 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-447-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 2007.

Take notice that on May 15, 2007, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of June 15, 2007:

11 Revised Sheet No. 135D
Sixth Revised Sheet No. 142C
17 Revised sheet No. 144

Northern states that the above referenced tariff sheets are being filed to add Mustang Station Unit 5 to the list of available storage points for receipt and delivery of storage services.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10193 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06-416-003]

Northwest Pipeline Corporation; Notice of Refund Report

May 21, 2007.

Take notice that on May 11, 2007, Northwest Pipeline Corporation (Northwest) tendered for filing a refund report pursuant to the Commission's Order Approving Settlement issued on March 30, 2007 in Northwest's general rate proceeding in the above referenced docket.

Northwest states that the refund covers the period from January 1, 2007 through March 31, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 29, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10188 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-106-013]

TransColorado Gas Transmission Company; Notice of Revenue Sharing Report

May 21, 2007.

Take notice that on May 15, 2007, TransColorado Gas Transmission Company (TransColorado) tendered for filing an original and five copies of its revenue sharing report in accordance with the provisions of the Settlement in Docket No. RP99-106 and the Commission's Order dated April 24, 2002.

TransColorado states that a copy of this filing has been served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule

211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 29, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10185 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07-50-000]

Californians for Renewable Energy, Inc. (CARE) Complainant v. California Public Utilities Commission Southern California Edison Company, Blythe Energy, LLC Respondents; Amended Complaint Notice

May 21, 2007.

Take notice that on May 1, 2007, Californians for Renewable Energy, Inc. (CARE) tendered for filing the first amendment to its complaint against the California Public Utilities Commission, Southern California Edison Company and Blythe Energy, LLC. CARE states that it filed a formal complaint against the respondents on February 28, 2007.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 31, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10178 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07-49-000]

Californians for Renewable Energy, Inc. (CARE), Complainant v. California Public Utilities Commission (CPUC), California, Department of Water Resources (CDWR), Pacific Gas and Electric Company (PG&E), The City and County of San Francisco (CCSF), Respondents; Amended Complaint Notice

May 21, 2007.

Take notice that on April 24, 2007, Californians for Renewable Energy, Inc. (CARE) tendered for filing the first

amendment to its complaint against the California Public Utilities Commission (CPUC), California Department of Water Resources (CDWR), Pacific Gas and Electric Company (PG&E), and the City and County of San Francisco. CARE states that it filed a formal complaint against the respondents on December 15, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 31, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-10192 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2558-025]

Vermont Marble Power Division of Omya Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

May 21, 2007.

a. *Type of Filing:* Notice of Intent to File License Application for a new License and Pre-Application Document.

b. *Project No.:* 2558-025.

c. *Dated Filed:* March 29, 2007.

d. *Submitted By:* Vermont Marble Power Division of Omya Inc.

e. *Name of Project:* Otter Creek Hydroelectric Project.

f. *Location:* The Otter Creek Hydroelectric Project is located on Otter Creek in Addison and Rutland Counties, Vermont.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Applicant Contact:* Todd Allard, Operations Engineer, Vermont Marble Power Division of Omya Inc., 61 Main Street, Proctor, VT, 05765, (802) 770-7138.

i. *FERC Contact:* Aaron Liberty (202) 502-6862 or via e-mail at aaron.liberty@ferc.gov.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph n below.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations there under at 50 CFR Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Vermont Marble Power Division of Omya Inc. filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. Copies of the PAD and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at <http://ferc.gov/esubscribenow.htm> to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and SD1 as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Otter Creek Hydroelectric Project) and number (P-2558-025), and bear the heading "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by July 27, 2007.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

o. At this time, Commission staff intends to prepare an Environmental Assessment for the project, in accordance with the National Environmental Policy Act. However,

there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, the scoping meetings will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

We will hold a daytime and night time scoping meeting at the times and places noted below. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The time and location of these meetings are as follows:

Daytime Scoping Meeting

Date and Time: Wednesday, June 6, 2007, 9:30 a.m. (EST)

Location: Middlebury Inn, 14 Courthouse Square, Middlebury, VT 05753-0798.

Evening Scoping Meeting

Date and Time: Wednesday, June 6, 2007, 7 p.m. (EST)

Location: Vermont Marble Power's "Shop Building", 84 Deere Lane, Pittsford¹, VT 05763.

For Directions: Please call Todd Allard, of Vermont Marble Power Division of Omya Inc. at (802) 770-7138.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph m. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visit

The applicant and Commission staff will conduct a site visit of the proposed project on Tuesday, June 5, 2007, starting at 9:30 a.m. All participants should meet at Vermont Marble Power Division of Omya Inc., located at 61 Main Street, Proctor, Vermont, 05765. All participants are responsible for their own transportation. Anyone with

questions about the site visit should contact Mr. Todd Allard at (802) 770-7138 on or before June 5, 2007.

Scoping Meeting Objectives

At the scoping meeting, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and potential study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meeting. Directions on how to obtain a copy of the PAD and SD1 are included in item m of this document.

Scoping Meeting Procedures

The scoping meeting will be recorded by a stenographer and will become part of the formal Commission record on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-10181 Filed 5-25-07; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2007-0142; FRL-8319-1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Cooling Water Intake Structure Phase II Existing Facilities (Renewal), EPA ICR No. 2060.03, OMB Control No. 2040-0257

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved

collection. This ICR is scheduled to expire on May 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 28, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA-HQ-OW-2007-0142, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to ow-docket@epa.gov, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Amelia Letnes, State and Regional Branch, Water Permits Division, OWM, Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-5627; e-mail address: letnes.amelia@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 1, 2007 (72 FR 9328), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on the draft ICR.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2007-0142, which is available for public viewing online at <http://www.regulations.gov>, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above.

¹ Vermont Marble Power's "Shop Building" is located in Pittsford, VT. However, for purposes of on-line mapping, this street address is often listed as being in Proctor, VT, 05765.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the electronic docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in the electronic docket.

Title: Cooling Water Intake Structure Phase II Existing Facilities (Renewal).

ICR Numbers: EPA ICR Number 2060.03, OMB Control Number 2040-0257.

Abstract: The section 316(b) Phase II Existing Facility rule requires the collection of information from existing point source facilities that generate and transmit electric power (as a primary activity) or generate electric power but sell it to another entity for transmission, use a cooling water intake structure (CWIS) that uses at least 25 percent of the water it withdraws from waters of the United States for cooling purposes, and have a design intake flow of 50 million gallons per day (MGD) or more. Section 316(b) of the Clean Water Act (CWA) requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of CWISs at that facility reflect the best technology available (BTA) for minimizing adverse environmental impact. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on technologies at the entrance to CWIS) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). The 316(b) Phase II rule establishes requirements applicable to the location, design, construction, and capacity of CWISs at Phase II existing facilities. These requirements establish the BTA for minimizing adverse environmental

impact associated with the use of CWISs.

On January 25, 2007, the United States Court of Appeals for the Second Circuit remanded to EPA certain provisions in the 2004 Final Regulations to Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities (See *Riverkeeper, Inc. v. U.S. EPA*, No. 04-6692-ag(L) [2d Cir. Jan. 25, 2007]). EPA is continuing to review the decision to determine its impact on the Phase II Rule. This ICR does not address changes to EPA regulations as a result of the court decision, since those revisions are not yet finalized.

Burden Statement: The annual average reporting and record keeping burden for the collection of information by facilities responding to the Section 316(b) Phase II Existing Facility rule is estimated to be 2,983 hours per facility respondent (i.e., an annual average of 1,157,216 hours of burden divided among an anticipated annual average of 388 facilities). The state Director reporting and record keeping burden for the review, oversight, and administration of the rule is estimated to average 2,034 hours per state respondent (i.e. an annual average of 83,383 hours of burden divided among an anticipated 41 States on average per year). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose information.

Respondents/Affected Entities: 316(b) Phase II existing facilities and NPDES authorized states.

Estimated Annual Number of Respondents: 429 (388 facilities and 41 states)

Frequency of Response: Bi-annually, every five years.

Estimated Total Annual Hour Burden: 1,240,599 hours.

Estimated Total Annual Cost: \$80,556,134. This includes an estimated labor burden cost of \$65,592,289 and an estimated cost of \$14,963,845 for capital

investment or operating and maintenance.

Changes in the Estimates: The change in burden results mainly from the shift from the approval period to the renewal period of the 316(b) Phase II Existing Facilities rule. This ICR covers the last 2 years of the permit approval period (i.e. years 4 and 5 after implementation) and the first year of the renewal period (i.e. year 6 after implementation). Activities for renewing an NPDES permit already issued under the 316(b) Phase II Existing Facilities rule are less burdensome than those for issuing a permit for the first time. Additionally, for the approval period ICR (EPA ICR No. 2060.02), EPA assumed that all facilities complying with the rule would be in NPDES-authorized States. EPA has moved away from this assumption, and, for this ICR, all calculations are based on the estimated number and type of facilities in authorized and non-authorized States.

Dated: May 17, 2007.

Sara Hisel-McCoy,
Acting Director, Collection Strategies Division.

[FR Doc. E7-10223 Filed 5-25-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8319-3]

Renewal of Federal Advisory Committee To Examine Detection and Quantitation Approaches in Clean Water Act Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Renewal of a Federal Advisory Committee on Detection and Quantitation in Clean Water Act Programs.

SUMMARY: The Charter for the Environmental Protection Agency's Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act (CWA) Programs (FACDQ) will be renewed for an additional two year period, to allow the committee to complete its work. This is a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2 section 9(c). The purpose of the FACDQ is to provide advice and recommendations to the EPA Administrator on policy issues related to detection and quantitation, and on the scientific and technical aspects associated with monitoring and

reporting chemical pollutants under the Clean Water Act. We have determined that completing the work of this committee is in the public interest, and will assist the Agency in performing its duties under the Clean Water Act, as amended.

Copies of the Committee Charter will be filed with the appropriate committees of Congress and the Library of Congress.

FOR FURTHER INFORMATION CONTACT:

Meghan Hessenauer, Engineering and Analysis Division, MC4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone number: (202) 566-1040; Fax number: (202) 566-1053; E-mail address: Hessenauer.Meghan@EPA.GOV.

Dated: May 21, 2007.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E7-10234 Filed 5-25-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8319-2]

Water Security Initiative: Preliminary Notice of a Request for Applications for Contamination Warning System Pilots

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing preliminary notice of its intention to solicit competitive applications for cooperative agreements to support contamination warning system demonstration pilots. These pilots will be part of the Agency's Water Security (WS) initiative (formerly WaterSentinel), which addresses the risk of contamination of drinking water distribution systems. Local governments or institutions (either public or private nonprofit organizations) that operate community water systems serving at least 750,000 people will be eligible to compete for these cooperative agreements. The purpose of this notice is to alert potential applicants to this future opportunity.

DATES: EPA intends to issue the Request for Applications (RFA) for contamination warning system cooperative agreements in June 2007.

ADDRESSES: For further information, contact Dan Schmelling, Water Security Division, Office of Ground Water and Drinking Water (MC 4601M),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564-5281; fax number: (202) 564-3753; e-mail address: schmelling.dan@epa.gov.

SUPPLEMENTARY INFORMATION: The WS initiative is an EPA program that includes piloting contamination warning systems at drinking water utilities. This initiative is responsive to Homeland Security Presidential Directive 9, under which the Agency must "develop robust, comprehensive, and fully coordinated surveillance and monitoring systems * * * for * * * water quality that provides early detection and awareness of disease, pest, or poisonous agents." The purpose of these pilots is to demonstrate warning systems that achieve timely detection and appropriate response to drinking water contamination incidents.

Under the WS initiative, EPA anticipates awarding four cooperative agreements for contamination warning system demonstration pilots, with individual award amounts between \$3 and \$12 million. A minimum 20 percent cost-share, which may include in-kind services, would be required. Contamination warning systems must address five monitoring and surveillance components, (1) online water quality monitoring, (2) contaminant sampling and analysis, (3) enhanced security monitoring, (4) consumer complaint surveillance, and (5) public health surveillance, along with a consequence management plan.

EPA has developed a document, Water Security Initiative: Interim Guidance on Planning for Contamination Warning System Deployment, to assist utilities with demonstrating these components. It is available at <http://cfpub.epa.gov/safewater/watersecurity/initiative.cfm>. EPA encourages utilities that may be interested in the upcoming RFA to review this document. When issued, the RFA will be available at this same Web address and may also be viewed through <http://www.grants.gov>.

Funding may be used by recipients to acquire services and fund contracts or to fund partnerships through subgrants, provided recipients follow applicable contracting and subgrants procedures. Please note that recipients may not award sole source contracts to consulting, engineering or other firms assisting applicants with the proposal based on the firm's role in preparing the proposal.

Dated: May 21, 2007.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E7-10241 Filed 5-25-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8319-4]

Science Advisory Board Staff Office; Notification of Upcoming Meetings of the Science Advisory Board Panel for the Review of EPA's 2007 Report on the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference and a public meeting of the SAB Panel for the Review of EPA's 2007 Report on the Environment. The teleconference and meeting are being held to conduct a peer review of the EPA's draft Report on the Environment 2007: Science Report.

DATES: The public teleconference will be held on June 22, 2007 from 1 p.m. to 4 p.m. (Eastern Daylight Time). The public meeting will be held from 9 a.m. to 5:15 p.m. on July 10, 2007; 8:30 a.m. to 5:15 p.m. on July 11, 2007; and 8 a.m. to 12:15 p.m. on July 12, 2007 (Eastern Daylight Time).

ADDRESSES: The public meeting of the Panel will be held in the Washington, DC metropolitan area at a location that will be announced on the SAB Web site: <http://www.epa.gov/sab>.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in number and access code; submit a written or brief oral statement; or receive further information concerning the teleconference or meeting must contact Dr. Thomas Armitage, Designated Federal Officer (DFO). Dr. Armitage may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: (202) 343-9995; fax

(202) 233-0643; or e-mail at: armitage.thomas@epa.gov. General information about the EPA SAB, as well as any updates concerning the teleconference and meeting announced in this notice, may be found in the SAB Web site at: <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the SAB Panel for the Review of EPA's 2007 Report on the Environment will hold a public teleconference and public meeting to conduct a peer review of EPA's draft Report on the Environment 2007: Science Report. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: In 2003, EPA issued a draft Report on the Environment describing the status of and trends in the environment and human health. The draft 2003 Report on the Environment was reviewed by the SAB (see http://www.epa.gov/sab/pdf/sab_05_004.pdf). EPA used advice received from the SAB and comments from stakeholders to develop an improved and updated draft Report on the Environment 2007. The Report on the Environment 2007 consists of a Science Report (ROE 2007 Science Report) containing detailed scientific and technical information, a Highlights Document written for concerned citizens, and an electronic document facilitating access to material in the reports.

EPA's Office of Research and Development has requested that the SAB review the ROE 2007 Science Report. The ROE 2007 Science Report asks key questions about the current status of, and trends in, the condition of the environment and human health. These questions are intended to be relevant to EPA's current regulatory and programmatic activities and mission, and they have been answered using a suite of environmental and human health indicators. The SAB has been asked to comment on: (1) The adequacy of the formulation and scope of the questions addressed in the ROE 2007 Science Report, (2) the appropriateness of the indicators used to answer the questions in the report, (3) the accuracy of the characterization of gaps and limitations in the indicators used in the report, (4) the appropriateness of regionalization of national indicators in the report, (5) the utility of regional indicators in the report, and (6) the overall quality of the report with respect to technical accuracy, clarity, and appropriateness of level of communication.

In response to EPA's request, the SAB Staff Office formed the SAB Panel for the Review of EPA's 2007 Report on the Environment. Background on the Panel formation process was provided in a **Federal Register** notice published on May 25, 2006 (71 FR 30138-30139). Information about the SAB Panel for the Review of EPA's 2007 Report on the Environment is available on the SAB Web site at: <http://www.epa.gov/sab>.

Availability of Meeting Materials: The draft Report on the Environment 2007: Science Report to be reviewed by the SAB Panel is available on the following EPA Office of Research and Development Web Site: <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=140917>. Agendas and other material for the upcoming public teleconference and meeting will be posted on the SAB Web site <http://www.epa.gov/sab>.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process. **Oral Statements:** In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Armitage, DFO, in writing (preferably via e-mail) at the contact information noted above, by June 15, 2007 to be placed on a list of public speakers for the teleconference, and by July 3, 2007 to be placed on the list of public speakers for the meeting. **Written Statements:** Written statements should be received in the SAB Staff Office by June 15, 2007 for the teleconference, and by July 3, 2007 for the meeting so that the information may be made available to the SAB Panel members for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: May 21, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7-10232 Filed 5-25-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA-RO4-SFUND-2007-0427; FRL-8318-9]

Performance Advantage, Inc. Superfund Site Weogufka, Coosa County, Alabama; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response concerning the Performance Advantage, Inc. Superfund Site located in Weogufka, Coosa County, Alabama.

DATES: The Agency will consider public comments on the settlement until June 28, 2007. 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.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA-RO4-SFUND-2007-0427 or Site name Performance Advantage, Inc. Superfund Site by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* Batchelor.Paula@epa.gov.

- *Fax:* 404/562-8842/Attn Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, SD-SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. "In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503." Instructions: Direct your comments to Docket ID No. EPA-RO4-SFUND-2007-0427. EPA's policy is that all comments received will be included in the public docket without change and may be made

available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562-8887.

Dated: May 16, 2007.

Rosalind H. Brown,
Chief, Superfund Enforcement & Information Management Branch, Superfund Division.
[FR Doc. E7-10224 Filed 5-25-07; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 2007.

A. Federal Reserve Bank of Chicago
(Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *First Mutual of Richmond, Inc., and Richmond Mutual Bancorporation, Inc.*, both of Richmond, Indiana; to acquire 100 percent of the voting shares of Mutual Bancorp, Inc., Sidney, Ohio, and thereby indirectly acquire Mutual Federal Savings Bank, Sidney, Ohio, and thereby engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 23, 2007.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. E7-10225 Filed 5-25-07; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that the presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, June 12, 2007 and Wednesday, June 13, 2007. The meeting will be held from 9 a.m. to approximately 5 p.m. on both days.

ADDRESSES: Department of Health and Human Services, Room 505A Hubert H. Humphrey Building; 200 Independence Avenue, SW.; Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Mary (Marty) McGeein, Executive Director, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, Independence Avenue, SW., Room 716G Hubert H. Humphrey Building, Washington, DC 20201; (202) 690-7694. More detailed information about PACHA can be obtained by accessing the Council's Web site at <http://www.pacha.gov>.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 21 members. Council membership is selected by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV and AIDS.

The agenda for this Council meeting is being developed. The meeting agenda will be posted on the Council's Web site when it is drafted.

Public attendance at the meeting is limited to space available. Individuals

must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Preregistration for public attendance is advisable and can be accomplished online by accessing the PACHA Web site <http://www.pacha.gov>.

Members of the public will have the opportunity to provide comments at the meeting. Preregistration is required for public comment. Any individual who wishes to participate in the public comment session must register online at <http://www.pacha.gov>; registration for public comment will not be accepted by telephone. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members for discussion at the meeting should submit, at a minimum, one copy of the materials to the Executive Director, ACHA no later than close of business on June 8, 2007. Contact information for the PACHA Executive Director is listed above.

Dated: May 22, 2007.

Mary (Marty) McGeein,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 07-2609 Filed 5-25-07; 8:45 am]

BILLING CODE 4150-28-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Task Force on Community Preventive Services

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Task Force on Community Preventive Services.

Times and Dates: 8 a.m.–6 p.m. EDT, June 13, 2007; 8 a.m.–1 p.m. EDT, June 14, 2007.

Place: Centers for Disease Control and Prevention, Roybal Building 19, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish the Guide to Community Preventive Services (Community Guide), which consists of systematic reviews of the best available scientific evidence and associated recommendations regarding and what works in the delivery of essential public health services.

Topics include: Excessive alcohol consumption; adolescent health; worksite health promotion; asthma; controlling

obesity; updating existing Community Guide reviews; and dissemination activities and projects in which the Community Guide is used.

Agenda items are subject to change as priorities dictate.

Persons interested in reserving a space for this meeting should call Tony Pearson-Clarke at 404.498.0972 by close of business on June 6, 2007.

Contact Person for Additional Information: Tony Pearson-Clarke, Community Guide Branch, Coordinating Center for Health Information and Service, National Center for Health Marketing, Division of Health Communication and Marketing, 1600 Clifton Road, M/S E-69, Atlanta, GA 30333, telephone: 404.498.0972.

Dated: May 18, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-10217 Filed 5-25-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Enhanced Surveillance for New Vaccine Preventable Disease, Funding Opportunity

Announcement (FOA) IP07-001, Effectiveness of an Intervention to Promote Comprehensive Vaccination Programs in the Obstetrician-Gynecologist Setting, FOA IP07-008, and Impact of New Adolescent Vaccines on the Delivery of Recommended Clinical Preventive Services, FOA IP07-009

In accordance with section 10(a)(2) of the Federal Advisory

Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces a meeting of the aforementioned Special Emphasis Panel.

Time and Date: 12 p.m.–4 p.m., June 15, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of research grant applications in response to FOA IP07-001, "Enhanced Surveillance for New Vaccine Preventable Disease", FOA IP07-008 "Effectiveness of an Intervention to Promote Comprehensive Vaccination Programs in the Obstetrician-

Gynecologist Setting", and FOA IP07-009 "Impact of New Adolescent Vaccines on the Delivery of Recommended Clinical Preventive Services".

Contact Person for More Information: Trudy Messmer, PhD, Designated Federal Official, 1600 Clifton Road, Mailstop C-19, Atlanta, GA 30333, telephone (404) 639-2176.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 22, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7-10246 Filed 5-25-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH-036]

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

MEETING DATE AND TIME: Tuesday, June 26, 2007, opening session will begin at 9 a.m. EDT and the meeting will adjourn in mid-afternoon. Registration will be held from 8 a.m. to 9 a.m.

PLACE: The Embassy Suites Pittsburgh International Airport, 550 Cherrington Parkway, Coraopolis, Pennsylvania 15108.

SUMMARY: The NIOSH National Personal Protective Technology Laboratory (NPPTL) will hold a public meeting to discuss a proposed Total Inward Leakage (TIL) program for half-mask air-purifying particulate filtering respirator certification with plans to later include similar requirements for all respirator certifications.

PURPOSE: Recent trends in the field of personal protective equipment (PPE) testing have focused on the need to effectively evaluate PPE systems performance for TIL under laboratory conditions. While TIL testing performed under laboratory conditions does not necessarily reflect expected actual field level PPE performance, it does represent a criterion for performance that

influences PPE design. TIL testing is intended to quantify the ability of respirators to fit a range of individuals; however, it is not intended to replace individual fit testing as mandated by the Occupational Safety and Health Administration (OSHA).

STATUS: This meeting will be open to the public, limited only by the space available. The meeting room will accommodate approximately 75 people. Interested parties should make hotel reservations directly with the Embassy Suites Hotel at 412-269-9070 (ask for Lauren) before the cut-off date of June 11, 2007. A special group rate of \$100 per night for meeting guests has been negotiated for this meeting. The NIOSH-NPPTL Public Meeting must be referenced to receive this rate.

Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (npptlevents@cdc.gov) or fax (304-225-2003) to the NPPTL Event Management Office. A registration form may be obtained from the NIOSH Homepage (<http://www.cdc.gov/niosh>) by selecting conferences and then the event.

ADDRESSES: Comments on the topics presented in this notice and at the meeting should be mailed to: NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513-533-8303, fax 513-533-8285. Comments may also be submitted by e-mail to niocindocket@cdc.gov. E-mail attachments should be formatted in Microsoft Word.

Comments regarding the TIL program should reference Docket Number NIOSH-036.

FOR FURTHER INFORMATION CONTACT: NPPTL Event Management, 3604 Collins Ferry Road, Suite 100, Morgantown, West Virginia 26505-2353, Telephone 304-225-5138, Fax 304-225-2003, E-mail npptlevents@cdc.gov.

Dated: May 21, 2007.

James D. Seligman,
Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-10219 Filed 5-25-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-2241-N]

RIN 0938-AO28

State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriations for Fiscal Year 2004 and Fiscal Year 2005 To Eliminate SCHIP Fiscal Year 2007 Funding Shortfalls; and Provisions for Continued Authority for Qualifying States To Use a Portion of Certain SCHIP Funds for Medicaid Expenditures

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice

SUMMARY: This notice describes, in accordance with the provisions of the National Institutes of Health Reform Act of 2006 (NIHRA), the methodology and process used for determining the amounts of unexpended Federal fiscal year (FY) 2004 SCHIP allotments remaining at the end of FY 2006, and the amounts of unexpended FY 2005 SCHIP allotments available mid-FY 2007, to be redistributed to certain States to eliminate these States' SCHIP funding shortfalls in FY 2007. In accordance with this methodology, this notice also contains the amounts of States' redistributed FY 2004 and FY 2005 allotments.

This notice also describes the amendments to the SCHIP statute, in accordance with the NIHRA, relating to the provisions for "qualifying States" to elect to receive a portion of their available SCHIP allotments as increased Federal matching funds for certain expenditures in their Medicaid programs.

SUPPLEMENTARY INFORMATION:

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786-2019.

I. Background

A. Availability and Redistribution of SCHIP Fiscal Year Allotments

Title XXI of the Social Security Act (the Act) sets forth the State Children's Health Insurance Program (SCHIP) to enable States, the District of Columbia, and specified Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children. The 50 States, the District of Columbia, and the Commonwealths and Territories may

implement SCHIP through a separate child health program under title XXI of the Act, an expanded program under title XIX of the Act, or a combination of both.

Section 2104(e) of the Act specifies that SCHIP allotments for a Federal fiscal year are available for payment to States' for their expenditures under an approved State child health plan for an initial 3-fiscal year period of availability, including the fiscal year for which the allotment was provided. Section 2104(f) of the Act specifies that the amounts of States' allotments, which are not expended during the initial 3-year period of availability, are to be redistributed to those States that have fully spent these fiscal year allotments during this period of availability in accordance with an appropriate procedure determined by the Secretary. Furthermore, section 2104(e) of the Act specifies that the amounts of the redistributed allotments continue to be available for expenditure by the States receiving these redistributions to the end of the fiscal year in which these funds are redistributed.

B. Enactment of the NIHRA and Special Rules for Addressing FY 2007 SCHIP Funding Shortfalls

In general, under section 2104(e) and (f) of the Act, any unexpended SCHIP allotments remaining following the end of the initial 3-year period of availability would otherwise be redistributed in accordance with an appropriate procedure determined by the Secretary. However, section 201(a) of the recently enacted National Institutes of Health Reform Act of 2006 (Pub. L. 109-482) (NIHRA) amended the SCHIP statute to add a new section 2104(h) of the Act. This new subsection provides for special rules to address States' FY 2007 SCHIP funding shortfalls. Specifically, in order to address States' FY 2007 SCHIP funding shortfalls, section 2104(h) of the Act provides for the redistribution in FY 2007 of the unexpended FY 2004 allotments remaining at the end of FY 2006, and the redistribution of certain amounts of unexpended FY 2005 allotments which are available for redistribution in months after March 31, 2007. This notice describes the implementation of section 201(a) of the NIHRA and contains the amounts of the States' redistributed FY 2004 and FY 2005 allotments determined in accordance with these provisions.

C. Expenditures, Authority for Qualifying States To Use Available SCHIP Allotments for Medicaid Expenditures

Under section 2105(a)(1)(A) through (D) and (a)(2) of the Act, and before enactment of Public Law 108–74 (Extension of Availability of SCHIP Allotment Act, enacted on August 15, 2003), only Federal payments for the following Medicaid and SCHIP expenditures were applied against States' available SCHIP allotments: (1) Medical assistance provided under title XIX (Medicaid) to targeted low-income children in a SCHIP-related Medicaid expansion, for which the enhanced SCHIP Federal Medical assistance program (FMAP) rate is available; (2) medical assistance provided on behalf of a child during a period of presumptive eligibility under section 1920A of the Act (these funds are matched at the regular Medicaid FMAP rate); (3) child health assistance to targeted low income children that meets minimum benefit requirements under SCHIP; and (4) expenditures in the SCHIP that are subject to the 10-percent limit on non-primary expenditures (including other child health assistance for targeted low-income children, health services initiatives, outreach, and administrative costs).

Section 1(b) of Public Law 108–74, as amended by Public Law 108–127 (Social Security Act, Technical corrections, enacted November 17, 2003), added new section 2105(g) to the Act under which certain “qualifying States” that met prescribed criteria could elect to use up to 20 percent of any of the States' available SCHIP allotments for FY 1998, 1999, 2000, or 2001 to increase the FMAP rate for regular Medicaid expenditures to the enhanced FMAP rate available under SCHIP. As described in the **Federal Register** published on July 23, 2004 (69 FR 44013), if a qualified State submitted both 20 percent allowance expenditures and other “regular” SCHIP expenditures at the same time in a quarter, the 20 percent allowance expenditures would be applied first against the available fiscal year allotments. However, the 20 percent allowance expenditures could be applied only against the specified fiscal year allotment funds (upon which the 20 percent allowances were based) and which would remain available. Under section 2104(g)(1)(B)(iii) of the Act, the amounts of States' FY 2001 allotments would only be available through the end of FY 2005; therefore, the FY 2001 20 percent allowances for the qualifying States are

only available through the end of FY 2005.

Section 6103 of the Deficit Reduction Act of 2005 (Pub.L. 109–171, enacted on February 8, 2006) amended section 2105(g) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2004 and FY 2005 SCHIP allotments to allow the use of the enhanced (FMAP) rate (as determined under section 2105(b) of the Act) for certain expenditures made under the Medicaid program.

Section 201(b) of the NIHRA amended section 2105(g) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2006 and FY 2007 SCHIP allotments to allow the use of the enhanced Federal Medical assistance percentage (FMAP) rate (as determined under section 2105(b) of the Act) for certain expenditures made under the Medicaid program.

II. Provisions of This Notice

The purpose of this notice is to set forth our procedure for redistributing unexpended FY 2004 and FY 2005 allotments in accordance with section 2104(h) of the Act as added by the NIHRA. In this regard, this notice applies solely to the redistribution of unexpended FY 2004 and FY 2005 allotments and does not describe the procedure for the redistribution of any other unexpended fiscal year allotments. This notice also implements the continued authority for “qualifying States” to elect to receive a portion of certain of their available FY 2006 and FY 2007 SCHIP allotments as increased Federal matching funds for certain expenditures in their Medicaid programs.

A. Methodology for Redistribution of the FY 2004 SCHIP Allotments for the Period Ending March 2007 To Eliminate FY 2007 SCHIP Funding Shortfalls

Section 2104(f) of the Act provides for the Secretary to determine an appropriate procedure to redistribute the entire amount of States' unexpended SCHIP allotments following the end of the related initial 3-year period of availability only to those States that fully expended the allotments by the end of the initial 3-year period of availability. However, section 2104(h)(1) of the Act as added by section 201(a) of the NIHRA, specifies the application of special rules for the redistribution of the unexpended FY 2004 allotments in FY 2007 with respect to certain “shortfall States.” As described below, the procedure for redistribution of States' unexpended FY 2004 allotments

remaining at the end of FY 2006 will be in accordance with the provisions of section 2104(h)(1) of the Act relating to the elimination of funding shortfalls in the SCHIP in FY 2007.

Under section 2104(h)(7) of the Act as amended by the NIHRA, the special rules for the redistribution of the unexpended FY 2004 and FY 2005 allotments in FY 2007 to address FY 2007 SCHIP funding shortfalls apply only to the 50 States and the District of Columbia; that is, this provision refers only to States which received an allotment under section 2104(b) of the Act, and under this section a State means only the 50 States and the District of Columbia, as appropriate. Therefore, section 2104(h)(1) of the Act does not apply to the Commonwealths and Territories, which received SCHIP allotments for FY 2007 under the authority of section 2104(c) of the Act. Accordingly, unless otherwise indicated in this notice in referring to the redistribution of the FY 2004 allotments the term “State” means only the 50 States and the District of Columbia, as applicable.

Under section 2104(h)(1)(B) of the Act, a shortfall State is a State with an approved child health plan under title XXI of the Act, for which the Secretary estimates, on a monthly basis using the most recent data available to the Secretary, that the State's projected FY 2007 expenditures under this plan will exceed the sum of:

- i. The amount of the State's allotments for each of FY's 2005 and 2006 that were not expended by the end of FY 2006;
- ii. The amount of the State's allotment for FY 2007.

Furthermore, in determining whether a States' estimated FY 2007 expenditures are in excess of the State's available allotment funds specified above, these expenditures are determined subject to the provisions of section 2104(h)(4) of the Act. In the context of the FY 2004 redistributed allotments, section 2104(h)(4) of the Act indicates that these redistributed funds may only be used to make payments to States with respect to expenditures for (1) providing child health assistance or other health benefits coverage for populations eligible under the State child health plan (including under a waiver of this plan) on October 1, 2006; and (2) providing child health assistance or other health benefits coverage to an individual who is not a child or a pregnant woman at the regular FMAP only (not the enhanced FMAP). The redistributed FY 2004 allotments would be available for making payments to States for

expenditures for a child or a pregnant woman at the enhanced FMAP rate.

In determining the amount of any unexpended FY 2004 allotments that might be redistributed to address a State's FY 2007 SCHIP funding shortfall, we first determined the amount, if any, of each State's FY 2004 allotments that were not expended by the end of FY 2006 based on States' quarterly expenditure reports (Forms CMS-21 and CMS-64) as submitted and certified by States through November 30, 2006. We also determined the amounts of each States' unexpended FY 2005 and FY 2006 allotments that were not expended by the end of FY 2006, also based on States' quarterly expenditure reports (Forms CMS-21 and CMS-64) as submitted and certified by States through November 30, 2006. The amounts of the States' allotments for FY 2007 are as published in the **Federal Register** on July 28, 2006 (71 FR 42854). We then determined the amounts of States' projected FY 2007 expenditures using the States' most recent estimates. In that regard, the most recent estimates of States' FY 2007 expenditures were obtained from the States' certified submissions of their February 2007 quarterly report forms CMS-21b and CMS-37. From these submissions we were able to determine States' projected expenditures for FY 2007 on a yearly and quarterly basis. For those States that cover adults in their SCHIP programs, we also obtained further breakdowns of these expenditures between children, pregnant women, and adults (other than pregnant women, that is, parents and childless adults). Using this information, we determined the States that met the definition of Shortfall State in section 2104(h)(1)(B) of the Act.

The next step was to determine on a monthly basis, beginning with October 2006, whether these shortfall States had sufficient allotment funds available to meet their estimated SCHIP expenditures. As indicated previously, this determination was made subject to the provisions of section 2104(h)(4)(B) of the Act, under which the FY 2004 redistributed funds are only available for expenditures for populations eligible on October 1, 2006 and for an individual other than a child or pregnant woman at the regular FMAP rate. Under the standard operational procedures in the SCHIP program, States report their actual expenditures on a quarterly basis, and only after the end of the quarter. This process has been explicitly recognized in the SCHIP statute with respect to previous fiscal year allotment determinations (for example, see section 2104(g)(3) of the Act, which references a November 30th

date (that is, 2 months following the end of the associated fiscal year)).

Accordingly, we have used 2 months as a reasonable time period for States to report their expenditures following the end of a fiscal year quarter. The most recent quarterly expenditure report submitted by States was for the fourth quarter of FY 2006, and as indicated previously, we obtained the final States' submissions for this quarter/fiscal year by November 30, 2006. Using the 2 month period, the next expenditure report for the first quarter of FY 2007 (October 1, 2006 through December 31, 2006) would be expected as of the end of February 2007.

With respect to States' estimated expenditures, a quarterly reporting process also applies. The most recent expenditure estimates for FY 2007 were submitted by States through their February 2007 submissions of the Forms CMS-37 and CMS-21B. Typically, the reports of States' quarterly estimates are completed/certified by States before the beginning of the following quarter; for example, the States' submissions of their February 2007 quarterly estimate reports were completed/certified by the end of March 2007. The next scheduled quarterly estimate reports due from States would be the May 2007 quarterly submission which would not be completed/certified by States until mid to late June 2007.

Because of the timing and availability of the States' quarterly expenditure reports and the States' quarterly expenditure estimate reports, and in order to comply timely with the provisions of section 2104(h)(1) of the Act (which requires that States' FY 2007 SCHIP funding shortfalls be addressed on a monthly basis), we propose to use the States' submissions of their February 2007 quarterly expenditure estimate reports to determine and estimate the amounts of the States' monthly SCHIP funding shortfalls through March 2007. That is, the February 2007 quarterly expenditure estimate reports submitted by States represent the most recent official/certified estimates that States have submitted and that were available through the end of March 2007.

In order to determine States' monthly SCHIP funding shortfalls, and in order to address the "varying FMAP" provision (in section 2104(h)(4)(B) of the Act), we used the States' expenditure estimates for FY 2007 to determine an expenditure per diem amount for shortfall States; this was calculated by dividing the total projected expenditures for the first two quarters of FY 2007 by 182, the number of days in the period October 1, 2007 through March 31, 2007, the period

ending with the date specified in section 2104(h)(2) of the Act as amended by NIHRA, and which is the end of the second quarter FY 2007. Furthermore, in applying the States' estimates for determining the monthly SCHIP funding shortfalls, we assumed that the expenditures represented by these fiscal year estimates would be presented for payment to the State in each quarter without regard to the type of individual the expenditure is associated with. Finally, we determined two different expenditure per diem amounts. The first expenditure per diem amount was determined as if payment for the entire amount of a State's estimated expenditures for the first two quarters of FY 2007 were available at the enhanced FMAP rate, without regard to the type of populations (children/pregnant women or non-pregnant adults) such expenditures represented. Therefore, the first expenditure per diem amount was determined by dividing the States' projected FY 2007 expenditures through March 31, 2007 (representing the first two quarters of FY 2007), with no adjustment for the type of individual (child/pregnant woman or non-pregnant adult) for whom the expenditure was associated, by 182. This expenditure per diem amount is applied under the premise that payment for a State's expenditures prior to a SCHIP funding shortfall occurring (the point in time when all allotments have been exhausted) for the State would be made from the State's other allotments available in FY 2007 (specifically, the States' available FY 2005, 2006 and 2007 allotments, not including any FY 2004 redistribution). The varying FMAP provision is not applicable with respect to the other fiscal year allotment funds available to the State (the allotments other than the FY 2004 allotments).

The second expenditure per diem amount is determined by adjusting the States' projected expenditures for the first two quarters of FY 2007 to reflect the provision under section 2104(h)(4) of the Act, as amended by NIHRA, that payment for expenditures for an individual who is not a child or pregnant woman (that is, a non-pregnant adult) which is made from the FY 2004 redistribution amounts available to the shortfall States would be at the regular FMAP rate. This reflects the premise that once a State experiences a SCHIP funding shortfall situation during a month, that is, the point in time when all other available allotments (other than the potential FY 2004 redistribution amounts) have been exhausted, payment for the State's expenditures could only

be made from the FY 2004 redistributed amounts that might be made available to the State. Since application of the FY 2004 redistributed allotments are conditioned by the varying FMAP provision in section 2104(h)(4)(B) of the Act, the second expenditure per diem amount was determined by dividing the estimated expenditures for the period ending March 31, 2007 by 182, after these expenditures were adjusted to reflect that adult expenditures are only matched at the regular FMAP rate (for States that have expenditures affected by this provision).

For each shortfall state, we then divided its total allotments available in FY 2007 (not including any FY 2004 redistribution amounts) by the unadjusted expenditure per diem amount to determine the total number of days funded by the other allotments available to the State before it would experience a SCHIP funding shortfall. Again, in this regard, "other allotments" refers to the allotments available to the State not including any FY 2004 redistributed allotments. Using this approach, we determined the month and the day on which each shortfall state would no longer have any other SCHIP allotment funds available during the period ending March 31, 2007. Then, for days in the month after the shortfall occurred, the State would be in a shortfall situation and as available, amounts of unexpended FY 2004 allotment would be redistributed to these State(s) in amounts intended to eliminate this shortfall. Using this approach, on a month by month basis for the period ending March 31, 2007, we determined the FY 2004 redistribution amounts for shortfall States for months in the first two quarters of FY 2007. This monthly amount is equal to the SCHIP funding shortfall amounts in the month, unless there were not sufficient FY 2004 allotments remaining available to meet this monthly SCHIP funding shortfall. The SCHIP funding shortfall amount for a month is equal to the number of days in the month in which the State is estimated to experience a shortfall multiplied by the adjusted per diem rate. In a month when the amounts of the unexpended FY 2004 allotment available for redistribution is less than the total allotment funds needed by shortfall States, per section

2104(h)(1)(D) of the Act, these amounts available for redistribution in this month would need to be prorated, based on the shortfall expenditures in this month for the identified shortfall States.

Using the approach described above, we identified the shortfall States in FY 2007, determined the amounts of these

States' monthly shortfalls through the end of March 2007, and the amounts of the redistributed unexpended FY 2004 allotments determined to meet these shortfalls for the period ending March 2007. The monthly amounts of the redistributed FY 2004 allotments are included in this notice.

B. Methodology for Redistribution of the Remaining Unexpended FY 2004 Allotments and Certain Amounts of Unexpended FY 2005 SCHIP Allotments to Eliminate FY 2007 SCHIP Funding Shortfalls in the Months After March 31, 2007

Under section 2104(f) of the Act, the Secretary is required to determine an appropriate procedure to redistribute the entire amount of States' unexpended SCHIP allotments following the end of the associated initial 3-year period of availability only to those States that fully expended the allotments by the end of the initial 3-year period of availability. However, section 2104(h)(2) of the Act as amended by the NIHRA, provides for an earlier redistribution of certain amounts of States' FY 2005 allotments. Specifically, this section requires the redistribution in FY 2007 of certain amounts of States' unexpended FY 2005 allotments estimated to be available in months following March 31, 2007, in order to address and reduce certain identified States' SCHIP funding shortfalls occurring in FY 2007.

Under section 2104(h)(7) of the Act as amended by the NIHRA, the special rules for the redistribution of the unexpended FY 2004 and FY 2005 allotments in FY 2007 to address FY 2007 SCHIP funding shortfalls apply only to the 50 States and the District of Columbia. That is, this provision refers only to States which received an allotment under section 2104(b) of the Act, and under this section a State means only the 50 States and the District of Columbia, as appropriate. Therefore, section 2104(h)(2) of the Act does not apply to the Commonwealths and Territories, which received SCHIP allotments for FY 2007 under the authority of section 2104(c) of the Act. Accordingly, unless otherwise indicated in this notice in referring to the redistribution of the FY 2005 allotments the term "State" means only the 50 States and the District of Columbia, as applicable.

Under section 2104(h)(2)(B) of the Act, a shortfall State is a State with an approved child health plan under title XXI of the Act, for which the Secretary estimates, subject to paragraph (4)(B) and on a monthly basis using the most recent data available to the Secretary as of March 31, 2007, that its projected FY

2007 expenditures under this plan will exceed the sum of:

i. The amount of the State's allotments for each of FYs 2005 and 2006 that were not expended by the end of FY 2006;

ii. The amount, if any, of the State's FY 2004 redistribution, as determined above, in accordance with section 2104(h)(1) of the Act; and

iii. The amount of the State's allotment for FY 2007.

In determining whether a State's estimated FY 2007 expenditures are in excess of the State's allotment funds available in FY 2007, these expenditures are determined, in accordance with section 2104(h)(4) of the Act. Section 2104(h)(4) of the Act indicates that Federal payments to a State from the FY 2005 redistributed allotment amounts with respect to expenditures for providing child health assistance or other health benefits coverage is for populations eligible under the State child health plan (including under a waiver of this plan) on October 1, 2006 and payment to an individual who is not a child or a pregnant woman, using the FY 2005 redistributed allotments may only be at the regular FMAP (not the enhanced FMAP). Federal payments from the FY 2005 redistributed allotments for expenditures for a child or a pregnant woman using the redistributed FY 2005 allotments would be available at the enhanced FMAP.

Section 2104(h)(2) of the Act provides for a redistribution of States' unexpended FY 2005 allotments in FY 2007. However, section 2104(h)(3) of the Act limits the amounts and the States from which these unexpended FY 2005 allotments would be redistributed. Specifically, the States from which these unexpended FY 2005 allotment funds would be redistributed are identified as follows, based on the most recent data as of March 31, 2007:

i. The States have not expended all of their FY 2005 allotments by March 31, 2007.

ii. The total of these States' estimated available allotments (as of March 31, 2007) is at least equal to 200 percent of the States' total projected SCHIP expenditures for FY 2007.

In the case of States identified as meeting the above conditions, the amount of the FY 2005 allotments that would be redistributed from them is limited to the lesser of:

i. 50 percent of their unexpended FY 2005 allotments available as of March 31, 2007, or

ii. \$20 million.

By March 31, 2007, all States submitted their first quarter FY 2007 expenditure reports; however, at that

time the second quarter of FY 2007 had only just ended, and the associated expenditure reports have not yet have been submitted by States. However, the States' February 2007 quarterly submissions of estimated expenditure reports for FY 2007 were submitted by March 31, 2007. In that regard, in accordance with section 2104(h)(2) of the Act, we used the States' submissions of their February 2007 quarterly expenditure estimate reports of their FY 2007 expenditures in order to determine the following:

- The amounts of SCHIP allotment funds (including the FY 2005 allotments and any redistributed amounts of unexpended FY 2004 allotments) that would be available as of March 31, 2007; and
- The amounts of States' estimated expenditures for FY 2007 on an annual basis and for each quarter of the fiscal year.

Using this information we were able to determine projected estimates of States' SCHIP funding shortfalls for months after March 31, 2007, and the amount of the unexpended FY 2005 allotments available as of that date to be used to address these SCHIP funding shortfalls.

In order to determine States' monthly SCHIP funding shortfalls after March 31, 2007, and in order to address the "varying FMAP" provision (referenced in section 2104(h)(4)(B) of the Act), we used the States' expenditure estimates for FY 2007 obtained from the February 2007 quarterly expenditure estimate reports to determine expenditure per diem amounts for the FY 2007 shortfall States, identified as discussed in section A above. The per diem amounts for the period after March 31, 2007 were calculated by dividing the total projected expenditures for the period April 1, 2007 through September 30, 2007 (as provided by States' February 2007 submission) by 183, the number of days in that period. Furthermore, in applying the States' estimates for determining the monthly SCHIP funding shortfalls after March 31, 2007, we assume that the expenditures represented by these estimates would be presented for payment to the State without regard to the type of individual (child/pregnant woman or non-pregnant adult) with which the expenditure is associated. Finally, we determined two different expenditure per diem amounts. The first per diem amount was determined as if payment for all of the State's estimated expenditures for the period April 1, 2007 through September 30, 2007 were available at the enhanced FMAP rate. Therefore, the first expenditure per diem amount is

determined by dividing the States' projected FY 2007 expenditures for the period after March 31, 2007, with no adjustment made for the type of individual (child/pregnant woman or adult) for whom the expenditure was associated, by 183. This first expenditure per diem amount is applied under the premise that a State's expenditures prior to a shortfall occurring for the State (the point in time when all allotments have been exhausted) would be matched with the other (if any) fiscal year allotments available to the State in FY 2007 (that is, the States' available FY 2005, 2006 and 2007 allotments, and also including any FY 2004 redistribution amounts available to the State). The varying FMAP provision would not be applicable for these other allotment funds available to the State (not including the FY 2004 and FY 2005 redistributions).

The second expenditure per diem amount is determined by adjusting the States' projected FY 2007 expenditures to reflect the condition that payment for expenditures for an individual who is not a child or pregnant woman would be made at the regular FMAP rate using any FY 2005 redistribution amounts available to the shortfall State. This reflects the premise that once a State reaches a shortfall situation during a month (that is, all other available allotments, other than the FY 2005 redistribution amounts have been exhausted), payment for the FY 2007 shortfall State's expenditures would only be made from the FY 2005 redistributed amounts that might be made available. Since application of the FY 2005 redistributed allotments is conditioned by the varying FMAP provision (refer to section 2104(h)(4)(B) of the Act), the second expenditure per diem amount is determined by dividing the estimated expenditures for FY 2007 for the period after March 31, 2007 (as adjusted to reflect the adult expenditures affected by the varying FMAP provision for States that have these expenditures) by 183.

For each shortfall state, we divided its total available allotments (other than the potential FY 2005 redistributed amounts, if any) by the unadjusted expenditure per diem amount to determine the total number of funded days the State had before it was in a shortfall situation. This would determine the month and the day on which the shortfall State would no longer have any (other) allotment funds available. For days in the month beginning with the day the SCHIP funding shortfall occurs, the State is in shortfall and as available, amounts of

the unexpended FY 2004 allotments (remaining after the redistributions for the months prior to April 2007) and the unexpended FY 2005 allotments (estimated to be unexpended at the end of March 2007 and available for redistribution on April 1, 2007) would be redistributed to these State(s). On a month by month basis, we determined the FY 2004 and FY 2005 redistribution amounts to be provided to shortfall States for months after March 31, 2007.

In particular, beginning with April 1, 2007, we determined the amount of the remaining unexpended FY 2004 allotments to be redistributed to each shortfall state with a shortfall projected for April by determining the April 2007 shortfall amount. The April shortfall amount for each shortfall State was determined by multiplying the State's number of shortfall days in April by the adjusted expenditure per diem amount. The remaining unexpended FY 2004 allotments were then prorated by the April shortfall amounts for each State (since the amounts of the remaining unexpended FY 2004 allotments were not sufficient to meet the entire April shortfall). That is, per section 2104(h)(1)(D) of the Act, unexpended FY 2004 allotment amounts available for redistribution in a month must be prorated or reduced proportionally, based on the shortfall expenditures in the month. From the unexpended FY 2005 allotments determined to be available as of April 1, 2005 to meet the remaining April shortfall, we then redistributed to each shortfall state with a projected April shortfall an amount equal to the remaining April shortfall after the provision of the FY 2004 redistribution for April.

Finally, we determined the redistribution of FY 2005 allotments for May 2007. This was determined by multiplying the number of shortfall days in May for each shortfall State by the adjusted per diem amount. Since the remaining unexpended FY 2005 allotments available for redistribution in May 2007 (after the April redistribution) were projected to be insufficient to meet the total projected May 2007 shortfall, the final FY 2005 redistribution amounts for May were prorated, based on the total shortfall for the month. That is, per section 2104(h)(2)(D) of the Act, FY 2005 allotment amounts available for redistribution in a month must be prorated or reduced proportionally, based on the shortfall expenditures in the month.

C. Retrospective Adjustment

Section 2104(h)(5) of the Act provides discretion for the Secretary to adjust the estimates and determinations of FY

2004 and FY 2005 redistributions following the end of FY 2007 under sections 2104(h)(1), (2) and (3) of the Act, on the basis of the actual expenditures reported by States no later than November 30, 2007. However, in no case may the amounts of the FY 2005 allotments redistributed from States exceed the amounts that were determined based on the most recent data available as of March 31, 2007. As described, above, these amounts were determined based on the States' submissions of the February 2007 quarterly estimate reports of their FY 2007 expenditures, and using these estimates would not exceed the lesser of 50 percent of the States' available FY 2005 allotments as would be available as of March 31, 2007 or \$20 million. Furthermore, under section 2104(h)(5)(B) of the Act, only the actual unexpended FY 2005 allotments remaining at the end of FY 2007 (as determined following the submission of States' fourth quarter FY 2007 expenditure reports submitted by November 30, 2007) may be available for any retrospective adjustments that may be made under this provision. Finally, under section 2104(h)(5)(C) of the Act, any retrospective adjustment may not provide for the reduction of any States' FY 2006 or FY 2007 allotments.

D. Ordering of Expenditures

In applying State's expenditures against their available SCHIP allotments, we follow the order of expenditures as provided under section 2105(a)(1)(A) through (D) and (a)(2) of the Act as follows:

- (i) Title XIX SCHIP-related expenditures for which payment is made at the enhanced FMAP (section 2105(a)(1)(A) of the Act);
- (ii) Title XIX expenditures for medical assistance provided during a presumptive eligibility period under section 1920A of the Act (section 2105(a)(1)(B) of the Act);
- (iii) Child health assistance for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 (per section 2105(a)(1)(C) of the Act);
- (iv) Expenditures listed in section 2105(a)(1)(D)(i) through (iv) of the Act, respectively: Other child health assistance for targeted low-income children; health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children); expenditures for outreach activities; and administration expenditures.

As discussed previously, Public Law 108–74, as amended by Public Law 108–127, also added a new section 2105(g) to the Act, under which a “qualifying State” meeting specified criteria could, at its option, elect to use up to 20 percent of any of the state's available SCHIP allotments for FY 1998, 1999, 2000, or 2001 for payments under the State's Medicaid program, instead of expenditures under the State's SCHIP. Furthermore, as amended by section 6103 of the DRA, qualifying States may elect to use up to 20 percent of their available FY 2004 and FY 2005 allotments for this purpose. Finally, as amended by section 201(b) of the NIHRA, qualifying States may elect to use up to 20 percent of their available FY 2006 and FY 2007 allotments. As described in the **Federal Register** published on July 23, 2004 (69 FR 44026), if a qualified State submits both 20 percent allowance expenditures and other “regular” SCHIP expenditures at the same time in a quarter (based on the allotment priority order they both must apply against any available fiscal year allotments), the 20 percent allowance expenditures will be applied first against any remaining 20 percent allowance allotments amounts. We will apply the same approach with respect to the FY 2006 and FY 2007 20 percent allowances determined in accordance with section 201(b) of the NIHRA.

In general, in accordance with the ordering of allotments and expenditures provisions, the expenditures of States eligible for the FY 2004 and FY 2005 redistribution amounts will be applied against the FY 2004 and FY 2005 redistribution amounts.

E. No Ordering Election for FY 2004 and FY 2005 Redistributed Amounts

In the past, for purposes of applying States' expenditures against the redistributed allotments, States receiving redistributed allotment amounts were given flexibility to decide the ordering of the redistributed allotments with respect to the States' other available allotments. This allowed the redistribution States to optimize the use of these redistributed funds. However, because of the statutory provisions made by the NIHRA related to the determination of shortfall States and the amount of the funding shortfalls on a monthly basis, and the requirement that these redistributed allotments be available only after the States' other SCHIP allotment funds have been exhausted, we believe that the FY 2004 and FY 2005 redistributed allotments must be ordered after the States' other available allotments are exhausted. Therefore, shortfall States must spend

their available FY 2005, FY 2006 and FY 2007 allotments first, before any redistributed FY 2004 and FY 2005 allotment amounts. Furthermore, since the unexpended FY 2004 allotments must be redistributed before any redistribution of the FY 2005 allotments, the FY 2004 redistributed allotment amounts must be ordered prior to any FY 2005 redistributed allotment amounts.

As specified in section 2104(h)(6) of the Act, as added by section 201(a) of the NIHRA, the amounts of the unexpended FY 2004 and FY 2005 allotments redistributed to a State in FY 2007 are only available for expenditure by the State through September 30, 2007; and any amounts of these redistributed allotments remaining at the end of FY 2007, shall not be subject to redistribution under section 2104(f) of the Act.

As part of the redistribution process, prior to making the FY 2004 and FY 2005 redistribution funds actually available, we contacted all of the States we estimated to be eligible for these fiscal year redistributions and all of the States contributing towards the FY 2005 redistribution (as identified in section 2104(h)(3) of the Act) in order to explain the redistribution process and associated SCHIP allotment amounts as described in this notice. The amounts of such States' FY 2004 and FY 2005 redistributed allotment amounts and the reduction of the FY 2005 allotments, will be incorporated into the Form CMS–21C (Allocation of Title XIX and Title XXI Expenditures to the SCHIP Fiscal Year Allotment). Form CMS–21C is used for tracking States' expenditures against their available SCHIP allotments. The amounts of the FY 2004 and the FY 2005 redistributed allotments and the reduction to the FY 2005 allotments will be entered on this form, and the Medicaid and SCHIP expenditure system will automatically apply expenditures reported on the quarterly expenditure reports for FY 2007 against the FY 2004 and FY 2005 redistributed amounts and the revised FY 2005 allotments available in FY 2007, and the other SCHIP allotments available in FY 2007.

F. Special Rule for Coverage for Populations Eligible on October 1, 2006

Under section 2104(h)(4)(A) of the Act, as added by the NIHRA, a State may use amounts of FY 2004 allotments or FY 2005 allotments, redistributed under section 2104(h) of the Act, only for expenditures for providing child health assistance or other health benefits coverage for populations eligible for assistance or benefits under

its approved State child health assistance plan (including a waiver of this plan) as in effect on October 1, 2006. During FY 2007, if a State which received amounts of redistributed FY 2004 or FY 2005 allotments does not provide eligibility for any populations in addition to those eligible under its approved plan (including a waiver of this plan) as in effect on October 1, 2006, we will deem this requirement to be met and no special/separate reporting of expenditures related to the populations eligible in accordance with the State's plans (or waiver of this plan) as in effect on October 1, 2006 would be required. However, if a State receiving amounts of redistributed FY 2004 or FY 2005 allotments does provide eligibility for any populations in addition to those eligible under its approved plan (including a waiver of this plan) as in effect on October 1, 2006, this State will need to separately report the FY 2007 expenditures it reports to CMS for these additional populations, in accordance with reporting requirements determined by CMS. Separately reporting these expenditures will ensure that none of the FY 2007 expenditures for these additional populations will be applied against the FY 2004 or FY 2005 redistributed allotments.

G. Continued Authority for Qualifying States To Use Certain Funds for Medicaid Expenditures

Section 1(b) of Public Law 108–74, as amended by Public Law 108–127, added new section 2105(g) to the Act under which certain “qualifying States” that met prescribed criteria could elect to use up to 20 percent of the States’ available SCHIP allotments for FY 1998, 1999, 2000, or 2001 as additional Federal financial participation for expenditures under the State’s Medicaid program, instead of expenditures under the State’s SCHIP. The **Federal Register** published on July 23, 2004 (69 FR 44026) described the definition of qualifying State and indicated how the 20 percent allowances for these States would be calculated and applicable expenditures tracked against them. Section 6103 of the DRA amended section 2105(g)(1)(A) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2004 and FY 2005 SCHIP allotments. Finally, section 201(b) of the NIHRA amended section 2105(g)(1)(A) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2006 and FY 2007 SCHIP allotments. The 20 percent allowances for qualifying States associated with the FY 2006 and FY 2007 allotments have been

calculated in the same way as we determined and tracked the 20 percent allowances associated with the FY 1998 through FY 2002 fiscal years. The availability of the 20 percent allowances for FY 2006 and FY 2007, and the application of expenditures against these allowances, will be in accordance with the same provisions as in the July 23, 2004 **Federal Register**.

H. Tables for FY 2004 Unexpended Allotments, Calculation of FY 2004 and FY 2005 Redistribution, and Determination of Available FY 2005 Allotments for Redistribution

In Table 1 of this notice we set forth the unexpended FY 2004 SCHIP allotments remaining at the end of FY 2006. We established the amount of States’ unexpended FY 2004 allotments at the end of the initial 3-year period of availability, based on the SCHIP-related expenditures, as reported and certified by States to us on the quarterly expenditure reports (Form CMS–64 and/or Form CMS–21) by November 30, 2006. These expenditures are applied and tracked against the States’ FY 2004 allotments (as published in the **Federal Register** on August 22, 2003 (68 FR 50784)) and other available allotments, on Form CMS–21C, Allocation of the Title XIX and Title XXI Expenditures to SCHIP Fiscal Year Allotment.

By November 30, 2006, all States reported and certified their FY 2006 fourth quarter expenditures (representing the last quarter of the 3-year period of availability for FY 2004). Expenditures reflected in Table 1 below were taken from our Medicaid Budget and Expenditure System/State Children’s Health Program Budget and Expenditure System (MBES/CBES) “master file,” which represents the State’s official certified SCHIP and Medicaid expenditure reporting system records related to the determination of the amounts of the unexpended FY 2004 allotments. Based on States’ expenditure reports submitted and certified through November 30, 2006, the total amount of States’ FY 2004 SCHIP allotments that were unexpended at the end of the 3-year period ending September 30, 2006, is \$146,879,932. These amounts were used to determine the States’ FY 2004 redistributed allotment amounts set forth in Table 3 of this notice.

Tables for Calculating the SCHIP FY 2004 Redistributed Allotments

The following describes Tables 1 through Table 3, which together presents the redistributed amounts of the unexpended FY 2004 and FY 2005 SCHIP allotments for purposes of

eliminating FY 2007 SCHIP funding shortfalls.

A total of \$3,175,200,000 was allotted nationally for FY 2004, representing \$3,142,125,000 in allotments to the 50 States and the District of Columbia, and \$33,075,000 in allotments to the Commonwealths and Territories. Based on the quarterly expenditure reports, submitted and certified by November 30, 2006, 44 States and the District of Columbia fully expended their FY 2004 allotments, 7 States did not fully expend their FY 2004 allotments, and all 5 of the Commonwealths and Territories fully expended their FY 2004 allotments. For the 7 States that did not fully expend their FY 2004 allotments, the total unexpended FY 2004 allotments is \$146,879,932; this amount is available for redistribution to States with shortfalls in FY 2007, in accordance with the provisions of the NIHRA in FY 2007. The calculation of the total unexpended FY 2004 allotments remaining at the end of FY 2006 is detailed in Table 1 below.

Based on the States’ February 2007 projections of their FY 2007 SCHIP expenditures, there are 11 States projected to have a SCHIP shortfall in FY 2007 totaling about \$932 million. However, only 5 of these States are projected to have a shortfall for the period October 1, 2006 through March 31, 2007 (Illinois, Maryland, Massachusetts, New Jersey, and Rhode Island); in particular, we projected that the shortfalls for these states begin in January 2007. In accordance with the provisions of section 2104(h)(1) of the Act, as amended by NIHRA, we estimated the shortfalls for the 5 States for the months of January through March 2007 total about \$86.5 million. Since there is a total of about \$146.9 million in unexpended FY 2004 allotments available for redistribution in FY 2007, the entire shortfall for months prior to April 2007 can be met. The redistribution of unexpended FY 2004 allotments for the months of January through March 2007 shortfalls is included in Table 3 below.

There were 13 States identified under section 2104(h)(3) of the Act, as amended by NIHRA, as having unexpended FY 2005 allotment amounts available as of March 31, 2007 and that also had total available allotments equal to at least 200 percent of their projected FY 2007 expenditures available as of March 31, 2007. We determined this using the States’ February 2007 submissions of their FY 2007 projected expenditures. For these States, the lesser of \$20 million, or fifty percent of their unexpended FY 2005 allotments, available as of March 31,

2007, is available for redistributions for states with FY 2007 shortfalls in months after March 2007. Based on this, we determined that a total of \$137,832,296 in unexpended FY 2005 allotments from these 13 states is available for redistribution to the shortfall States in FY 2007 for months after March 2007. Table 3 below provides details regarding this determination.

Of the 11 States projected to have shortfalls in FY 2007, 6 of them are projected to have shortfalls in April and May 2007 (Georgia, Illinois, Maryland, Massachusetts, New Jersey, and Rhode Island). Based on the February 2007 estimates of States' projected FY 2007 expenditures, the total shortfall for these 6 States for the month of April is estimated at about \$96.9 million. About \$60.3 million in unexpended FY 2004 allotments remained after the redistribution for the months prior to April 2007; therefore, this amount is available to meet the FY 2007 shortfall for the month of April. The remaining April shortfall after the FY 2004 redistribution is about \$36.6 million (\$96.9 million minus \$60.3 million). This remaining April shortfall is fully covered by the \$137.8 million in unexpended FY 2005 allotments available for redistribution for months after March 2007. The remaining \$101.2 million in unexpended FY 2005 allotments is available to be applied to projected May 2007 shortfall amounts. The projected May 2007 shortfall for the 6 states projected to have shortfalls in May is about \$116.6 million; therefore, the remaining \$101.2 million in FY 2005 allotments available for redistribution to address May 2007 shortfalls has been prorated among the 6 May shortfall States, based on the May shortfall projections. The amounts of the remaining redistributed FY 2004 allotments and the redistribution of the FY 2005 allotments for the April and May 2007 shortfalls is included in Table 3 below.

Key to Table 1—Unexpended SCHIP Allotments for Fiscal Year 2004

Table 1 presents the amounts of the unexpended FY 2004 allotments remaining at the end of FY 2006 and available for redistribution in FY 2007 to address the FY 2007 SCHIP funding shortfalls for the 50 States and the District of Columbia.

Column/Description

Column A = State. Name of State, District of Columbia, the Commonwealth or Territory.

Column B = FY 2004 Allotments. This column contains the FY 2004 SCHIP allotments for all States, which were

published in the **Federal Register** on October 22, 2003 (68 FR 50784).

Column C = Expenditures Applied Against FY 2004 Allotment. This column contains the cumulative expenditures applied against the FY 2004 allotments, as reported and certified by all States through November 30, 2006.

Column D = Unexpended FY 2004 Allotments or "None". This column contains the amounts of unexpended FY 2004 SCHIP allotments for States that did not fully expend the allotments during the 3-year period of availability for FY 2004 (FYs 2004 through 2006), and is equal to the difference between the amounts in Column B and Column C. For States that did fully expend their FY 2004 allotments during the 3-year period of availability, the entry in this column is "None." The total of the entries in Column D, \$146,879,932, represents the total amount of unexpended FY 2004 allotments remaining at the end of FY 2006 and available for redistribution in FY 2007.

Key to Table 2—Determination of Amounts of Unexpended FY 2005 Allotments Available Mid-FY2007 for Redistribution

Table 2 reflects the amounts of unexpended FY 2005 allotments determined to be available as of March 31, 2007 based on the States' February 2007 submissions of their FY 2007 estimated expenditures, determined in accordance with the provisions of section 2104(h)(3) of the Act, as amended by the NIHRA and as described in this **Federal Register** notice. These amounts will be used to eliminate the States' FY 2007 SCHIP funding shortfalls occurring in the period beginning April 2007 through the redistribution process described in this **Federal Register** notice; the amounts of this FY 2005 redistribution is contained in Table 3 along with the redistributed amounts of the FY 2004 allotments.

Column/Description

Column A = STATE. Column A contains the name of the State or the District of Columbia.

Column B = Total Allots. Remaining 3/31/2007. Column B contains the total allotments remaining available to each State in FY 2007 as of March 31, 2007. These amounts were determined by applying the projected expenditures for each State for the first two quarters of FY 2007 (October 1, 2006 through March 31, 2007) against the State's available allotments in that period (including the State's unexpended FY 2005 allotments carried over from FY 2006, unexpended FY 2006 allotments

carried over from FY 2006, and FY 2007 allotments).

Column C = FY 2005 Allots.

Remaining 3/31/2007. Column C contains the total FY 2005 allotments remaining available to each State in FY 2007 as of March 31, 2007. These amounts were determined by applying the projected expenditures for each State for the first two quarters of FY 2007 (October 1, 2006 through March 31, 2007) against the State's available allotments in that period (including the State's unexpended FY 2005 allotments carried over from FY 2006, unexpended FY 2006 allotments carried over from FY 2006, and FY 2007 allotments).

Column D = Total Yearly Projected FY 2007 Expenditures. Column D contains the total Federal share projected SCHIP expenditures for FY 2007, as projected by the State and submitted to CMS in its February 2007 submission.

Column E = 200 Percent of FY 2007 Proj. Expend. 2 x D. Column E contains 200 percent of the amount of the State's projected Federal share SCHIP FY 2007 expenditures contained in Column D.

Column F = 2104(h)(3)(B) Test, Tot. Mid-FY07 Est. Exp., B >= E. Column F contains the results of the test applied under section 2104(h)(3)(B) of the Act. That test, is whether the total available SCHIP allotments projected to be available as of March 31, 2007 (indicated in Column B) is at least equal to 200 percent of the State's projected FY 2007 SCHIP expenditures (indicated in Column E). If the amounts for the State meet this test, the entry in Column E will indicate "YES". If the amounts for the State do not meet this test, the entry in Column E will indicate "Not Met".

Column G = Amount Contributed to FY 05 Redist., Min (.5xC, \$20M). For the States that Column F indicates the test is met (Column F indicates "YES"), Column G contains the portion of that State's FY 2005 allotment that is available as of March 31, 2007 which will be adjusted applied to the FY 2007 SCHIP funding shortfalls. For the States meeting the test, the amount in Column G is determined as the lesser of \$20 million, or 50 percent of the amount of the State's available FY 2005 allotment as of March 31, 2007 (indicated in Column C).

Key to Table 3—Amounts of Unexpended FY 2004 and FY 2005 Allotments Redistributed in FY 2007

Table 3 contains the redistributed amounts of unexpended FY 2004 allotments and FY 2005 allotments for addressing States' funding shortfalls in FY 2007, determined in accordance with section 2104(h) of the Act, as

amended by NIHRA. These amounts were determined using States' SCHIP expenditure projections for FY 2007 as provided by the States in their February 2007 CMS-37 and CMS-21B quarterly submissions.

Column/Description

Column A = STATE. Column A contains the name of the State or the District of Columbia.

Column B = FY 2007 Tot. Avail. Allots NOT Including Redist. Amounts. Column B contains the total allotments available to each State in FY 2007, not including any potential unexpended fiscal year allotments a State may receive in FY 2007 as a redistribution such as the FY 2004 or FY 2005 redistributed allotments. Specifically, this amount includes, if any, the sum of the amounts of each State's: Unexpended FY 2005 allotments carried over from FY 2006, unexpended FY 2006 allotments carried over from FY 2006, and FY 2007 allotments.

Column C = FY 2007 Projected Fed. Share Expenditures. Column C contains the Federal share amount of each State's projected FY 2007 SCHIP expenditures, as contained in the February 2007 States' quarterly budget submissions of the CMS-37 and CMS-21B. These amounts reflect the availability of a Federal matching rate for the State's expenditures equal to the full SCHIP enhanced FMAP rate for all individuals.

Column D = FY 2007 Projected Shortfall. Col C—B. Column D contains the amount, if any, of the State's shortfall for the entire FY 2007, calculated as the amount in Column C minus the amount in Column B. If the amount in Column B is greater than or equal to the amount in Column C, there would be no shortfall in FY 2007 and the entry in Column D is "No SF".

Columns E Through L, General. Columns E through L contain the

amounts of the unexpended FY 2004 and FY 2005 allotments redistributed for States with projected shortfalls in FY 2007, and in particular, with projected shortfalls for the indicated months of January through May 2007, determined in accordance with the methodology for such redistributions described in this **Federal Register**. Redistributed allotment amounts in these columns reflect the amounts of the estimated shortfalls; specifically, these amounts were determined based on the number of projected shortfall days in the indicated month funded at the "adjusted per diem" expenditure amount (reflecting that non-pregnant adults may only be funded from the redistributed FY 2004 or FY 2005 allotments at the regular FMAP rate), and proportionally prorated, if appropriate. For States not projected to have shortfalls in FY 2007, the entry in these columns is "na". For States that are projected to have a shortfall in FY 2007 which occurs after May 2007, the entry in this column is also \$0 since the FY 2004 and FY 2005 redistribution amounts are exhausted by May 2007. For States projected to have funding shortfalls through May 2007, but are not projected to experience a shortfall in the particular month, the entry in these columns would also be \$0.

Column E = FY 04 SF Redist. For JAN. 2007. Column E contains the amount of the unexpended FY 2004 allotments redistributed to address estimated SCHIP funding shortfalls for the State for January 2007.

Column F = FY 04 SF Redist. For FEB. 2007. Column F contains the amount of the unexpended FY 2004 allotments redistributed to address estimated SCHIP funding shortfalls for the State for February 2007.

Column G = FY 04 SF Redist. For Mar. 2007. Column G contains the

amount of the unexpended FY 2004 allotments redistributed to address estimated SCHIP funding shortfalls for the State for March 2007.

Column H = FY 04 SF Redist. For Apr. 2007. Column H contains the amount of the unexpended FY 2004 allotments redistributed to address estimated SCHIP funding shortfalls for the State for April 2007.

Column I = Total FY 2004 Redist. E+F+G+H. Column I contains the total unexpended FY 2004 allotments redistributed to each State for January, February, March, and April 2007, respectively, calculated as the sum of the amounts in Column E, F, G, and H. With respect to States for which there is no redistribution of FY 2004 allotments for these months, the entry in Column I is \$0.

Column J = FY 05 SF Redist. For Apr. 2007. Column J contains the amount of the estimated FY 2005 allotments available as of March 31, 2007 and redistributed to address estimated SCHIP funding shortfalls for the State for April 2007.

Column K = FY 05 SF Redist. For May 2007. Column K contains the amount of the estimated FY 2005 allotments available as of March 31, 2007 and redistributed to address estimated SCHIP funding shortfalls for the State for May 2007.

Column L = Total FY 2005 Redist. J + K. Column L contains the total estimated FY 2005 allotments available as of March 31, 2007 and redistributed to each State for April and May 2007, respectively, calculated as the sum of the amounts in Column J and K. With respect to States for which there is no redistribution of FY 2005 allotments for these months, the entry in Column L is \$0.

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TABLE 1 - UNEXPENDED FY 2004 ALLOTMENTS			
State	FY 2004 Allotment	Expenditures Applied Against FY 2004 Allotment	Unexpended FY 2004 Allotments or "None"
A	B	C	D
Alabama	\$54,679,333	\$54,679,333	None
Alaska	\$7,156,891	\$7,156,891	None
Arizona	\$87,023,654	\$87,023,654	None
Arkansas	\$35,073,372	\$35,073,372	None
California	\$533,990,797	\$533,990,797	None
Colorado	\$44,865,429	\$44,865,429	None
Connecticut	\$27,975,129	\$20,492,297	\$7,482,832
Delaware	\$7,817,461	\$6,997,354	\$820,107
District of Columbia	\$7,198,952	\$7,198,952	None
Florida	\$193,614,837	\$193,614,837	None
Georgia	\$103,892,954	\$103,892,954	None
Hawaii	\$9,647,963	\$9,647,963	None
Idaho	\$16,958,002	\$16,958,002	None
Illinois	\$120,969,643	\$120,969,643	None
Indiana	\$54,026,680	\$54,026,680	None
Iowa	\$19,703,423	\$19,703,423	None
Kansas	\$23,541,920	\$23,541,920	None
Kentucky	\$39,286,749	\$39,286,749	None
Louisiana	\$64,523,178	\$64,523,178	None
Maine	\$9,474,540	\$9,474,540	None
Maryland	\$36,121,348	\$36,121,348	None
Massachusetts	\$46,201,047	\$46,201,047	None
Michigan	\$89,138,280	\$89,138,280	None
Minnesota	\$30,626,504	\$30,626,504	None
Mississippi	\$36,897,326	\$36,897,326	None
Missouri	\$41,923,481	\$41,923,481	None
Montana	\$10,193,881	\$10,193,881	None
Nebraska	\$13,872,884	\$13,872,884	None
Nevada	\$31,163,957	\$27,466,356	\$3,697,601
New Hampshire	\$8,013,366	\$8,013,366	None
New Jersey	\$64,389,677	\$64,389,677	None
New Mexico	\$32,788,606	\$31,432,329	\$1,356,277
New York	\$216,455,790	\$216,455,790	None
North Carolina	\$85,753,907	\$85,753,907	None
North Dakota	\$5,436,695	\$5,436,695	None
Ohio	\$103,803,316	\$103,803,316	None
Oklahoma	\$44,621,756	\$44,621,756	None
Oregon	\$38,056,795	\$38,056,795	None
Pennsylvania	\$98,747,809	\$98,747,809	None
Rhode Island	\$7,379,988	\$7,379,988	None
South Carolina	\$43,355,057	\$43,355,057	None
South Dakota	\$5,790,144	\$5,790,144	None
Tennessee	\$57,957,983	\$0	\$57,957,983
Texas	\$330,851,514	\$269,367,729	\$61,483,785
Utah	\$24,091,106	\$24,091,106	None
Vermont	\$3,813,156	\$3,813,156	None
Virginia	\$55,714,814	\$55,714,814	None
Washington	\$50,326,484	\$36,245,137	\$14,081,347
West Virginia	\$18,760,354	\$18,760,354	None
Wisconsin	\$43,504,958	\$43,504,958	None
Wyoming	\$4,952,110	\$4,952,110	None
TOTAL STATES ONLY	\$3,142,125,000	\$2,995,245,068	\$146,879,932
COMMONWEALTHS AND TERRITORIES			
Puerto Rico	\$30,296,700	\$30,296,700	None
Guam	\$1,157,625	\$1,157,625	None
Virgin Islands	\$859,950	\$859,950	None
American Samoa	\$396,900	\$396,900	None
N. Mariana Islands	\$363,825	\$363,825	None
TOTAL	\$33,075,000	\$33,075,000	\$0
NATIONAL TOTAL	\$3,175,200,000	\$3,028,320,068	\$146,879,932

TABLE 2 - DETERMINATION OF AMOUNTS OF UNEXPENDED FY 2006 ALLOTMENTS AVAILABLE MID-FY 2007 FOR REDISTRIBUTION						
STATE	Total Allots. Remaining 3/31/2007	FY 2006 Allots. Remaining 3/31/2007	Total Yearly Projected FY 2007 Expenditures	200 Percent of FY 2007 Proj. Expenditures 2 x D	2104(h)(3)(B) Test Tot. Mid-FY07 Allots >=2 x FY07 Est. Exp. B >= E	Amount Contributed to FY 06 Redist. Min(.5 x C, \$20M)
A	B	C	D	E	F	G
Alabama	\$93,120,112	\$0	\$97,233,000	\$194,466,000	Not Met	\$0
Alaska	\$6,321,064	\$0	\$20,969,000	\$41,938,000	Not Met	\$0
Arizona	\$95,148,464	\$0	\$112,171,000	\$224,342,000	Not Met	\$0
Arkansas	\$97,666,689	\$4,563,778	\$56,738,000	\$117,476,000	Not Met	\$0
California	\$757,715,585	\$0	\$1,392,541,000	\$2,785,082,000	Not Met	\$0
Colorado	\$140,911,976	\$11,415,891	\$62,501,000	\$125,002,000	YES	\$5,707,946
Connecticut	\$98,642,264	\$24,216,595	\$26,530,000	\$53,060,000	YES	\$12,108,298
Delaware	\$25,267,693	\$5,164,320	\$8,462,000	\$16,924,000	YES	\$2,582,460
District of Columbia	\$26,099,643	\$4,533,984	\$9,342,000	\$18,684,000	YES	\$2,416,992
Florida	\$592,877,804	\$47,481,165	\$259,931,000	\$517,862,000	YES	\$20,000,000
Georgia	\$17,888,665	\$0	\$352,564,000	\$705,128,000	Not Met	\$0
Hawaii	\$23,735,482	\$0	\$17,356,000	\$34,712,000	Not Met	\$0
Idaho	\$50,129,159	\$5,202,008	\$28,067,000	\$56,134,000	Not Met	\$0
Illinois	\$166,479,908	\$10,025	\$449,186,000	\$898,372,000	Not Met	\$0
Indiana	\$14,932,950	\$0	\$63,844,000	\$127,688,000	Not Met	\$0
Iowa	\$40,726,292	\$0	\$56,248,000	\$112,496,000	Not Met	\$0
Kansas	\$104,399,358	\$0	\$46,113,000	\$92,226,000	Not Met	\$0
Kentucky	\$102,470,239	\$0	\$178,824,000	\$357,648,000	Not Met	\$0
Louisiana	\$13,471,113	\$0	\$107,329,000	\$214,658,000	Not Met	\$0
Maine	\$0	\$0	\$22,060,564	\$44,121,127	Not Met	\$0
Maryland	\$0	\$0	\$154,106,000	\$308,210,000	Not Met	\$0
Massachusetts	\$0	\$0	\$715,893,000	\$1,431,786,000	Not Met	\$0
Michigan	\$126,014,053	\$0	\$173,085,000	\$346,170,000	Not Met	\$0
Minnesota	\$33,908,824	\$0	\$66,889,500	\$133,779,000	Not Met	\$0
Mississippi	\$43,764,889	\$0	\$120,460,000	\$240,920,000	Not Met	\$0
Missouri	\$53,612,416	\$0	\$84,571,000	\$169,142,000	Not Met	\$0
Montana	\$24,777,768	\$0	\$16,092,000	\$32,184,000	Not Met	\$0
Nebraska	\$17,201,136	\$0	\$32,877,000	\$65,754,000	Not Met	\$0
Nevada	\$121,179,786	\$27,227,249	\$29,799,000	\$59,598,000	YES	\$13,613,625
New Hampshire	\$23,006,942	\$3,035,413	\$7,574,719	\$15,149,437	YES	\$1,517,706
New Jersey	\$0	\$0	\$305,386,000	\$610,772,000	Not Met	\$0
New Mexico	\$118,005,964	\$23,803,779	\$36,863,000	\$73,706,000	YES	\$11,901,890
New York	\$600,357,011	\$0	\$344,277,000	\$688,554,000	Not Met	\$0
North Carolina	\$101,054,005	\$0	\$167,961,000	\$335,922,000	Not Met	\$0
North Dakota	\$6,537,167	\$0	\$11,867,000	\$23,734,000	Not Met	\$0
Ohio	\$152,229,292	\$0	\$195,453,000	\$390,906,000	Not Met	\$0
Oklahoma	\$85,942,434	\$0	\$85,566,000	\$171,132,000	Not Met	\$0
Oregon	\$100,121,202	\$0	\$66,988,000	\$133,976,000	Not Met	\$0
Pennsylvania*	\$253,067,938	\$0	\$188,148,000	\$376,296,000	Not Met	\$0
Rhode Island	\$199,998,809	\$0	\$77,964,000	\$155,908,000	Not Met	\$0
South Carolina	\$8,954,484	\$13,602,120	\$45,953,000	\$91,906,000	YES	\$5,901,060
South Dakota	\$246,333,054	\$68,466,574	\$13,666,000	\$27,332,000	Not Met	\$0
Tennessee	\$1,289,330,933	\$276,609,119	\$25,526,000	\$51,052,000	YES	\$20,000,000
Texas	\$59,500,025	\$0	\$417,160,000	\$834,320,000	YES	\$20,000,000
Utah	\$12,735,384	\$2,164,638	\$39,520,000	\$79,040,000	Not Met	\$0
Vermont	\$123,960,525	\$0	\$3,563,000	\$7,126,000	YES	\$1,082,319
Virginia	\$196,140,266	\$51,551,479	\$105,597,750	\$211,195,500	Not Met	\$0
Washington	\$40,541,242	\$0	\$27,607,000	\$55,214,000	YES	\$20,000,000
West Virginia	\$50,422,130	\$0	\$36,758,000	\$73,516,000	Not Met	\$0
Wisconsin	\$13,806,923	\$983,456	\$96,725,445	\$193,450,890	Not Met	\$0
Wyoming	\$6,510,708,873	\$670,532,193	\$7,827,000	\$15,654,000	Not Met	\$0
TOTAL STATES ONLY			\$6,237,732,077	\$12,475,464,154		\$137,832,296

TABLE 3 - AMOUNTS OF UNEXPENDED FY 2004 AND FY 2005 ALLOTMENTS REDISTRIBUTED IN FY 2007

TABLE 3 - AMOUNTS OF UNEXPENDED FY 2004 AND FY 2005 ALLOTMENTS REDISTRIBUTED IN FY 2007												
: States with SFs through May 31, 2007*												
STATE	FY 2007 Tot. Avail. Allots NOT including Redist. Amounts	FY 2007 Projected Fed. Share Expenditures	FY 2007 Projected Shortfall C - B	FY 04 SF Redist. For JAN. 2007	FY 04 SF Redist. For FEB. 2007	FY 04 SF Redist. For MAR. 2007	FY 04 SF Redist. For APR. 2007	TOTAL FY 2004 REDIST. E+F+G+H	FY 05 SF Redist. For APR. 2007	FY 05 SF Redist. For MAY 2007	TOTAL FY 2005 REDIST. J + K	
A	B	C	D	E	F	G	H	I	J	K	L	
Alabama	\$141,039,112	\$97,233,000	No SF	na	na	na	na	\$0	na	na	\$0	
Alaska	\$16,805,054	\$20,969,000	\$4,163,946	na	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Arizona	\$150,766,464	\$112,171,000	No SF	na	na	na	na	\$0	na	na	\$0	
Arkansas	\$125,275,689	\$58,738,000	No SF	na	na	na	na	\$0	na	na	\$0	
California	\$1,276,822,586	\$1,139,541,000	No SF	na	na	na	na	\$0	na	na	\$0	
Colorado	\$171,314,976	\$62,501,000	No SF	na	na	na	na	\$0	na	na	\$0	
Connecticut	\$110,986,264	\$26,530,000	No SF	na	na	na	na	\$0	na	na	\$0	
Delaware	\$29,148,593	\$8,462,000	No SF	na	na	na	na	\$0	na	na	\$0	
District of Columbia	\$30,013,643	\$9,342,000	No SF	na	na	na	na	\$0	na	na	\$0	
Florida	\$734,807,804	\$258,931,000	No SF	na	na	na	na	\$0	na	na	\$0	
Georgia	\$183,656,553	\$352,564,000	\$169,598,435	na	\$0	\$0	\$7,033,401	\$7,033,401	\$4,286,716	\$24,356,503	\$28,653,319	
Hawaii	\$32,682,482	\$17,355,000	No SF	na	na	na	na	\$0	na	na	\$0	
Idaho	\$64,124,159	\$28,067,000	No SF	na	na	na	na	\$0	na	na	\$0	
Illinois	\$213,025,199	\$449,186,000	\$236,160,811	na	\$0	\$18,159	\$18,098,417	\$18,116,678	\$10,979,157	\$26,092,460	\$37,071,617	
Indiana	\$207,347,908	\$53,844,000	No SF	na	na	na	na	\$0	na	na	\$0	
Iowa	\$41,699,950	\$56,248,000	\$14,548,050	na	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Kansas	\$64,554,292	\$46,113,000	No SF	na	na	na	na	\$0	na	na	\$0	
Kentucky	\$144,083,358	\$78,824,000	No SF	na	na	na	na	\$0	na	na	\$0	
Louisiana	\$156,828,239	\$107,329,000	No SF	na	na	na	na	\$0	na	na	\$0	
Maine	\$24,499,802	\$22,060,664	No SF	na	na	na	na	\$0	na	na	\$0	
Maryland	\$71,673,127	\$154,105,000	\$82,431,873	na	\$0	\$3,149,873	\$7,634,625	\$10,784,498	\$4,631,441	\$11,006,827	\$15,639,268	
Massachusetts	\$73,355,132	\$215,893,000	\$142,557,868	na	\$0	\$12,473,522	\$17,616,346	\$40,642,821	\$5,401,955	\$15,214,320	\$21,616,186	
Michigan	\$215,279,053	\$173,085,000	No SF	na	na	na	na	\$0	na	na	\$0	
Minnesota	\$62,920,824	\$66,889,500	\$3,968,676	na	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Mississippi	\$96,926,889	\$120,460,000	\$23,533,111	na	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Missouri	\$95,398,416	\$94,571,000	No SF	na	na	na	na	\$0	na	na	\$0	
Montana	\$32,247,788	\$16,092,000	No SF	na	na	na	na	\$0	na	na	\$0	
Nebraska	\$33,598,136	\$32,877,000	No SF	na	na	na	na	\$0	na	na	\$0	
Nevada	\$134,339,786	\$29,799,000	No SF	na	na	na	na	\$0	na	na	\$0	
New Hampshire	\$27,393,336	\$7,574,719	No SF	na	na	na	na	\$0	na	na	\$0	
New Jersey	\$107,854,559	\$305,395,000	\$197,501,431	na	\$0	\$14,375,152	\$22,561,524	\$39,484,114	\$8,206,238	\$19,502,486	\$27,708,720	
New Mexico	\$136,358,964	\$35,853,000	No SF	na	na	na	na	\$0	na	na	\$0	
New York	\$771,328,011	\$344,277,000	No SF	na	na	na	na	\$0	na	na	\$0	
North Carolina	\$182,381,005	\$167,961,000	No SF	na	na	na	na	\$0	na	na	\$0	
North Dakota	\$12,393,167	\$11,867,000	No SF	na	na	na	na	\$0	na	na	\$0	
Ohio	\$249,327,292	\$195,453,000	No SF	na	na	na	na	\$0	na	na	\$0	
Oklahoma	\$130,156,434	\$95,566,000	No SF	na	na	na	na	\$0	na	na	\$0	
Oregon	\$130,485,202	\$66,988,000	No SF	na	na	na	na	\$0	na	na	\$0	
Pennsylvania	\$339,146,938	\$188,148,000	No SF	na	na	na	na	\$0	na	na	\$0	
Rhode Island	\$20,211,483	\$7,754,000	\$12,457,483	na	\$0	\$5,822,233	\$3,487,802	\$19,318,422	\$2,115,828	\$5,028,359	\$7,144,187	
South Carolina	\$160,793,909	\$45,953,000	No SF	na	na	na	na	\$0	na	na	\$0	
South Dakota	\$15,645,484	\$13,666,000	No SF	na	na	na	na	\$0	na	na	\$0	
Tennessee	\$256,771,054	\$25,526,000	No SF	na	na	na	na	\$0	na	na	\$0	
Texas	\$1,482,693,933	\$417,160,000	No SF	na	na	na	na	\$0	na	na	\$0	
Utah	\$79,238,025	\$39,520,000	No SF	na	na	na	na	\$0	na	na	\$0	
Vermont	\$14,496,384	\$3,563,000	No SF	na	na	na	na	\$0	na	na	\$0	
Virginia	\$176,094,475	\$105,697,750	No SF	na	na	na	na	\$0	na	na	\$0	
Washington	\$209,294,266	\$27,607,000	No SF	na	na	na	na	\$0	na	na	\$0	
West Virginia	\$58,719,242	\$36,758,000	No SF	na	na	na	na	\$0	na	na	\$0	
Wisconsin	\$96,235,163	\$96,725,445	\$490,282	na	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Wyoming	\$17,529,923	\$7,827,000	No SF	na	na	na	na	\$0	na	na	\$0	
TOTAL	\$9,389,778,439	\$6,237,732,077	\$31,997,000	\$5,249,595	\$32,107,465	\$49,188,135	\$60,334,736	\$146,879,932	\$36,601,241	\$101,231,055	\$137,832,296	
Although, other States have shortfalls projected for FY 2007 (as indicated in Column D), the total available unexpended FY 2004 and FY 2005 redistributed allotments were exhausted by May 2007 through the redistribution to States with shortfalls that were protected to occur through May 2007.												

* Although, other States have shortfalls projected for FY 2007 (as indicated in Column D), the total available unexpended FY 2004 and FY 2005 redistributed allotments were exhausted by May 2007 through the redistribution to States with shortfalls that were projected to occur through May 2007.

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III. Regulatory Impact Statement

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 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). We have determined that with respect to the FY 2004 and FY 2005 redistribution amounts, totaling

about \$146.9 million and \$137.8 million, respectively, this notice is economically significant. However, because this notice only announces the redistribution of funds based on the formulae specified in statute and does not put forward any administrative policies, we have not performed an analysis beyond that which is presented in section II. (H) above. The 50 States and the District of Columbia's FY 2004 SCHIP allotments (totaling \$3,142,125,000) and FY 2005 allotments (totaling \$4,039,875,000), were originally published in a notice in the **Federal Register** (68 FR 50784 and 69 FR 52700, respectively) and allotted to States in FY 2004 and FY 2005, respectively. This notice does not revise the amounts of the FY 2004 and FY 2005 allotments originally made available to the States, but rather, sets forth the procedure for redistributing the amounts of those FY 2004 and FY 2005 allotments which were unexpended at the end of FY 2004 (the end of the 3-year period of availability referenced in section 2104(e) of the Act) or available mid FY 2007 (under the provision of section 2104(h) of the Act), and announces the amounts of the FY 2004 and FY 2005 allotments to be redistributed to the redistribution States, the methodology for determining the amounts of the FY 2005 allotments to be redistributed in FY 2007 and announces these amounts determined in accordance with this methodology, and indicates the availability of these redistributed allotment amounts to the end of 2007, in accordance with SCHIP statute, as amended by the NIHRA.

Because State participation in the SCHIP program is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal Government are made voluntarily.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of

a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This notice will not create an unfunded mandate on States, tribal, or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice and have determined that it does not significantly affect States' rights, roles, and responsibilities.

Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the FY 2004 or FY 2005 allotment's redistribution amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a proposed notice in the **Federal Register** to provide a period of public comment before the provisions of a notice, such as this, are effective in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d)

of the APA (5 U.S.C. 553(d)). However, we can waive both the notice of proposed rulemaking and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the notice.

We find there is good cause to waive notice of proposed rulemaking and the delay in the effective date of this issuance of the FY 2004 redistributed allotments and the methodology for determining the FY 2005 redistributed allotment amounts to eliminate the FY 2007 funding shortfalls in SCHIP because a comment period and delay in effective date are unnecessary because: (1) States were already given informal notice of proposed amounts; and (2) redistribution was carried out in accordance with a statutory formula that permitted limited discretion.

We determined the amounts of the FY 2004 redistributed allotments and the amounts of the FY 2005 redistributed allotments to eliminate the FY 2007 SCHIP funding shortfall as expeditiously as possible in order to make them available to the States as soon as possible. To that end, all States had until November 30, 2006 to submit their required fourth quarter FY 2006 expenditure reports. In determining both the FY 2004 redistributed amounts and the FY 2005 redistributed amounts we used State FY 2007 projected expenditures as contained in the most recent (February 2007) States' quarterly budget report submissions. The redistributed FY 2004 and FY 2005 allotments make available Federal funds to the recipient redistribution States, which is especially important for those redistribution States that may need these funds.

Furthermore, under section 2104(h)(6) of the Act, the FY 2004 and FY 2005 redistributed allotments to eliminate the FY 2007 shortfalls in SCHIP funding, are only available through September 30, 2007. We believe it is important that we issue these redistributed allotments and additional allotments as soon as possible. Delay in States receiving those funds could result in disruption of program operations. Therefore, in the interest of ensuring that the FY 2004 and FY 2005 redistributed allotments to eliminate the FY 2007 shortfall in SCHIP funding are made available without delay to those States that need these funds, we are waiving notice of proposed rulemaking and the 30-day delay in effective date, and are publishing this issuance of the **Federal Register** as a notice.

In accordance with the provisions of this notice, we have determined the amounts of the FY 2004 and FY 2005 redistributed allotment funds to eliminate the FY 2007 shortfalls in SCHIP funding available to shortfall States effective immediately upon publication of this notice. These FY 2004 and FY 2005 redistributed allotment funds are subject to final adjustment based on comments received in response to this notice.

Authority: (Section 1102 of the Social Security Act (42 U.S.C. 1302) (Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program))

Dated: February 16, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: February 26, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07-2607 Filed 5-25-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Title V Section 510 Abstinence Education Grant Program-Annual Program Application and Annual Performance Progress Report.

OMB No.: 0970-0271 (formerly 0915-0291 when in HRSA).

Description: The Title V Section 510 Abstinence Education Grant Program (Section 510 program) is a formula block grant program, authorized through June 30, 2007, by the Tax Relief and Health Care Act of 2006.

The Section 510 *Annual Program Application* requires basic application information that will be used by the Administration for Children and Families (ACF) to establish applicant eligibility, determine each applicant's compliance with Federal law, review

and evaluate each applicant's proposed plans, and to develop any conditions to be placed on grant awards. Projects must meet the legislative priorities as described in Section 510 of Title V of the Social Security Act.

The Section 510 *Annual Performance Progress Report* includes four forms through which grantees report basic performance information, which is used by ACF to determine each grantee's compliance with Federal law and to review and evaluate each applicant's progress toward achieving its goals. Basic performance information includes the unduplicated count of clients served, hours of service received by clients, program completion data, and communities served.

Respondents: The 50 States, the District of Columbia, and the following 8 Territories: American Samoa, Guam, Republic of the Marshall Islands, Federated States of Micronesia, Commonwealth of the Northern Mariana Islands, Republic of Palau, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Program Application	59	1	40	2,360
Annual Performance Progress Report	59	1	130	7,670

Estimated Total Annual Burden Hours: 10,030.

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: infocollectio@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: May 20, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07-2628 Filed 5-25-07; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N-0420]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Orphan Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 28, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs,

OMB, Attn: FDA Desk Officer, FAX: 202-395-6974. All comments should be identified with the OMB control number 0910-0167. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Orphan Drugs (OMB Control Number 0910-0167)—Extension

Sections 525 through 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aa through 360dd) give FDA statutory authority to do the following: (1) Provide recommendations on investigations required for approval of marketing applications for orphan drugs, (2) designate eligible drugs as orphan drugs, (3) set forth conditions under which a sponsor of an approved orphan drug obtains exclusive approval, and (4) encourage sponsors to make orphan drugs available for treatment on an "open protocol" basis before the drug has been approved for general marketing. The implementing regulations for these statutory requirements have been codified under part 316 (21 CFR part 316) and specify procedures that sponsors of orphan drugs use in availing themselves of the incentives provided for orphan drugs in the act and sets forth procedures FDA will use in administering the act with regard to orphan drugs. Section 316.10 specifies the content and format of a request for written recommendations concerning the non-clinical laboratory

studies and clinical investigations necessary for approval of marketing applications. Section 316.12 provides that, before providing such recommendations, FDA may require results of studies to be submitted for review. Section 316.14 contains provisions permitting FDA to refuse to provide written recommendations under certain circumstances. Within 90 days of any refusal, a sponsor may submit additional information specified by FDA. Section 316.20 specifies the content and format of an orphan drug application which includes requirements that an applicant document that the disease is rare (affects fewer than 200,000 persons in the United States annually) or that the sponsor of the drug has no reasonable expectation of recovering costs of research and development of the drug. Section 316.26 allows an applicant to amend the applications under certain circumstances. Section 316.30 requires submission of annual reports, including progress reports on studies, a description of the investigational plan, and a discussion of changes that may affect orphan status. The information requested will provide the basis for an FDA determination that the drug is for a rare disease or condition and satisfies the requirements for obtaining orphan drug status. Secondly, the information will describe the medical and regulatory history of the drug. The respondents to this collection of information are biotechnology firms, drug companies, and academic clinical researchers.

The information requested from respondents represents, for the most part, an accounting of information already in the possession of the applicant. It is estimated, based on frequency of requests over the past 5 years, that 171 persons or organizations per year will request orphan-drug designation and none will request

formal recommendations on design of preclinical or clinical studies.

In the **Federal Register** of October 30, 2006 (71 FR 63325), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one comment related to the information collection.

(Comment 1) The comment suggested that our burden estimate to prepare an Orphan Drug Annual Report is too low.

(Response 1) Section 316.30 pertains to annual reporting, a brief progress report which is a requirement after orphan designation has been granted to a sponsor. We estimate this takes 1 hour professional time and 1 hour support time.

(Comment 2) The comment suggested that our estimate of 130 hours to prepare and submit an orphan drug application is too high.

(Response 2) We disagree with the comment because some sponsors have more experience with submitting Orphan Drug Designation applications/requests and, therefore, may require less human resource hours to compile all required information. Many other sponsors, which include foreign sponsors, do not have such experience.

The estimated 130 hours pertains to §§ 316.20, 316.21, and 316.26. These apply primarily to initial applications/requests seeking orphan drug designation. Many applications/requests received in the Office of Orphan Products Development contain multiple volumes; include an exact duplicate copy of the original; and may include 50 or more documented references. Additional information is requested when an application/request is denied. The sponsor usually supplies the requested information in the form of an amendment.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Responses	Total Hours
316.10, 316.12, & 316.14	5	1	5	130	650
316.20, 316.21, & 316.26	171	2	342	130	44,460
316.22	30	1	30	2	60
316.27	25	1	25	4	100
316.30	500	1	500	2	1,000
316.36	.2	3	.6	15	9
Total					46,279

¹ There are no capital costs or maintenance costs associated with this collection of information.

Dated: May 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-10271 Filed 5-25-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N-0193]

Timed-Release Drug Products Containing Guaifenesin; Enforcement Action Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to take enforcement action against unapproved drug products in timed-release dosage forms containing guaifenesin and persons who cause the manufacture or interstate shipment of such products. Hundreds of unapproved drug products in timed-release form containing guaifenesin, alone or in combination with other ingredients, are marketed to relieve the symptoms associated with cough, cold, and similar conditions. Such drug products require approved applications because they are not generally recognized as safe and effective for these uses. One firm has obtained approved applications to market timed-release products containing guaifenesin. Other firms who wish to market a drug product in timed-release form containing guaifenesin must obtain FDA approval of a new drug application (NDA) or an abbreviated new drug application (ANDA).

DATES: This notice is effective May 29, 2007.

For marketed, unapproved drug products in timed-release form containing guaifenesin that have a National Drug Code (NDC) number that is listed with FDA under section 510 of the act (21 U.S.C. 360) on the effective date of this notice (i.e., “currently marketed products”), the agency intends to exercise its enforcement discretion to permit products properly marketed with those NDC numbers a brief period of continued marketing after May 29, 2007 as follows. FDA does not intend to initiate enforcement actions against firms that are manufacturing such currently marketed products unless those firms are still manufacturing the products on or after August 27, 2007. Further, FDA does not intend to initiate

enforcement actions related to the shipment in interstate commerce of currently marketed products made by such firms unless they are still being shipped on or after November 26, 2007. Unapproved drug products in timed-release form containing guaifenesin that are not currently marketed products on the date of this notice must, as of the date of this notice, have approved applications prior to their shipment in interstate commerce. Submission of an application does not excuse timely compliance with this notice.

ADDRESSES: All communications in response to this notice should be identified with Docket No. 2007N-0193 and directed to the appropriate office listed as follows:

Regarding applications under section 505(b) of the act (21 U.S.C. 355(b)): Division of Pulmonary and Allergy Products, Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993-0002.

Regarding applications under section 505(j) of the act: Office of Generic Drugs, Center for Drug Evaluation and Research (HFD-600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

All other communications: Sakineh Walther, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research (HFD-310), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sakineh Walther, Center for Drug Evaluation and Research (HFD-310), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852, 301-827-8964, e-mail: sakineh.walther@FDA.HHS.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

Guaifenesin is an expectorant that has been marketed for decades. Thousands of products intended to relieve symptoms associated with cough, colds, allergies and similar conditions are marketed containing guaifenesin, alone or in combination with other active ingredients, such as antitussives (for instance, dextromethorphan or hydrocodone), nasal decongestants (for instance, pseudoephedrine or phenylephrine), and analgesics (for instance, acetaminophen). These products are marketed both over-the-counter (OTC) and by prescription, and in immediate- and timed-release dosage forms.

Guaifenesin in immediate-release form was reviewed in the OTC drug

review and is covered by the OTC monograph in part 341 (21 CFR part 341), “Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use.” OTC products that comply with this monograph may be marketed without approval.

The OTC monograph system does not include timed-release drug products, a dosage form that is designed to release the active ingredients over a prolonged period of time. Since 1959, the agency has stated that all products in timed-release dosage forms also described as, for example, sustained release, extended release, controlled release, or long-acting—are new drugs requiring approved applications (24 FR 3756, May 9, 1959). Agency review of individual applications is needed to ensure that the finished product releases its active ingredients at a rate that is both safe, without “dumping” of the dose, and effective, sustaining the intended effect over the entire period during which the therapeutic benefit is claimed. Firms submitting applications are required to establish appropriate release specifications supported by clinical evidence, along with data showing that the finished product as manufactured by the firm releases its active ingredient according to these specifications. The agency’s determination that all products in timed-release form are new drugs requiring approved applications is codified in § 310.502(a)(14) (21 CFR 310.502(a)(14)). The regulation applies to all products in this dosage form containing guaifenesin, alone or in combination with other active ingredients.

II. Current Status of Timed-Release Drug Products Containing Guaifenesin

One firm has obtained approved applications for products in timed-release dosage forms containing guaifenesin. Adams Respiratory Therapeutics, formerly known as Adams Laboratories, Inc. (Adams), submitted an NDA for single-ingredient guaifenesin tablets in timed-release form (NDA 021-282), which was approved by FDA on July 12, 2002. These products are sold OTC under the trade names of MUCINEX (600 milligrams (mg)) and HUMIBID (1,200 mg), with labeling for uses consistent with expectorant products marketed under an OTC monograph (§ 341.78(b)). Specifically, MUCINEX and HUMIBID are intended to help “loosen phlegm (mucus) and thin bronchial secretions to rid the bronchial passageways of bothersome mucus, and make coughs more productive.” On October 11, 2002, the agency notified firms marketing single-

ingredient, timed-release products containing guaifenesin without approved applications that their products were unapproved new drugs marketed in violation of section 505 of the act and that they must cease marketing them. The agency did not at that time address products in timed-release form that combined guaifenesin with other active ingredients.

Subsequently, Adams submitted applications for OTC timed-release combination products containing guaifenesin and dextromethorphan, an antitussive (NDA 21–620), and guaifenesin and pseudoephedrine, a decongestant (NDA 21–585). The agency approved these applications on April 29, 2004, and June 22, 2004, respectively. These products are marketed OTC under the trade names MUCINEX–DM and MUCINEX–D, respectively. Both products are labeled for use as expectorants. In addition, MUCINEX–DM is labeled for antitussive uses as permitted under the OTC monographs (§ 341.74(b)) and MUCINEX–D is labeled for nasal decongestant uses as permitted under the OTC monographs (§ 341.80(b)).

Hundreds of products in timed-release form containing guaifenesin in combination with other active ingredients such as antitussives and decongestants are marketed without approved applications for relief of various symptoms associated with cough, cold, allergy, and similar conditions. Because no applications have been filed and reviewed by the agency for these products, the safety and effectiveness of the products cannot be ensured. For instance, the agency does not know if the firms that market them have established appropriate specifications for release of the active ingredients; whether the products are properly formulated and manufactured so as to release their ingredients at a rate that is both safe and effective; and whether each active ingredient in the combination makes a contribution to the claimed effect, as required by 21 CFR 300.50.

Many of these unapproved drug products in timed-release form containing guaifenesin are marketed, labeled, and dispensed as prescription products. Section 503(b)(1) of the act (21 U.S.C. 353(b)(1)) establishes the definition of a prescription drug. Drug products that do not meet the definition of a prescription drug but are labeled for prescription use are considered misbranded under section 503(b)(4) of the act. Some firms choose to market drugs as prescription, even though those drugs do not meet the prescription drug definition, either because of the

availability of reimbursement by insurers or because of familiarity with the distribution channels for prescription drugs. This is contrary to the act.

III. Legal Status

A. Timed-Release Products Containing Guaifenesin Are New Drugs Requiring Approved Applications

Under § 310.502(a)(14), drug products in timed-release dosage forms containing guaifenesin are not generally recognized as safe and effective for any use because of the need for agency review of individual applications to ensure the safe and effective release of active ingredients. Therefore, a drug product in timed-release form containing guaifenesin, alone or in combination with other drugs, is regarded as a new drug, as defined in section 201(p) of the act (21 U.S.C. 321(p)), and is subject to the requirements of section 505 of the act. As set forth in this notice, approval of an NDA under section 505(b) of the act (including section 505(b)(2)) and 21 CFR 314.50 or an ANDA under section 505(j) of the act and 21 CFR 314.94 is required as a condition for manufacturing or marketing all such products. After the dates identified in this notice (see **DATES**), FDA intends to take enforcement action, as described in this notice, against unapproved drug products in timed-release form containing guaifenesin and persons who cause the manufacture or interstate shipment of such products. Submission of an application does not excuse timely compliance with this notice.

The Adams timed-release products containing 1,200 mg of guaifenesin marketed under NDA 021–282, NDA 21–620, and NDA 21–585, as described in section I of this notice, have been designated as reference listed drug products. The review and approval of any applications for timed-release drug products containing guaifenesin will be subject to the patent rights of the current NDA holder.

B. Notice of Enforcement Action

Although not required to do so by the Administrative Procedure Act, the act, or any rules issued under its authority, or for any other legal reason, FDA is providing this notice to firms that are marketing timed-release drug products containing guaifenesin without an approved application that the agency intends to take enforcement action against such products and those who cause them to be manufactured or shipped in interstate commerce. Consistent with the priorities identified

in the agency's guidance entitled "Marketed Unapproved Drugs—Compliance Policy Guide" (the Marketed Unapproved Drugs CPG), the agency is taking action at this time against these products because the agency has approved applications to market timed-release drug products containing guaifenesin, alone and in combination with other active ingredients, for relief of cough, cold, and allergy symptoms; thus, the continued marketing of unapproved timed-release guaifenesin products is a direct challenge to the drug approval process. Manufacturing or shipping such unapproved products may result in seizure, injunction, or other judicial proceeding. Consistent with policies described in the Marketed Unapproved Drugs CPG, the agency does not expect to issue a warning letter or any other further warning to firms marketing unapproved timed-release drug products containing guaifenesin prior to taking enforcement action. The agency also reminds firms that, as stated in the Marketed Unapproved Drugs CPG, any unapproved drug marketed without a required approved drug application is subject to agency enforcement action at any time. The issuance of this notice does not in any way obligate the agency to issue similar notices or any notice in the future regarding other marketed unapproved drugs.¹

As described in the Marketed Unapproved Drugs CPG, the agency may, in its discretion, exercise enforcement discretion and identify a period of time during which the agency does not intend to initiate an enforcement action against a currently marketed unapproved drug on the grounds that it lacks an approved application under section 505 of the act, to preserve access to medically necessary drugs, or ease disruption to affected parties, for instance. The agency notes that there are numerous marketed products that have approved applications or comply with an applicable OTC drug monograph and that are used to treat conditions for which products in timed-release form containing guaifenesin are commonly used. Therefore, the agency intends to implement this notice as follows.

This notice is effective May 29, 2007. Unapproved timed-release drug products containing guaifenesin, alone

¹ The agency's general approach in dealing with these products in an orderly manner is spelled out in the Marketed Unapproved Drugs CPG. However, the CPG provides notice that any product that is being marketed illegally, and the persons responsible for causing the illegal marketing of the product, are subject to FDA enforcement action at any time.

or in combination with other active ingredients, that are not currently marketed products on the effective date of this notice must, as of this date, have approved applications prior to their shipment in interstate commerce. However, for unapproved timed-release guaifenesin products that are currently marketed as of the date of this notice (i.e., timed-release guaifenesin products that are not approved but have an NDC number that is listed with the agency on the effective date of this notice), the agency intends to exercise its enforcement discretion to permit the products marketed with those NDC numbers a period of continued marketing after May 29, 2007 as follows. FDA does not intend to initiate enforcement actions against firms that are manufacturing currently marketed products unless those firms are still manufacturing the products on or after August 27, 2007. Further, FDA does not intend to initiate enforcement actions related to the shipment in interstate commerce of currently marketed products made by such firms unless they are still being shipped on or after November 26, 2007.² The agency, however, does not intend to exercise its enforcement discretion as outlined in this paragraph if: (1) A manufacturer or distributor of an unapproved product covered by this notice is violating other provisions of the act or (2) it appears that a firm, in response to this notice, increases its manufacture or interstate shipment of drug products covered by this notice above its usual volume during these periods.

Drug manufacturers and distributors should be aware that the agency is exercising its enforcement discretion as described previously only in regard to timed-release drug products containing guaifenesin that are marketed under an NDC number listed with the agency on the effective date of this notice. Such unapproved drug products that are not currently marketed and listed with the agency on the effective date of this notice must, as of the effective date of this notice, have approved applications prior to their shipment in interstate commerce. Moreover, submission of an application does not excuse timely compliance with this notice.

² If a firm continues to manufacture or market a product covered by this notice after the applicable enforcement date has passed, to preserve limited agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time (see, e.g., *United States v. Sage Pharmaceuticals*, 210 F.3d 475, 479–480 (5th Cir. 2000) (permitting the agency to combine all violations of the act in one proceeding, rather than taking action against a firm with multiple violations of the act in "piecemeal fashion")).

C. Discontinued Products

Some firms may have previously discontinued the manufacturing or distribution of products covered by this notice without removing them from the listing of their products under section 510(j) of the act. Other firms may discontinue manufacturing or marketing listed products in response to this notice. Firms that wish to notify the agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product(s), including its NDC number(s), and stating that the product(s) has (have) been discontinued and will not be marketed again without FDA approval, to Sakineh Walther (see **ADDRESSES**). Firms should also update the listing of their products under section 510(j) of the act to reflect discontinuation of unapproved timed-release products containing guaifenesin. FDA plans to rely on its existing records, the results of a subsequent inspection, or other available information when it initiates enforcement action.

D. Reformulated Products

In addition to discontinuing the manufacturing of products covered by this notice, FDA cautions firms against reformulating their products into guaifenesin-free unapproved new drugs that are marketed under the same name or substantially the same name (including a new name that contains the old name). In the Marketed Unapproved Drugs CPG, FDA states that it intends to give higher priority to enforcement actions involving unapproved drugs that are reformulated to evade an FDA enforcement action. In addition, reformulated products marketed under a name previously identified with a different active ingredient or combination of active ingredients have the potential to confuse health care practitioners and harm patients. Depending on the circumstances, these products may be considered misbranded under section 502(a) or (i) of the act (21 U.S.C. 352(a) and (i)).

This notice is issued under the act (sections 502 and 505) and under authority delegated to the Deputy Commissioner for Policy under section 1410.10 of the FDA Staff Manual Guide.

Dated: May 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-10266 Filed 5-25-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N-0204]

Joint Meeting of the Gastrointestinal Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Gastrointestinal Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 31, 2007, from 8 a.m. to 5 p.m.

Addresses: Electronic comments should be submitted to <http://www.fda.gov/dockets/ecomments>. Select "2007—Efficacy and Safety of TYSABRI (natalizumab) for Patients With Moderately to Severely Active Crohn's Disease" and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments received will be posted without change, including any personal information provided. Comments received on or before July 24, 2007, will be provided to the committee before the meeting.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Victoria Ferretti-Aceto, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, e-mail: Victoria.FerrettiAceto@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572) in the Washington, DC area, codes 301-451-2538 and 301-451-2535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously

announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss TYSABRI (natalizumab) biologic license application (BLA) 125104/33, Biogen Idec, Inc., for the proposed indication of inducing and maintaining sustained response and remission, and eliminating corticosteroid use in patients with moderately to severely active Crohn's disease with inflammation, as evidenced by elevated C-reactive protein level or another objective marker. The committee will discuss the risks (including progressive multifocal leukoencephalopathy) associated with TYSABRI (natalizumab) administration, its efficacy in the treatment of moderate to severe Crohn's disease, and proposed risk management plan(s).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 18, 2007. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 10, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will

notify interested persons regarding their request to speak by July 11, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Victoria Ferretti-Aceto at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 22, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7-10270 Filed 5-25-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 17, 2007, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ronald P. Jean, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD, 20850, 240-276-3676, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications

that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for the Bryan Total Cervical Disc Prosthesis, sponsored by Medtronic Sofamor Danek, Inc. This device is indicated in skeletally mature patients with cervical degenerative disc disease (DDD) at one level from C3-C7. DDD is defined as any combination of the following: Disc herniation with radiculopathy, spondylotic radiculopathy, disc herniation with myelopathy, or spondylotic myelopathy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 3, 2007. Oral presentations from the public will be scheduled for 30 minutes at the beginning of the committee deliberations and for 30 minutes near the end of the deliberations. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 25, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 26, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 240-276-8932, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 22, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7-10267 Filed 5-25-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; 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 Center for Minority Health and Health Disparities Special Emphasis Panel; LRP for Health Disparities and Clinical Research-Panel-D.

Date: June 15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lorrinda Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd, Suite 800, Bethesda, MD 20892-5465, (301) 402-1366, watsonl@ncmhd.nih.gov.

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2619 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Rehabilitation for Methamphetamine Induced Impulsivity.

Date: June 5, 2007.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, (301) 435-1439, lf33c.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2611 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel, Exploratory/Development Centers.

Date: June 27-28, 2007.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892-8401, (301) 435-1389, ms80x@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Gene by Environment Initiative.

Date: July 3, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301.435.1388, rliu@nida.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Mechanisms of Drug Abuse Interactions with HIV Neuropathogenesis.

Date: July 12, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact Person: Nadine Rogers, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-402-2105, rogersn2@nida.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2612 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Communication Disorders Review Committee, June 21, 2007, 8 a.m. to June 22, 2007, 5 p.m., Wyndham Hotel, 101 W. Fayette Street, Baltimore, MD 21202 which was published in the **Federal Register** on May 4, 2007, 72 FR 25323.

The meeting will be held June 20-21, 2007. The meeting is closed to the public.

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2615 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

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 Child Health and Human Development Special Emphasis Panel, "Health and Behavior, Special Emphasis Panel".

Date: June 21-22, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, Executive Meeting Center Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health, and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812-7510, (301) 435-8382, hindialm@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2616 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences, Notice of 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: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: June 18, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Ave, Bethesda, MD 20814.

Contact person: Mona R. Trempe, PhD, Scientific Review Administration, Office of Scientific Review, National Institute of

General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301-594-3998, trempe@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2617 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

Date: June 21-22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Carla T. Walls, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435-6898, wallsc@mail.nih.gov.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Maternal Employment, The Economy and Family.

Date: June 22, 2007.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Carla T. Walls, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435-6898, wallsc@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2618 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; Developing Imaging Technology.

Date: June 19, 2007.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3200, 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.

Name of Committee: National Institute of Allergy and Infectious Diseases Special

Emphasis Panel; Immune Mechanisms of Viral Control.

Date: June 25-27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Paul A. Amstad, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-402-7098, pamstad@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: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2620 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Child Health and Human Development Special Emphasis Panel; Obstetrical Pharmacology Research Network-Data Coordination and Analysis Center (OPRU-DCAC).

Date: June 18, 2007.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human

Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6680, skandasa@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2621 Filed 5-25-07; 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, Limited Competition for Applications to Analyze Whole Genome Association Data for NIMH.

Date: June 6, 2007.

Time: 1 p.m. to 4 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: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892-9606, 301-443-1606.

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: National Institute of Mental Health Special Emphasis Panel; Interdisciplinary Developmental Science Centers Review.

Date: June 25, 2007.

Time: 2 p.m. to 4 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: Megan Libbey, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Bethesda, MD 20892, 301-402-6807, libbeym@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interdisciplinary Developmental Science Centers for MH (IDSC): Mature Centers.

Date: July 12, 2007.

Time: 1 p.m. to 4 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: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892-9606, 301-443-1606.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Fellowships and Dissertation Grants.

Date: July 16, 2007.

Time: 1 p.m. to 4 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: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301-443-0004, sechu@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: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2622 Filed 5-25-07; 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 Ethical, Legal, and Social Implications of Human Genetics Study Section, June 21, 2007, 7:30 a.m. to June 22, 2007, 4 p.m., The Watergate, 2650 Virginia Avenue, NW., Washington, DC, 20037 which was published in the **Federal Register** on May 17, 2007, 72 FR 27828-27830.

The starting time of the meeting on June 21, 2007 has been changed to 5:30 p.m. until adjournment. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2613 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 11, 2007, 7 a.m. to June 11, 2007, 6 p.m., Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007 which was published in the **Federal Register** on May 17, 2007, 72 FR 27831-27832.

The meeting title has been changed to "Small Business: Biomedical Devices and Bioengineering". The meeting is closed to the public.

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-2614 Filed 5-25-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group Cancer Genetics Study Section.

Date: June 11-12, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301-451-0132, zouzhig@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: Brain Disorders and Clinical Neuroscience Integrated Review Group Clinical Neuroscience and Disease Study Section.

Date: June 18-19, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW, Washington, DC 20037.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435-1121, bhagavas@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Research in Predicting Psychosis.

Date: June 18, 2007.

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, (Virtual Meeting).

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301-435-2309, pluded@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CIHB Member Special Emphasis Panel.

Date: June 19, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Melinda Tinkle, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594-6594, tinklem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HOP Member Special Emphasis Panel.

Date: June 19, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Melinda Tinkle, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594-6594, tinklem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment I, SBIR/STTR.

Date: June 20–21, 2007.

Time: 11 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 214, MSC 7804, Bethesda, MD 20892, 301-435-1720, shauhung@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment II, SBIR/STTR.

Date: June 20–21, 2007.

Time: 11 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 214, MSC 7804, Bethesda, MD 20892, 301-435-1720, shauhung@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immune Cell Mechanisms.

Date: June 22, 2007.

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: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301-435-1221, laingc@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: June 25–26, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pailion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435-1213, meyerjl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomaterials and Tissue Engineering.

Date: June 25–26, 2007.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Geoffrey White, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301-435-2417, whitege@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, R15 Grant Application Review.

Date: June 26, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301-435-3565, sedam@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Environmental Monitoring and Remediation.

Date: June 27–28, 2007.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Geoffrey White, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301-435-2417, whitege@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Neuropharmacology.

Date: June 28–29, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Boris P. Sokolov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301-435-1197, bsokolov@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hematology Small Business Special Emphasis Panel.

Date: June 29, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301-435-2506, tangd@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, 93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2623 Filed 5–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 1, 2007, 11 a.m. to June 1, 2007, 1 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 17, 2007, 72 FR 27828–27830.

The meeting has been changed to a virtual meeting starting June 7, 2007, 11 a.m. to June 9, 2007, 11 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2624 Filed 5–25–07; 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 Biophysics of Neural Systems Study Section, June 21, 2007, 8 a.m. to June 22, 2007, 4 p.m. Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20032 which was published in the **Federal Register** on May 17, 2007, 72 FR 27828–27830.

The meeting will be held on June 21, 2007, from 8 a.m. to 8 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2625 Filed 5–25–07; 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 Development—1 Study Section, June 7, 2007, 8 a.m. to June 8, 2007, 5 p.m., Georgetown Suites, 1000 29th Street, Washington, DC 20007 which was published in the **Federal Register** on May 1, 2007, 72 FR 23842–23843.

The meeting will be held on June 7, 2007, from 8 a.m. to 8 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2626 Filed 5–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2007–0036]

The National Infrastructure Advisory Council

AGENCY: Directorate for National Protection and Programs, Department of Homeland Security.

ACTION: Committee management; notice of federal advisory council meeting.

SUMMARY: The National Infrastructure Advisory Council will meet on July 10, 2007 in Washington, DC. The meeting will be open to the public.

DATES: The National Infrastructure Advisory Council will meet Tuesday, July 10 from 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business. The time of the meeting is also subject to change. For the most current information, please consult the NIAC Web site, <http://www.dhs.gov/niac>, or contact Mark Baird by phone at 703–235–5352 or by e-mail at mark.baird@associates.dhs.gov.

ADDRESSES: The meeting will be held at the National Press Club, 529 14th Street, NW., Washington, DC 20045. Send written material, comments, and requests to make oral presentations to Gail Kaufman, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528. Written materials, comments, and requests to make oral presentations at the meeting should reach the contact person listed below by June 10, 2007. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by June 10, 2007. Comments must be identified by DHS–2007–0036 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** mark.baird@associates.dhs.gov Include the docket number in the subject line of the message.
- **Fax:** 703–235–5887.
- **Mail:** Gail Kaufman, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Infrastructure Advisory Council, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Gail Kaufman, NIAC Designated Federal Officer, Department of Homeland Security, Washington, DC 20528; telephone 703–235–5352.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal

Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Infrastructure Advisory Council shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The National Infrastructure Advisory Council will meet to address issues relevant to the protection of critical infrastructure as directed by the President. The July 10, 2007 meeting will also include the presentation of initial findings from the two open Working Groups:

- (1) Chemical, Biological, and Radiological Events and Critical Infrastructure Workers and
- (2) The Insider Threat to Critical Infrastructures.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Participation in The National Infrastructure Advisory Council deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Gail Kaufman as soon as possible.

Dated: May 21, 2007.

Gail Kaufman,

Designated Federal Officer for the NIAC.

[FR Doc. E7–10264 Filed 5–25–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–28112]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: A Merchant Marine Personnel Advisory Committee (MERPAC) working group will meet to discuss an issue relating to the fitness of merchant marine personnel. MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, and certification of seamen serving in the U.

S. merchant marine. These meetings will be open to the public.

DATES: A MERPAC working group will meet on Wednesday, June 27, 2007, and on Thursday, June 28, 2007, from 8:30 a.m. to 4:30 p.m. Requests to make oral presentations should reach the Coast Guard on or before June 15, 2007. Written material and requests to have a copy of your material distributed to each member of the subcommittee should reach the Coast Guard on or before June 15, 2007.

ADDRESSES: The MERPAC working group will meet in Room A129 of the South Academic Building (#4) of the Maritime Institute of Technology and Graduate Studies (MITAGS), 692 Maritime Boulevard, Linthicum Heights, MD 21090-1952. Further directions regarding the location of MITAGS may be obtained at the following link: <http://www.mitags.org/t-directions.aspx>. Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (CG-3PSO-1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. This notice is available on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Gould, Assistant to the Executive Director, telephone 202-372-1409, fax 202-372-1926, or e-mail mark.c.gould@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463, 86 Stat. 770).

There will be additional meetings concerning this task statement in the future. The Coast Guard plans to conduct teleconference meetings every two weeks until work on the task statement has been completed. However, notice of these meetings will not be announced in the **Federal Register**. Therefore, the Coast Guard recommends that any person interested in participating in deliberations concerning this task statement attend the meetings announced in this notice in order to be placed on a list of interested persons. Alternatively, you may check on MERPAC's Web site for teleconference dates and for information on how to participate in teleconferences. MERPAC's Web site is located at <https://homeport.uscg.mil/mycg/portal/ep/home.do>. Then, click on the "Ports and waterways" link in the left-hand column. Then, click on the "Safety Advisory Committees" link in the center column. Then click on the "MERPAC" link in the center column.

Lastly, click on the "Announcements" link in the center column.

Agenda of Meetings

The working group for Task Statement 61, concerning "Merchant mariner medical waiver evaluation guidelines," will meet to conduct deliberations in preparation for delivering proposed MERPAC recommendations to the full committee.

Procedural

All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify Mr. Gould no later than June 15, 2007. Written material for distribution at a meeting should reach the Coast Guard no later than June 15, 2007. If you would like a copy of your material distributed to each member of the subcommittee in advance of the meeting, please submit 25 copies to Mr. Gould no later than June 15, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Mr. Gould as soon as possible.

Dated: May 21, 2007.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention-Operations.

[FR Doc. E7-10164 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Relocation and Temporary Closure of TSA's Docket Facility

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration's (TSA) official regulatory docket is maintained in electronic form at the U.S. Department of Transportation's (DOT) Docket Management System (DMS) docket facilities. This notice announces two service disruptions relating to the relocation of those facilities. The DOT Docket Operations facility, equipment, and staff is moving to 1200 New Jersey

Avenue, SE., Washington, DC 20590, and will be located on the West Building Ground Floor, Room W12-140. Hours for the new facility will continue to be 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The Docket Operations telephone number will continue to be (202) 366-9826.

1. To prepare for the relocation to the new facility, the DOT Docket Operations office will be closed to the public on Friday, May 25, 2007, through Tuesday, May 29, 2007. The office will reopen to the public on Wednesday, May 30, 2007 at the new facility.

2. To move the computers that host the electronic dockets, the DMS will be unavailable for use from Wednesday, June 13, 2007, through Sunday, June 17, 2007. The electronic docket will be available to users on June 18, 2007.

FOR FURTHER INFORMATION CONTACT:

DOT: Renee V. Wright, Program Manager, Docket Operations, Office of Information Services, Office of the Assistant Secretary for Administration, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590 until May 24, 2007; and at M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., after that; *telephone number:* 202-366-9826; *e-mail address:* renee.wright@dot.gov.

TSA: Marisa Mullen, Docket Liaison, Office of the Chief Counsel, TSA-2, 601 South 12th Street, Arlington, VA 22202-4220; *telephone* (571) 227-2706.

SUPPLEMENTARY INFORMATION:

Applicability

This notice applies to the Department of Homeland Security operating administrations of the Transportation Security Agency (TSA) and the United States Coast Guard (USCG), as well as all DOT operating administrations and the Office of Secretary (OST).

Accessing Docket Materials During the Office Closure

During the closure of the Dockets Operations Facility, May 25, 2007, through May 29, 2007, docket materials will remain available to the public through the DMS at <http://dms.dot.gov>, which is available 24 hours a day/7 days a week. The electronic dockets will continue to be available through June 12, 2007, and will be available to users again on June 18, 2007.

Submitting Public Docket Material During Disruptions

You may submit public docket material by one of the following methods:

1. During the office closure May 25, 2007, through May 29, 2007:

a. Electronically through the DMS at <http://dms.dot.gov>, which is available 24 hours a day/7 days a week. Follow the online instructions for submitting comments.

b. By mail that will be forwarded to the new building during this transition period through the U.S. Postal Service after Thursday, May 24, 2007, addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave SE., Washington, DC 20590.

2. When the DMS computer is down from June 13, 2007, through June 17, 2007:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave SE., Washington, DC 20590.

b. By hand delivery to the same address.

Note, however, that office staff will not begin to place documents received during this period into the DMS electronic system until the computer goes back on line June 18, 2007.

Accepting Courier Deliveries

Docket Operations staff will continue to accept deliveries at 400 7th Street, SW., Room PL-401, Washington, DC, until 5 p.m., Thursday, May 24, 2007.

Beginning at 9 a.m. on Wednesday, May 30, 2007, Docket Operations staff will be available to accept deliveries at the new DOT facility on the West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Processing Material With Deadlines or an Emergency Filing During Office Closure

The Docket Operations staff will still receive electronic submissions during the office move May 25, 2007, through May 29, 2007, but not during the period the computers are down from June 13, 2007, through June 17, 2007. These submissions, however, will not be immediately entered onto the Internet Web site. Hard copy submissions delivered to Docket Operations by May 30, 2007, will be treated as received in a timely manner, if they were due during the office's closure.

Generally, time periods/due dates for responsive filings for submissions due during the May office closure will be extended from May 30, 2007, and June 18, 2007, when DMS operations resume. These periods of closure and computer inaccessibility will be considered "holidays" for purposes of procedural rules.

Persons filing emergency applications or other such documents should contact TSA with specific questions about deadlines and extensions.

Issued in Arlington, Virginia, on May 22, 2007.

Mardi Ruth Thompson,

Deputy Chief Counsel (Regulations).

[FR Doc. E7-10242 Filed 5-25-07; 8:45 am]

BILLING CODE 9110-05-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: Form I-824, Application for Action on an Approved Application or Petition; OMB Control No. 1615-0044.

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 March 5, 2007, at 72 FR 9768 allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 28, 2007. 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), USCIS, Chief, 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 1615-0044 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-824. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The Form I-824 facilitates a request from a petitioner or applicant for further action on a previously approved petition or application, or it can be used by a U.S. citizen to notify the Department of State of his or her U.S. citizenship status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 43,772 responses at 25 minutes (.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 18,209 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529; Telephone 202-272-8377.

Dated: May 23, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7-10243 Filed 5-25-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of an Existing Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Form I-643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status; OMB Control No. 1615-0070.

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 March 19, 2007, at 72 FR 12809 allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 28, 2007. 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), USCIS, Chief, 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 to 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 1615-0070 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-643. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or Households. Refugees and asylees, Cuban/Haitian Entrants under section 202 of Public Law 99-603, and Amerasians under Public Law 97-359, must use this form when applying for adjustment of status, with the U.S. Citizenship and Immigration Services (USCIS). USCIS will provide the data collected on this form to the Department of Health and Human Services (HHS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 178,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529; Telephone 202-272-8377.

Dated: May 23, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7-10244 Filed 5-25-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2409-07; DHS Docket No. USCIS-2007-0026]

RIN 1615-ZA48

Extension of the Designation of Honduras for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Honduran TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of extension of temporary protected status designation of Honduras.

SUMMARY: This Notice announces that the designation of Honduras for Temporary Protected Status (TPS) has been extended for 18 months to January 5, 2009, from its current expiration date of July 5, 2007. This Notice also sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) for the additional 18-month period. Re-registration is limited to persons who have previously registered for TPS under the designation of Honduras and whose application has been granted or remains pending. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

Given the timeframes involved with processing TPS re-registrants, the Department of Homeland Security (DHS) recognizes that re-registrants may not receive a new EAD until after their current EAD expires on July 5, 2007. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Honduras for six months, through January 5, 2008, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended. New EADs with the January 5, 2009,

expiration date will be issued to eligible TPS beneficiaries who timely re-register and apply for an EAD.

DATES: The extension of the TPS designation of Honduras is effective July 6, 2007, and will remain in effect until 11:59 p.m. on January 5, 2009. The 60-day re-registration period begins May 29, 2007, and will remain in effect until July 30, 2007. To facilitate processing applications, applicants are strongly encouraged to file as soon as possible after the start of the 60-day re-registration period beginning on May 29, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Horner, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272-1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at <http://uscis.gov>.

Note: the phone number provided here is solely for questions regarding this notice and the information contained herein. It is not for individual case status inquiries. Applicants seeking information about the status of their individual case can look up cases in Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1-800-375-5283 (TTY 1-800-767-1833).

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
ASC—USCIS Application Support Center
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
USAID—U.S. Agency for International Development
USCIS—U.S. Citizenship and Immigration Services

What authority does the Secretary of Homeland Security have to extend the designation of Honduras for TPS?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1), authorizes the Secretary of Homeland Security (Secretary), after consultation with appropriate agencies of the Government, to designate a foreign state (or part thereof) for TPS.

The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of the TPS designation, or any extension thereof, the Secretary, after consultations with appropriate agencies of the Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, the length of an extension. 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for the TPS designation, he must terminate the designation. 8 U.S.C. 1254a(b)(3)(B).

Why did the Secretary decide to extend the TPS designation of Honduras?

On January 5, 1999, the Attorney General published a Notice in the **Federal Register** at 64 FR 524, designating Honduras for TPS due to the devastation resulting from Hurricane Mitch. Subsequent to that date, the Attorney General and the Secretary have extended TPS for Honduras six times, determining in each instance that the conditions warranting the designation continued to be met. 65 FR 30438 (July 6, 2000); 66 FR 23269 (July 6, 2001); 67 FR 22451 (July 6, 2002); 68 FR 23744 (July 6, 2003); 69 FR 64084 (Jan. 6, 2005); 71 FR 16328 (July 6, 2006). The most recent extension of TPS for Honduras became effective on July 5, 2006, and is due to expire on July 5, 2007.

On February 21, 2007, the Government of Honduras requested an extension of the TPS designation of Honduras. Over the past year, DHS and the Department of State have continued to review conditions in Honduras. Based on this review, the Secretary has concluded that an 18-month extension is warranted because there continues to be a substantial, but temporary, disruption of living conditions in Honduras resulting from Hurricane Mitch and Honduras remains unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on environmental disasters. 8 U.S.C. 1254a(b)(1)(B).

The Government of Honduras has realized some success in disaster mitigation and prevention projects, as well as in rebuilding infrastructure since Hurricane Mitch. The country, however, still faces significant social and economic stress caused by the environmental disaster.

Estimates of severely damaged or destroyed dwellings as a result of the hurricane ranged from 80,000 to 200,000. By 2004, the United States Agency for International Development (USAID) had completed the construction of 6,100 permanent housing units. By early 2005, nongovernmental organizations had repaired or built over 15,000 housing units, but housing reconstruction had still not been completed in many areas and much of the housing that was built lacked water and electricity. In those cases where people were required to be relocated, infrastructure and personnel for health and education services, as well as employment opportunities, were unavailable.

An estimated 70 to 80 percent of Honduras' transportation infrastructure was destroyed. The majority of the country's bridges and secondary roads were washed away, including 163 bridges and 6,000 km of roads. In November 2006, the road network had been restored and transport infrastructure continued to improve. Infrastructure, however, remains basic and vulnerable to additional damage depending on weather conditions. The "Road Reconstruction and Improvement Project" funded by the World Bank is scheduled to be completed during 2007.

All health centers were fully operational and almost all schools had reopened by the end of 1999, and by the end of 2005, USAID and some other donors had completed their reconstruction projects in Honduras. The country continues, however, to rely heavily on outside assistance and faces daunting long-term development challenges with hundreds of thousands of people living in areas designated as "high risk," awaiting completion of additional disaster mitigation projects. Current unemployment and underemployment rates range from 20 to 40 percent.

Based upon this review, the Secretary finds, after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Honduras for TPS continue to be met. *See* 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption in living conditions in Honduras as the result of an environmental disaster, and Honduras continues to be unable, temporarily, to handle adequately the return of its nationals. *See* 8 U.S.C. 1254a(b)(1)(B). On the basis of these findings, the Secretary concludes that the designation of Honduras for TPS should be extended for an additional 18-month period. *See* 8 U.S.C. 1254a(b)(3)(C).

Notice of Extension of the TPS Designation of Honduras

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies that the conditions that prompted designation of Honduras for TPS in January 1999 continue to be met. See 8 U.S.C. 1254a(b)(3)(A). There are approximately 78,000 nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have been granted TPS and who may be eligible for re-registration. Accordingly, I am extending the TPS designation of Honduras for 18 months from July 6, 2007 to January 5, 2009. For instructions on this extension, please refer to the following attachments, which include filing and eligibility requirements for Temporary Protected Status and Employment Authorization Documents.

Dated: May 16, 2007.
Michael Chertoff,
Secretary.

Temporary Protected Status Filing Guidelines

If I currently have benefits through the TPS designation of Honduras for TPS and would like to maintain them, do I need to re-register for TPS?

Yes. If you already have received TPS benefits through the designation of Honduras for TPS, your benefits will expire at 11:59 p.m. on July 5, 2007. All TPS beneficiaries must comply with the re-registration requirements described in this Notice in order to maintain TPS benefits through January 5, 2009. TPS benefits include temporary protection against removal from the United States and employment authorization during the TPS designation period. 8 U.S.C. 1254a(a)(1). Failure to re-register without good cause will result in the withdrawal of your TPS and possibly your removal from the United States. 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits for the duration of the extension period?

Please submit the proper forms and fees according to Table 1 below. All applicants are strongly encouraged to pay close and careful attention when filling out the required forms to help ensure that their dates of birth, alien registration numbers, spelling of their names, and other required information is correctly entered on the forms. Aliens who have previously registered for TPS, but whose applications remain pending, should follow these instructions if they wish to renew their TPS benefits. All TPS re-registration applications submitted without the required fees will be returned to the applicant. All fee waiver requests should be filed in accordance with 8 CFR 244.20. If you received an EAD during the most recent registration period, please submit a photocopy of the front and back of your EAD.

TABLE 1.—APPLICATION FORMS AND APPLICATION FEES

If	And	Then
You are re-registering for TPS	You are applying for an extension of your EAD valid through January 5, 2009.	You must complete and file the Form I-765, Application for Employment Authorization, with fee or a fee waiver request. You must also submit Form I-821, Application for Temporary Protected Status, with no fee.
You are re-registering for TPS	You are NOT applying for renewal of your EAD.	You must complete and file the Form I-765 with no fee and Form I-821 with no fee. Note: DO NOT check any box for the question "I am applying for" listed on Form I-765, as you are NOT requesting an EAD benefit.
You are applying for TPS as a late initial registrant and you are between the ages of 14 and 65 (inclusive).	You are applying for a TPS-related EAD	You must complete and file Form I-821 with the \$50 fee or fee waiver request and Form I-765 with fee or a fee waiver request.
You are applying for TPS as a late initial registrant and are under age 14 or over age 65.	You are applying for a TPS-related EAD	You must complete and file Form I-821 with the \$50 fee or fee waiver request. You must also submit Form I-765 with no fee.
T≤You are applying for TPS as a late initial registrant, regardless of age.	You are NOT applying for an EAD	You must complete and file Form I-821 with the \$50 fee or fee waiver request and Form I-765 with no fee.
Your previous TPS application is still pending.	You are applying to renew your temporary treatment benefits (i.e., an EAD with category "C-19" on its face).	You must complete and file the Form I-765 with fee or a fee waiver request. You must also submit Form I-821 with no fee.

Certain applicants must also submit a Biometric Service Fee (See Table 2).

TABLE 2.—BIOMETRIC SERVICE FEES

If	And	Then
You are 14 years of age or older	1. You are re-registering for TPS, or 2. You are applying for TPS under the late initial registration provisions, or.	You must submit a Biometric Service fee as defined in 8 CFR 103.7.

TABLE 2.—BIOMETRIC SERVICE FEES—Continued

If	And	Then
	3. Your TPS application is still pending and you are applying to renew temporary treatment benefits (i.e., EAD with category “c-19” on its face).	
You are younger than 14 years of age	You are applying for an EAD	You must submit a Biometric Service fee as defined in 8 CFR 103.7.
You are younger than 14 years of age	You are NOT applying for an EAD	You do NOT need to submit a biometric fee.

What edition of the Form I-821 should I submit?

Only the edition of Form I-821 dated November 5, 2004, or later will be accepted. The revision date can be

found in the bottom right corner of the form. The proper form can be found on the Internet at <http://www.uscis.gov> or by calling the USCIS forms hotline at 1-800-870-3676.

Where should I submit my application for TPS?

Please reference Table 3 below to see where to mail your specific application.

TABLE 3.—APPLICATION MAILING DIRECTIONS

If	Then mail to	Or, for Non-United States Postal Service (USPS) deliveries, mail to
You are applying for re-registration or applying to renew your temporary treatment benefits.	U.S. Citizenship and Immigration Services Attn: TPS Honduras P.O. Box 6943 Chicago, IL 60680-6943.	U.S. Citizenship and Immigration Services Attn: TPS Honduras 427 S. LaSalle—3rd Floor Chicago, IL 60605-1029.
You are applying for TPS for the first time, as a late initial registrant, or you were granted TPS by an Immigration Judge or the Board of Immigration Appeals.	U.S. Citizenship and Immigration Services Attn: TPS Honduras P.O. Box 8631 Chicago, IL 60680-8631.	U.S. Citizenship and Immigration Services Attn: TPS Honduras [EOIR/Additional Documents] or [Late Initial Registrant] 427 S. LaSalle—3rd Floor, Chicago, IL 60605-1029.

How will I know if I need to submit supporting documentation with my application package?

See Table 4 below to determine if you need to submit supporting documentation.

TABLE 4.—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?

If	Then
One or more of the questions listed in Part 4, Question 2 of Form I-821 applies to you. You were granted TPS by an Immigration Judge or the Board of Immigration Appeals.	You must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation. You may NOT file electronically. You must include evidence of the grant of TPS (such as an order from the Immigration Judge) with your application package. You may NOT file electronically.

Can I file my application electronically?

If you are filing for re-registration and do not need to submit supporting documentation with your application, you may file your application electronically. To file your application electronically, follow directions on the USCIS Web site at: <http://www.uscis.gov>.

What is late initial registration?

Some persons may be eligible for late initial registration under 8 CFR 244.2. In order to be eligible for late initial registration, an applicant must:

(1) Be a national of Honduras (or an alien who has no nationality and who last habitually resided in Honduras);

(2) Have continuously resided in the United States since December 30, 1998;

(3) Have been continuously physically present in the United States since January 5, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Immigration and Nationality Act (Act), and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period (from January 5, 1999 to August 20, 1999), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the designation of Honduras, should be submitted to the appropriate address in Chicago, Illinois, as defined in Table 3.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. See 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A). See 8 U.S.C. 1254a(c)(2)(B)(ii).

If I currently have TPS, can I lose my TPS benefits?

An individual granted TPS will have his or her TPS withdrawn if the alien is not in fact eligible for TPS, if the alien fails to timely re-register for TPS without good cause, or if the alien fails to maintain continuous physical presence in the United States. See 8 U.S.C. 1254a(c)(3)(A)–(C).

Does TPS lead to lawful permanent residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence or confer any other immigration status. 8 U.S.C. 1254a, (f)(1), and (h). When a country's TPS designation is terminated, TPS beneficiaries will maintain the same immigration status that they held prior to TPS (unless that status has since expired or been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation are expected to plan for their departure from the United States.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for non-immigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. See 8 U.S.C. 1254a(f)(4).

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. See 8 U.S.C. 1158(b)(2)(A)(ii) and 8 U.S.C. 1254a(c)(2)(B)(ii).

Does this extension allow nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who entered the United States after December 30, 1998, to file for TPS?

No. An extension of a TPS designation does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS eligibility to those that are not eligible currently. To be eligible for benefits under this extension, nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) must have continuously resided in the United States since December 30, 1998, and been continuously physically present in the United States since January 5, 1999, the date of the initial designation of Honduras for TPS.

Employment Authorization Document Automatic Extension Guidelines*Who is eligible to receive an automatic extension of his or her EAD from July 5, 2007 to January 5, 2008?*

To receive an automatic extension of an EAD, an individual must be a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who has applied for and received an EAD under the designation of Honduras for TPS and who has not had TPS withdrawn or denied. This automatic extension is limited to: (1) EADs issued on Form I-766, Employment Authorization Document, bearing an expiration date of July 5, 2006 on the face AND that have a July 2007 DHS-issued extension sticker on the back of the card; and (2) EADs issued on Form I-766, bearing an expiration date of July 31, 2007. These EADs must also bear the notation "A-12" or "C-19" on the face of the card under "Category."

If I am currently registered under the designation of Honduras for TPS and am re-registering for TPS, how do I receive an extension of my EAD after the automatic six-month extension?

You will receive a notice in the mail with instructions as to whether or not you will be required to appear at a USCIS Application Support Center (ASC) for biometrics collection. To increase efficiency and improve customer service, whenever possible USCIS will reuse previously-captured biometrics and conduct the security checks using those biometrics such that you may not be required to appear at an ASC.

Regardless of whether you are required to appear at an ASC, you are required to pay the biometrics fee during this re-registration. USCIS fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. A detailed description of how USCIS developed its current fee schedule is contained in the proposed rule, Adjustment of Certain Fees of the Immigration Examinations Fee Account, 63 FR 1775 (Jan. 12, 1998).

If you are required to report to an ASC, you must bring the following documents: (1) Your receipt notice for your re-registration application; (2) your ASC appointment notice; and (3) your current EAD. If no further action is required for your case, you will receive a new EAD by mail, valid through January 5, 2009. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. Once your case is resolved and if your application is approved, you will receive a new EAD in the mail with an expiration date of January 5, 2009.

May I request an interim EAD at my local District Office?

No. USCIS will not be issuing interim EADs to TPS applicants and re-registrants at District Offices.

How may employers determine whether an EAD has been automatically extended for six months through January 5, 2008, and is therefore acceptable for completion of the Form I-9?

An EAD that has been automatically extended for six months by this Notice through January 5, 2008, will be a Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category," and either: (1) have an expiration date of July 5, 2006 on the face of the card and a July 2007 DHS-

issued extension sticker on the back; or (2) have an expiration date of July 31, 2007 on the face of the card. New EADs or extension stickers showing the January 5, 2008, expiration date of the six-month automatic extension will not be issued. Employers should not request proof of Honduran citizenship.

Employers should accept an EAD as a valid "List A" document and not ask for additional Form I-9, Employment Eligibility Verification, documentation if presented with an EAD that has been extended pursuant to this **Federal Register** Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. This does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. See 8 CFR 274a.2(b)(1)(vii). For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1-800-357-2099. Also, employers may call the U.S. Department of Justice, Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1-800-255-8155 or 1-800-362-2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1-800-255-7688 or 1-800-237-2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at <http://www.usdoj.gov/crt/osc/index.html>.

How may employers determine an employee's eligibility for employment once the automatic six-month extension expires on January 5, 2008?

Eligible TPS aliens will possess an EAD with an expiration date of January 5, 2009. The EAD will be a Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category," and should be accepted for the purposes of verifying identity and employment authorization.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I-9, Employment Eligibility Verification?

During the first six months of this extension, qualified individuals who have received a six-month automatic extension of their EADs by virtue of this **Federal Register** Notice may present

their TPS-based EAD to their employer, as described above, as proof of identity and employment authorization through January 5, 2008. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation through January 5, 2008.

After the first six months of this extension and continuing until the end of the extension period, January 5, 2009, a qualified individual may present a new EAD valid through January 5, 2009.

In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I-9 may be presented as proof of identity and employment eligibility.

[FR Doc. E7-10175 Filed 5-25-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2410-07; DHS Docket No. USCIS-2007-0027]

RIN 1615-ZA49

Extension of the Designation of Nicaragua for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Nicaraguan TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of extension of temporary protected status designation of Nicaragua.

SUMMARY: This Notice announces that the designation of Nicaragua for Temporary Protected Status (TPS) has been extended for 18 months to January 5, 2009, from its current expiration date of July 5, 2007. This Notice also sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) for the additional 18-month period. Re-registration is limited to persons who have previously registered for TPS under the designation of Nicaragua and whose application has been granted or remains pending. Certain nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who

have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

Given the timeframes involved with processing TPS re-registrants, the Department of Homeland Security (DHS) recognizes that re-registrants may not receive a new EAD until after their current EAD expires on July 5, 2007. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Nicaragua for six months, through January 5, 2008, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended. New EADs with the January 5, 2009 expiration date will be issued to eligible TPS beneficiaries who timely re-register and apply for an EAD.

DATES: The extension of the TPS designation of Nicaragua is effective July 6, 2007, and will remain in effect until 11:59 p.m. on January 5, 2009. The 60-day re-registration period begins May 29, 2007, and will remain in effect until July 30, 2007. To facilitate processing of applications, applicants are strongly encouraged to file as soon as possible after the start of the 60-day re-registration period beginning on May 29, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Horner, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW, 2nd Floor, Washington, DC 20529, telephone (202) 272-1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at <http://uscis.gov>. Note: the phone number provided here is solely for questions regarding this notice and the information contained herein. It is not for individual case status inquiries. Applicants seeking information about the status of their individual case can look up their case in Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1-800-375-5283 (TTY 1-800-767-1833).

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
ASC—USCIS Application Support Center
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document

Secretary—Secretary of Homeland Security
 TPS—Temporary Protected Status
 USCIS—U.S. Citizenship and Immigration Services

What authority does the Secretary of Homeland Security have to extend the designation of Nicaragua for TPS?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1), authorizes the Secretary of Homeland Security (Secretary), after consultation with appropriate agencies of the Government, to designate a foreign state (or part thereof) for TPS. The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of the TPS designation, or any extension thereof, the Secretary, after consultations with appropriate agencies of the Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, the length of an extension. 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for the TPS designation, he must terminate the designation. 8 U.S.C. 1254a(b)(3)(B).

Why did the Secretary decide to extend the TPS designation of Nicaragua?

On January 5, 1999, the Attorney General published a Notice in the **Federal Register** at 64 FR 526, designating Nicaragua for TPS due to the devastation resulting from Hurricane Mitch. Subsequent to that date, the Attorney General and the Secretary of Homeland Security have extended TPS for Nicaragua six times, determining in each instance that the conditions warranting the designation continued to be met. 65 FR 30440 (July 6, 2000); 66 FR 23271 (July 6, 2001); 67 FR 22454 (July 6, 2002); 68 FR 23748 (July 6, 2003); 69 FR 64088 (Jan. 6, 2005); 71 FR 16333 (July 6, 2006). The most recent extension of Nicaragua for TPS became effective on July 5, 2006, and is due to expire on July 5, 2007.

On February 2, 2007, the Government of Nicaragua requested an extension of the TPS designation of Nicaragua. Over the past year, DHS and the Department of State have continued to review conditions in Nicaragua. Based on this review, the Secretary has concluded that an 18-month extension is warranted because there continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting

from Hurricane Mitch and Nicaragua remains unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on environmental disasters. 8 U.S.C. 1254a(b)(1)(B)(i–iii).

Significant progress has been made in reconstruction following Hurricane Mitch. However, Nicaragua has not fully recovered from the environmental disaster.

An estimated 145,000 homes were destroyed by the hurricane, leaving an estimated 400,000 to 800,000 people homeless. Health clinics and schools were also impacted with 90 clinics, 400 health posts, and over 500 primary schools suffering structural damage. While much of the large-scale post-disaster aid and reconstruction projects were completed years ago, these projects were focused on temporary buildings that have not been replaced with permanent cement structures and are now largely deteriorated.

Hurricane Mitch destroyed or disabled 70 percent of the roads and severely damaged 71 bridges. Over 1,700 miles of highway and access roads needed replacement. The Pan-American Highway has been repaired, but reconstruction efforts continue with the focus shifted to improving secondary and rural roads.

Nicaragua also suffered significant economic damage and reduced access to food following Hurricane Mitch. Over 100,000 acres of crops were destroyed by the hurricane, half of them life-sustaining food crops such as beans and corn. The regions hardest hit by the hurricane continue to be the poorest and least developed in Nicaragua and the Government of Nicaragua is reporting hunger cases in the northern mountainous region. Additionally, landslides triggered by the heavy and sustained rains of the hurricane resulted in the loss of forest canopy. This problem has affected the environment, resulting in reduced rainfall and agricultural yields that are consistently below average. Export crops, such as coffee, sugar cane and bananas were also destroyed, to a lesser extent but not without resulting reductions in export income.

While the damage resulting from Hurricane Mitch in 1998 formed the basis of the initial designation of Nicaragua for TPS, the country has remained vulnerable and suffered damage during subsequent storms. Hurricane Beta and Tropical Storm Stan severely affected thousands of people, destroying houses, medical centers, and schools in October 2005.

Based upon this review of conditions in Nicaragua, the Secretary finds, after

consultation with the appropriate Government agencies, that the conditions that prompted the designation of Nicaragua for TPS continue to be met. *See* 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption in living conditions in Nicaragua as the result of an environmental disaster, and Nicaragua continues to be unable, temporarily, to handle adequately the return of its nationals. *See* 8 U.S.C. 1254a(b)(1)(B). The Secretary also finds that it is not contrary to the national interest of the United States to permit aliens who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* 8 U.S.C. 1254a(b)(1)(C). On the basis of these findings, the Secretary concludes that the designation of Nicaragua for TPS should be extended for an additional 18-month period. *See* 8 U.S.C. 1254a(b)(3)(C).

Notice of Extension of the TPS Designation of Nicaragua

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted designation of Nicaragua for TPS in January 1999 continue to be met. *See* 8 U.S.C. 1254a(b)(3)(A). There are approximately 4,100 nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have been granted TPS and who may be eligible for re-registration. Accordingly, I am extending the TPS designation of Nicaragua for 18 months from July 6, 2007 to January 5, 2009. For instructions on this extension, please refer to the following attachment, which includes filing and eligibility requirements for Temporary Protected Status and Employment Authorization Documents.

Dated: May 16, 2007.

Michael Chertoff,
Secretary.

Temporary Protected Status Filing Guidelines

Do I need to re-register if I currently have TPS benefits through the TPS designation of Nicaragua and would like to maintain them?

Yes. If you already have received TPS benefits through the designation of Nicaragua for TPS, your benefits will expire at 11:59 p.m. on July 5, 2007. All TPS beneficiaries must comply with the re-registration requirements described in this Notice in order to maintain TPS benefits through January 5, 2009. TPS

benefits include temporary protection against removal from the United States and employment authorization during the TPS designation period. 8 U.S.C. 1254a(a)(1). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits for the duration of the extension period?

Please submit the proper forms and fees according to the Table 1 below. All applicants are strongly encouraged to pay close and careful attention when filling out the required forms to help ensure that their dates of birth, alien registration numbers, spelling of their names, and other required information is correctly entered on the forms. Aliens

who have previously registered for TPS, but whose applications remain pending, should follow these instructions if they wish to renew their TPS benefits. All TPS re-registration applications submitted without the required fees will be returned to the applicant. All fee waiver requests should be filed in accordance with 8 CFR 244.20. If you received an EAD during the most recent registration period, please submit a photocopy of the front and back of your EAD.

TABLE 1.—APPLICATION FORMS AND APPLICATION FEES

If	And	Then
You are re-registering for TPS	You are applying for an extension of your EAD valid through January 5, 2009.	You must complete and file the Form I-765, Application for Employment Authorization with fee or a fee waiver request. You must also submit Form I-821, Application for Temporary Protected Status, with no fee.
You are re-registering for TPS	You are NOT applying for renewal of your EAD.	You must complete and file the Form I-765 with no fee and Form I-821 with no fee. Note: DO NOT check any box for the question "I am applying for" listed on Form I-765, as you are NOT requesting an EAD benefit.
You are applying for TPS as a late initial registrant and you are between the ages of 14 and 65 (inclusive).	You are applying for a TPS-related EAD	You must complete and file Form I-821 with the \$50 fee or fee waiver request and Form I-765 with fee or a fee waiver request.
You are applying for TPS as a late initial registrant and are under age 14 or over age 65.	You are applying for a TPS-related EAD	You must complete and file Form I-821 with the \$50 fee or fee waiver request. You must also submit Form I-765 with no fee.
You are applying for TPS as a late initial registrant, regardless of age.	You are NOT applying for an EAD	You must complete and file Form I-821 with the \$50 fee or fee waiver request and Form I-765 with no fee.
Your previous TPS application is still pending ...	You are applying to renew your temporary treatment benefits (i.e., an EAD with category "C-19" on its face).	You must complete and file the Form I-765 with fee or a fee waiver request. You must also submit Form I-821 with no fee.

Certain applicants must also submit a Biometric Service Fee (See Table 2).

TABLE 2.—BIOMETRIC SERVICE FEES

If	And	Then
You are 14 years of age or older	1. You are re-registering for TPS, or 2. You are applying for TPS under the late initial registration provisions, or. 3. Your TPS application is still pending and you are applying to renew temporary treatment benefits (i.e., and EAD with category "C-19" on its face).	You must submit a Biometric Service fee as defined in 8 CFR 103.7.
You are younger than 14 years of age	You are applying for an EAD	You must submit a Biometric Service fee as defined in 8 CFR 103.7.
You are younger than 14 years of age	You are NOT applying for an EAD	You do NOT need to submit a Biometric Service fee.

What edition of the Form I-821 should I submit?

Only the edition of Form I-821 dated November 5, 2004, or later will be accepted. The revision date can be

found in the bottom right corner of the form. The proper form can be found on the Internet at <http://www.uscis.gov> or by calling the USCIS forms hotline at 1-800-870-3676.

Where should I submit my application for TPS?

Please reference Table 3 below to see where to mail your specific application.

TABLE 3.—APPLICATION MAILING DIRECTIONS

If	Then mail to	Or, for Non-United States Postal Service (USPS) deliveries, mail to
You are applying for re-registration or applying to renew your temporary treatment benefits.	U.S. Citizenship and Immigration Services Attn: TPS Nicaragua P.O. Box 6943 Chicago, IL 60680-6943.	U.S. Citizenship and Immigration Services Attn: TPS Nicaragua 427 S. LaSalle—3rd Floor Chicago, IL 60605-1029.
You are applying for TPS for the first time, as a late initial registrant, or you were granted TPS by an Immigration Judge or the Board of Immigration Appeals.	U.S. Citizenship and Immigration Services Attn: TPS Nicaragua P.O. Box 8631 Chicago, IL 60680-8631.	U.S. Citizenship and Immigration Services Attn: TPS Nicaragua [EOIR/Additional Documents] or [Late Initial Registrant] 427 S. LaSalle—3rd Floor, Chicago, IL 60605-1029.

How will I know if I need to submit supporting documentation with my application package?

See Table 4 below to determine if you need to submit supporting documentation.

TABLE 4.—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?

If	Then
One or more of the questions listed in Part 4, Question 2 of Form I-821 applies to you.	You must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation must be provided. You may NOT file electronically.
You were granted TPS by an Immigration Judge or the Board of Immigration Appeals.	You must include evidence of the grant of TPS (such as an order from the Immigration Judge) with your application package. You may NOT file electronically.

Can I file my application electronically?

If you are filing for re-registration and *do not* need to submit supporting documentation with your application, you may file your application electronically. To file your application electronically, follow directions on the USCIS Web site at: <http://www.uscis.gov>.

What is late initial registration?

Some persons may be eligible for late initial registration under 8 CFR 244.2. In order to be eligible for late initial registration, an applicant must:

- (1) Be a national of Nicaragua (or an alien who has no nationality and who last habitually resided in Nicaragua);
- (2) Have continuously resided in the United States since December 30, 1998;
- (3) Have been continuously physically present in the United States since January 5, 1999; and
- (4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Immigration and Nationality Act (Act), and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period (from January 5, 1999 to August 20, 1999), he or she:

- (1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

- (2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

- (3) Was a parolee or had a pending request for parole; or

- (4) Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the designation of Nicaragua, should be submitted to the appropriate address in Chicago, Illinois as defined in Table 3.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. See 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A). See 8 U.S.C. 1254a(c)(2)(B)(ii).

If I currently have TPS, can I lose my TPS benefits?

An alien granted TPS will have his or her TPS withdrawn if the alien is not in fact eligible for TPS, if the alien fails to timely re-register for TPS without good cause, or if the alien fails to maintain continuous physical presence in the United States. See 8 U.S.C. 1254a(c)(3)(A)–(C).

Does TPS lead to lawful permanent residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence or confer any other immigration status. 8 U.S.C. 1254a, (f)(1), and (h). When a country's TPS designation is terminated, TPS beneficiaries will maintain the same immigration status that they held prior to TPS (unless that status has since expired or been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation are expected

to plan for their departure from the United States.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for non-immigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. See 8 U.S.C. 1254a(f)(4).

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. See 8 U.S.C. 1158(b)(2)(A)(ii) and 8 U.S.C. 1254a(c)(2)(B)(ii).

Does this extension allow nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who entered the United States after December 30, 1998, to file for TPS?

No. An extension of a TPS designation does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS eligibility to those that are not eligible currently. To be eligible for benefits under this extension, nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) must have continuously resided in the United States since December 30, 1998 and been continuously physically present in the United States since January 5, 1999, the date of the initial designation of Nicaragua for TPS.

Employment Authorization Document Automatic Extension Guidelines

Who is eligible to receive an automatic extension of his or her EAD from July 5, 2007 to January 5, 2008?

To receive an automatic extension of an EAD, an individual must be a national of Nicaragua (or an alien having no nationality who last

habitually resided in Nicaragua) who has applied for and received an EAD under the designation of Nicaragua for TPS and who has not had TPS withdrawn or denied. This automatic extension is limited to: (1) EADs issued on Form I-766, Employment Authorization Document, bearing an expiration date of July 5, 2006 on the face AND that have a July 2007 DHS-issued extension sticker on the back of the card; and (2) EADs issued on Form I-766, Employment Authorization Document, bearing an expiration date of July 31, 2007. These EADs must also bear the notation "A-12" or "C-19" on the face of the card under "Category."

If I am currently registered under the designation of Nicaragua for TPS and am re-registering for TPS, how do I receive an extension of my EAD after the automatic six-month extension?

You will receive a notice in the mail with instructions as to whether or not you will be required to appear at a USCIS Application Support Center (ASC) for biometrics collection. To increase efficiency and improve customer service, whenever possible USCIS will reuse previously-captured biometrics and conduct the security checks using those biometrics such that you may not be required to appear at an ASC.

Regardless of whether you are required to appear at an ASC, you are required to pay the biometrics fee during this re-registration. The fee will cover the USCIS costs associated with the use of the collected biometrics for FBI and other background checks. USCIS fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. A detailed description of how USCIS developed its current fee schedule is contained in the proposed rule, Adjustment of Certain Fees of the Immigration Examinations Fee Account, 63 FR 1775 (Jan. 12, 1998).

If you are required to report to the ASC, you must bring the following documents: (1) Your receipt notice for your re-registration application; (2) your ASC appointment notice; and (3) your current EAD. If no further action is required for your case, you will receive a new EAD through the mail that is valid through January 5, 2009. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. Once your case is resolved and if your application is approved, you will receive a new EAD in the mail with an expiration date of January 5, 2009.

May I request an interim EAD at my local District Office?

No. USCIS will not be issuing interim EADs to TPS applicants and registrants at District Offices.

How may employers determine whether an EAD has been automatically extended for six months through January 5, 2008, and is therefore acceptable for completion of the Form I-9?

An EAD that has been automatically extended for six months by this Notice through January 5, 2008, will be a Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category," and either: (1) have an expiration date of July 5, 2006 on the face of the card and have a July 2007 DHS-issued extension sticker on the back; or (2) have an expiration date of July 31, 2007 on the face of the card. New EADs or extension stickers showing the January 5, 2008, expiration date of the six-month automatic extension will not be issued. Employers should not request proof of Nicaraguan citizenship.

Employers should accept an EAD as a valid "List A" document and not ask for additional Form I-9, Employment Eligibility Verification documentation if presented with an EAD that has been extended pursuant to this **Federal Register** Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. This does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. See 8 CFR 274a.2(b)(1)(vii). For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1-800-357-2099. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1-800-255-8155 or 1-800-362-2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1-800-255-7688 or 1-800-237-2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at <http://www.usdoj.gov/crt/osc/index.html>.

How may employers determine an employee's eligibility for employment once the automatic extension has expired on January 5, 2008?

Eligible TPS aliens will possess an EAD with an expiration date of January 5, 2009. The EAD will be a Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category," and should be accepted for the purposes of verifying identity and employment authorization.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I-9, Employment Eligibility Verification?

During the first six months of this extension, qualified individuals who have received a six-month automatic extension of their EADs by virtue of this **Federal Register** Notice may present their TPS-based EAD to their employer, as described above, as proof of identity and employment authorization through January 5, 2008. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation through January 5, 2008.

After the first six months of this extension, and continuing until the end of the extension period, January 5, 2009, a qualified individual may present a new EAD valid through January 5, 2009.

In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I-9 may be presented as proof of identity and employment eligibility.

[FR Doc. E7-10194 Filed 5-25-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5118-N-02]

Notice of Proposed Information Collection: Comment Request; Housing Opportunities for Persons with AIDS (HOPWA); Competitive Grant Application; Project Budget Summary and Annual Performance Reporting Requirements

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 30, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202-708-2374, (this is not a toll-free number) or e-mail Ms. Deitzer at Lillian_L_Deitzer@HUD.gov for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: William Rudy, Deputy Director, Office of HIV/AIDS Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202-708-1934 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information

Title of Proposal: (1) HOPWA Competitive and Renewal of Permanent Supportive Housing Project Budget Summary; (2) Annual Progress Report (APR) for competitive grantees; and (3) Consolidated Annual Performance and Evaluation Report (CAPER) for formula grantees.

OMB Control Number, if applicable: 2506-0133.

Description of the need for the information and proposed use: The budget summary form is submitted by both competitive and renewal grant applicants and is used to rate applications, determine program eligibility, and determine individual budget line item grant amounts. Annual performance reporting requirements enables an assessment of grantee progress towards implementing the HOPWA housing stability annual performance outcome measure while measuring project success against planned and actual accomplishments.

Agency form numbers, if applicable: HUD-40110-B; 40110-C; and 40110D.

Members of Affected Public: Business or other for-profit, not-for-profit institutions, State, Local or Tribal governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: Annually.
Reporting Burden:

Description of information collection	Number of respondents	Responses per year	Total annual responses	Hrs per response	Total hours
40110-B Competitive Application Project Budget Summary	40	1	40	22	880
40110-C Annual Progress Report (APR)	85	1	85	70	5,950
40110-D Consolidated Annual Performance and Evaluation Report (CAPER)	122	1	122	45	5,490
Recordkeeping	247	1	247	68	16,796

Description of information collection	Number of respondents	Responses per year	Total annual responses	Hrs per response	Total hours
Grant amendments and extensions	20	1	20	20	400
Uniform relocation act appeals process	5	1	5	2	10
Environmental review recordkeeping	20	1	20	20	400
Miscellaneous other reporting	40	1	40	6	240
Total of grantee annual reporting burden:	247	1	247	30,166	

Total Estimated Burden Hours:
30,166.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 9, 2007.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E7-10158 Filed 5-25-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5121-N-17]

Notice of Proposed Information Collection: Comment Request Owner Certification with HUD Tenant Eligibility and Rent Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 30, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4178, Washington, DC 20410 or Lillian_L_Deitzer@hud.gov.

FOR FURTHER INFORMATION CONTACT: Gail Williamson, Director, Housing Assistance Policy Division, Office of Multifamily Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708-3300 ext. 2473 (this is not a toll free number) for copies of

the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Owner Certification with HUD Tenant Eligibility and Rent Procedures.

OMB Control Number, if applicable: 2502-0204.

Description of the need for the information and proposed use: This information is necessary to (1) determine an applicant's eligibility for admission and assistance, (2) recertify the households income and level of assistance at least annually to ensure accurate calculation of the tenant's rent and the amount of assistance HUD pays on behalf of the household (3) determine the continued eligibility of a household to receive assistance and (4) ensure that the owner make available all units under an assistance contract to eligible families unless HUD authorizes a waiver of the regulation(s).

Agency form numbers, if applicable: HUD-50059, HUD-27061, HUD-9887, HUD-9887-A

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of

burden hours is 2,199,569. The number of respondents is 1,888,272, the frequency of response varies and the burden hour per response is: 4 minutes to obtain signatures and gather and review documentation required by the Recertification Notice; 10 minutes to review policy, complete and sign the Sample Certification for Qualified Long-Term Care Insurance Expenses; 5 minutes for a college student's parents to complete a certification and declaration of their income and for owners to review to eligibility for Section 8 assistance; 8 minutes to obtain third party verifications to determine a college student's independence from parents; 3 minutes to obtain and analyze third party verification relative to a person's disability meeting the qualifications for the program covering the project where they are applying to live; 10 minutes to submit a request and supporting documentation to waive regulations governing eligibility requirements and for HUD or contract administrator to review and approve the request. There are no hours associated with signing lease agreements or completing the move-in/move-out inspection forms as these are standard business practices used by the rental housing industry.

Status of the proposed information collection: Currently approved.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 18, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E7-10160 Filed 5-25-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5121-N-16]

Notice of Proposed Information Collection: Comment Request HUD Multifamily Energy Assessment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 30, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Dietzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410 or Lillian_L_Dietzer@hud.gov.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Housing Program Manager, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-1320 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to

be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Multifamily Energy Assessment.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: The purpose of this information collection is to assist owners of multifamily housing projects with assessing energy needs in an effort to reduce energy costs and improve energy conservation.

Agency form numbers, if applicable: Form HUD-9614.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours is 211,650. The estimated number of respondents is 14,188, estimated number of responses is 177,303, the frequency of response varies, and the estimated burden hours per response is 4 for form HUD-9614, however varies for the other required documents.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 16, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E7-10161 Filed 5-25-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

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: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
144838	Jose R. Perez de Ayala	72 FR 8199; February 23, 2007	March 28, 2007

MARINE MAMMALS

Permit number	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
143920	Jonathan Miles Olson	72 FR, 8193; February 23, 2007	April 3, 2007
129586	Robert L. Hudson	72 FR 56544; September 27, 2006	March 22, 2007
141741	Kurt A. Fetzer	72 FR 2539; January 19, 2007	March 22, 2007
142186	Roger Kolassa	72 FR 2539; January 19, 2007	March 22, 2007
142251	Philip J. Dunne	72 FR 2539; January 19, 2007	March 22, 2007
142450	Russell A. Young	72 FR 2539; January 19, 2007	March 22, 2007

Dated: April 6, 2007.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits,
Division of Management Authority.

[FR Doc. E7-10252 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 28, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: State of Alaska-Department of Fish and Game, Juneau, AK, PRT-150411.

The applicant requests a permit to import up to 70 juvenile wood bison (*Bison bison athabasca*) from Elk Island National Park breeding facility, Canada, to establish a disease free herd for the purpose of enhancement of the survival of the species through introduction into the wild.

Applicant: David G. Aul, Arlington, IL, PRT-147186.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jerrold P. Agunoy, Kihei, HI, PRT-148248.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Larry C. Bucher, Tarzana, CA, PRT-149006.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Steven D. Sodolak, Bryan, TX, PRT-150798.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Douglas M. Eberhardt, Stockton, CA, PRT-149953.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a

hearing is at the discretion of the Director.

Applicant: David M. Lally, Akron, NY, PRT-150804.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: John W. Muncy Jr., Cleveland, OH, PRT-139825.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: April 6, 2007.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits,
Division of Management Authority.

[FR Doc. E7-10253 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before June 28, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, California/Nevada Operations Office (CNO), 2800 Cottage Way, Room W-2606, Sacramento, California, 95825 (telephone: 916-414-6464; fax: 916-414-6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist, at the above CNO address, (telephone: 760-431-9440; fax: 760-431-9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered

species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit No. TE-809232

Applicant: Paul Holden, Logan, Utah.

The applicant requests an amendment to take (capture, and release) the Moapa Dace (*Moapa coriacea*) in conjunction with surveys in Clark County, Nevada for the purpose of enhancing its survival.

Permit No. TE-150547

Applicant: Anna Marie Schroeder, Santa Ana, California.

The applicant requests a permit to take (harass by survey, and nest monitor) the least Bell's vireo in conjunction with surveys and monitoring throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-150550

Applicant: Jerry D. Rowe, Martinez, California.

The permittee requests a permit to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys in Contra Costa, Alameda, Sonoma, Santa Clara, Santa Barbara, San Benito, Monterey, and Solano Counties, California for the purpose of enhancing its survival.

Permit No. TE-053598

Applicant: Nicole Shorey, San Diego, California.

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardii*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each

species in California for the purpose of enhancing their survival.

Permit No. TE-150561

Applicant: Denise L. LaBerteaux, Weldon, California.

The applicant requests a permit to take (harass by survey) the Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in San Diego, Imperial, Los Angeles, Orange, Riverside, San Bernardino, Kern, Inyo, Ventura, Santa Barbara, and San Luis Obispo Counties, California for the purpose of enhancing its survival.

Permit No. TE-027736

Applicant: David Erik LaCoste, Ramona, California.

The applicant requests a permit to take (harass by survey) the Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California, for the purpose of enhancing its survival.

Permit No. TE-835365

Applicant: Barbara McDonnell, Sacramento, California.

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardii*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE-097845

Applicant: Scott Westfall, Lompoc, California.

The applicant requests a permit to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with surveys in Ventura County, California, for the purpose of enhancing its survival.

Permit No. TE-800291

Applicant: Anne Wallace, Grass Valley, California.

The applicant requests an amendment to take (monitor) the California least tern (*Sterna antillarum browni*) in conjunction with monitoring and other life history studies in Solano County, California, for the purpose of enhancing its survival.

Permit No. TE-819491

Applicant: Michael Fitzgerald, Durango, Colorado.

The permittee requests an amendment to take (harass by survey) the Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California, for the purpose of enhancing its survival.

Permit No. TE-094642

Applicant: Howard B. Schaffer, Davis, California.

The applicant requests an amendment to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*) and vernal pool fairy shrimp (*Lepidurus packardii*) in conjunction with research and other life history studies in Solano, and Alameda Counties, California for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications. 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 addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: May 22, 2007.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E7-10248 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Availability of the Revised Recovery Plan for the Whooping Crane (*Grus americana*)**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the revised Recovery Plan for the Whooping Crane (*Grus americana*). This is the third revision of the recovery plan for this species; the original was completed in 1980. The whooping crane is found in the United States east of the Rocky Mountains and in central Canada. This revision to the recovery plan was developed by an international team and will be jointly adopted by the United States and Canada.

ADDRESSES: Copies of the recovery plan on CD may be obtained from the Whooping Crane Coordinator, U.S. Fish and Wildlife Service, Aransas National Wildlife Refuge, P.O. Box 100, Austwell, Texas 77950, or the plan may be downloaded from the Internet at <http://www.fws.gov/endangered> (type "whooping crane" in the species search field).

FOR FURTHER INFORMATION CONTACT: Tom Stehn, USFWS Whooping Crane Coordinator, Aransas National Wildlife Refuge, P.O. Box 100, Austwell, Texas 77950; telephone (361) 286-3559, ext. 221, facsimile (361) 286-3722, e-mail: Tom_Stehn@fws.gov.

SUPPLEMENTARY INFORMATION:**Background**

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species.

Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service considers all information provided during a public comment period prior to approval of each new or revised recovery plan. The Service and others take these comments into account in the course of implementing recovery plans.

In the United States, the whooping crane (*Grus americana*) was listed as Threatened with Extinction in 1967 and Endangered in 1970—both listings were "grandfathered" into the Endangered Species Act of 1973. Critical habitat was designated in 1978. In Canada, it was designated as Endangered in 1978 by the Committee on the Status of Endangered Wildlife in Canada; critical habitat in Canada will be designated upon publication of the final recovery strategy on the Species at Risk Act public registry.

Whooping cranes occur only in North America. Approximately 343 individuals exist in the wild at 3 locations, and 135 whooping cranes are in captivity at 9 sites. Only the Aransas—Wood Buffalo National Park population (AWBP) that nests in Canada and winters in coastal marshes in Texas is self-sustaining, with approximately 220 in the flock. With so few individuals surviving, the population remains in danger of extinction. Historic population declines resulted from habitat destruction, shooting, and displacement by activities of man. Current threats include limited genetics, loss and degradation of migration stopover habitat, collisions with power lines, and degradation of coastal habitat and threat of chemical spills.

The revised recovery plan includes scientific information about the species and provides objectives and actions needed to downlist the species. Recovery actions designed to achieve these objectives include protection and enhancement of the breeding, migration, and wintering habitat for the AWBP to allow the wild flock to grow and reach ecological and genetic stability; reintroduction and establishment of geographically separate self-sustaining wild flocks to ensure resilience to catastrophic events; and maintenance of a captive breeding flock to protect against extinction that is genetically managed to retain a minimum of 90 percent of the whooping crane's genetic material for 100 years.

The current recovery goal is to reclassify (downlist) the species from endangered to threatened status. Criteria to delist the species are not being proposed at this time because the status

and biology of the species dictate that considerable time (over 20 years) is needed to reach downlisting goals. Additional threats are expected to arise and will have to be overcome before downlisting occurs. Additional information is also needed on the conservation biology of small populations, including a determination of effective population size (N_e) for whooping cranes to maintain genetic viability over the long-term, and impacts of stochastic and catastrophic events on population survival. Delisting criteria will be established, as appropriate, in a subsequent revision of, or amendment to, this recovery plan.

Downlisting can be achieved when (1) There are a minimum of 40 productive pairs in the AWBP and 25 productive pairs in each of two additional self-sustaining populations, or (1A) there are 100 productive pairs in the AWBP and 30 productive pairs in a second self-sustaining population, or (1B) there are 250 productive pairs in the AWBP, and (2) there are at least 21 productive pairs in the captive population.

This revision to the recovery plan was developed by an international recovery team, and will be jointly adopted by the United States and Canada.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 21, 2006.

Benjamin N. Tuggle,

Acting Regional Director, Region 2.

Editorial Note: This document was received at the Office of the Federal Register on May 22, 2007.

[FR Doc. E7-10099 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[F-14858-A, F-14858-B; AK-964-1410-HY-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Gana-a'Yoo, Limited, Successor in Interest to Notaghleedin, Limited. The lands are in the vicinity of Galena, Alaska, and are located in:

Lots 7, 9, 10, 11, and 13, U.S. Survey No. 6664, Alaska.

Containing 101.65 acres.

T. 7 S., R. 10 E.,
Secs. 19, 30, and 31.

Containing 1,775.79 acres.

T. 10 S., R. 11 E.,
Secs. 21, 28, and 29; Secs. 30 to 33,
inclusive.

Containing 4,345.45 acres.

Aggregating 6,222.89 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited when the surface estate is conveyed to Gana-a'Yoo, Limited. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until 30 days after publication in the **Federal Register** to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jenny M. Anderson,
Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7-10222 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-820-1430-EQ]

Notice of Seasonal Closure of Public Lands, San Juan County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of seasonal closure.

SUMMARY: The San Juan Public Lands Center, Bureau of Land Management (BLM) is giving notice that public lands near the Silverton Ski Area as described below, will be seasonally closed to all entry, from November 1 *through the end of the seasonal ski area operation, but not later than June 15 of each year*. This closure is necessary to protect skiers within the ski area boundaries and the general public during periods of avalanche control work as authorized under BLM permit/lease.

The lands affected by this closure are described as a portion of those federal lands administered by the Bureau of Land Management within sections 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 of protracted Township 42 N., R.7 W., New Mexico Principal Meridian. These lands are further described as: beginning at a point 0.5 mile north of Cascade Gulch and extending northeasterly along the east side of Colorado State highway #110A to the junction of San Juan County #52, thence southeasterly along the Middle Fork of Cement Creek to the divide between the Middle Fork Cement Creek and the South Fork of the Animas River, thence south along the ridge line forming the Colorado Basin to Storm Peak, thence west along a descending ridge line to the tree line between Grassy Gulch and Cascade Gulch, thence, northwest to the point of the beginning.

The BLM will post closure signs in this area. You may obtain maps of the closure area and information from the San Juan Public Lands Center in Durango, CO.

Discussion of the Rule: Under the authority of 43 CFR 9268.3(d)(1)(I) and 43 CFR 8364.1(a), the BLM will enforce the following rule on public lands within the closed area as described above:

You must not enter the closed area between November 1st *through the end of the seasonal ski area operation, or June 15 of each year whichever is the last date of seasonal operation*.

Exemptions: Persons who are exempt from these rules include any Federal, State, or local officer or employee in the scope of their duties; Members of any organized rescue or fire-fighting force in performance of an official duty; and any person authorized in writing by the Bureau of Land Management.

Penalties: The authorities for this closure are section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a), 43 CFR 9268.3(a)(4) and 43 CFR 8360.0-7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months,

or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

FOR FURTHER INFORMATION CONTACT: Charlie Higby, BLM Realty Specialist, (970) 385-1374; San Juan Public Lands Center, 15 Burnett Court, Durango, Colorado 81301.

Pauline E. Ellis,
Field Office Manager, Columbine Field Office.

[FR Doc. E7-10166 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-910-07-1990-EX]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the January 2007 Amendment to the Plan of Operations for the Barrick Goldstrike Mine (Also Known as the Betze Project), Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 and 43 CFR part 3809, the Bureau of Land Management (BLM), Elko Field Office will be preparing a Supplemental Environmental Impact Statement (SEIS) to analyze the environmental effects of the proposed amendment to the Plan of Operations for the Goldstrike Mine also known as the Betze Project, 25 miles north of Carlin, Nevada. The original EIS was completed in 1991. The Goldstrike Mine has continued in operation since that date.

DATES: Public comments must be received in the Elko Field Office within 30 days after publication of this notice in the **Federal Register**.

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

—**Fax:** (775) 753-0255.

—**Mail:** Sent to the attention of the January 2007 Barrick Goldstrike Amendment Manager, BLM Elko Field Office, 3900 East Idaho Street, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Kirk Laird, Project Manager at the Elko Field Office, 3900 E. Idaho, Elko, NV 89801. Telephone (775) 753-0200.

SUPPLEMENTARY INFORMATION: The current amendment proposes to expand the Goldstrike Mine from 7,771 acres of disturbance to 9,031 acres of which 493 acres of new disturbance will be on public land managed by the BLM Elko

Field Office. The proposed amendment includes four primary components: (1) A third tailings facility, which includes burial of an existing tailings facility, (2) a new waste rock facility (Clydesdale), (3) an expansion of the open pit by 296 acres, which will result in an increase of the size of the post-mining pit lake from 800 to 900 acres, and (4) an extension of mining activities until approximately 2015, including mining employment for 4 years as well as an extension of the dewatering program to maintain the water table at its current level for an additional four years. Ancillary disturbance includes a new haul road with culverts over Rodeo Creek, an intermittent drainage, diversion channels for a portion of the Brush Creek, an intermittent drainage, and Rodeo Creek, and accelerated reclamation of the Bazza Waste Rock Facility. A focal point of the SEIS will be the analysis of the cumulative impacts of mining and related actions along the Carlin Trend, including incorporation of the re-analysis of cumulative impacts for the Leeville and South Operations Area Projects currently underway by the Elko Field Office. The BLM is asking the public for information on any issues, including cumulative impacts, relevant to this amendment. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the SEIS. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Danielle Yroz,

Associate Field Manager.

[FR Doc. E7-10162 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-910-07-0777-XX]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: the meeting dates are July 24–25, 2007, at the Convention Center, 302 South Canal Street, Carlsbad, New Mexico, Room 3. the public comment period is scheduled July 24, 2007, from 6–7 p.m. at the Convention Center. the public may present written comments to the RAC. Depending on the number of individuals wishing to comment and time available, oral comments may be limited. The three established RAC working groups may have a later afternoon or an evening meeting.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics include issues on renewable and nonrenewable resources.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505.438.7517.

Dated: May 22, 2007.

Linda S.C. Rundell,

State Director.

[FR Doc. 07-2650 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-050-1430-ER; N-62861; 7-08807]

Notice of Intent To Amend the Las Vegas Resource Management Plan To Relocate a Utility Corridor; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend the Las Vegas Resource Management Plan (RMP) to allow for the relocation of a section of a BLM utility corridor, and to prepare an environmental assessment (EA), pursuant to Section 102 of the National Environmental Policy Act of 1969 (NEPA) to analyze the effects of that action. The BLM proposes to relocate an 11.4-mile length of the half-mile wide BLM Utility Corridor that currently extends across the southern portion of Indian Springs in Clark County, NV. The Corridor as designated overlaps private lands. The amendment would relocate the Corridor further south behind Grandpa Mountain to avoid the private lands.

DATES: The scoping comment period will commence with the publication of this notice and will end 30 days after its publication. Comments should be submitted in writing to the address below and will be accepted throughout the scoping period. Any scoping meetings will be announced 15 days in advance through the local news media, newsletters, and the BLM Web site at <http://www.nv.blm.gov/vegas/default.htm>.

ADDRESSES: Please mail written comments to the Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV, 89130-2301, (fax (702) 515-5023) attention Mark R. Chatterton.

FOR FURTHER INFORMATION CONTACT: Mark R. Chatterton at the Las Vegas Field Office (see address above), telephone (702) 515-5049; e-mail Mark_Chatterton@nv.blm.gov.

SUPPLEMENTARY INFORMATION: The Las Vegas RMP was approved on October 5, 1998. The BLM Utility Corridor in the vicinity of Indian Springs (see Map 2-4 of Volume II of the Las Vegas RMP) was established along an existing power line. The existing BLM Utility Corridor is approximately 2,640 feet wide in the vicinity of Indian Springs. This half-mile wide utility corridor extends northwest from T. 16 S., R. 57 E., sec. 33, M.D.M. along U.S. Highway 95 to the community of Indian Springs where the corridor diverges south around Indian Springs. Approximately one-quarter-mile of the Corridor width extends into private property. This RMP amendment is intended to relocate 11.4 miles of the half-mile wide corridor, centered on Indian Springs, further south behind Grandpa Mountain to avoid abutting any private lands. Beyond Indian Springs, the Corridor continues west parallel to U.S. Highway

95 offset approximately 3,960 feet to the south.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including concerns, or proposed alternatives that should be considered. Please note that public comments and information submitted, including names, addresses, and email addresses of the respondents will be available for public review at the Las Vegas Field Office during regular business hours from 7:30 a.m. to 4:15 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we be able to do so.

BLM will notify the public through local news media and the BLM website when the draft plan amendment and the EA will be available for public comment. Preliminary issues and concerns have been identified by BLM personnel, other agencies, and individuals. Disciplines involved in the planning process will include specialists with expertise in wildlife management, minerals and geology, outdoor recreation, archaeology, lands and realty, and botany. The alternative to the proposed action will be the No Action Alternative (keeping the existing BLM Utility Corridor).

Planning documents, environmental information, and other associated information are available for public review at the Las Vegas Field Office during regular business hours from 7:30 a.m. to 4:15 p.m., Monday through Friday, except holidays.

The authority for the **Federal Register** publication of this Notice of Intent is found at, 43 CFR 1610.2(c).

Dated: April 3, 2007.

Juan Palma,
Field Manager.

[FR Doc. E7-10163 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-926-07-1910-BJ-5REG]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101-4669, telephone (406) 896-5124 or (406) 896-5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine Trust and Tribal land.

The lands we surveyed are:

Principal Meridian, Montana

T. 5 S., R. 32 E.

The plat, in 1 sheet, representing the survey of the meanders of the present left bank of the Big Horn River, through section 18 and a portion of section 19, the medial lines of certain relicted channels of the Big Horn River, through sections 18 and 19, and an island (Tract No. 37), Township 5 South, Range 32 East, Principal Meridian, Montana, was accepted May 10, 2007.

We will place a copy of the plat, in 1 sheet, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in 1 sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: May 22, 2007.

Michael T. Birtles,
Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E7-10240 Filed 5-25-07; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National

Register were received by the National Park Service before May 12, 2007. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW, 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by June 13, 2007.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

CONNECTICUT

Fairfield County

Sanford—Curtis—Thurber House, 71
Riverside Rd., Newtown, 07000557

Middlesex County

Old Saybrook Town Hall and Theater, 300
Main St., Old Saybrook, 07000558

INDIANA

Blackford County

Montpelier Carnegie Library, 301 S. Main St.,
Montpelier, 07000560

Carroll County

ackson Township School Gymnasium, 205 E.
Cumberland St., Camden, 07000564

Fulton County

Woodstock Country Club, 1301 W. 38th St.,
Indianapolis, 07000561

Lake County

Van Buren Terrace Historic District, P≤336–
354 Van Buren St., Gary, 07000565
Wolf, George John, House, 7220 Forest Ave.,
Hammond, 07000563

Madison County

Central Avenue School, (Indiana's Public
Common and High Schools MPS) 2120
Central Ave., Anderson, 07000562

IOWA

Jefferson County

Evergreen Ridge Stock Farm Historic District,
2224 IA S, Fairfield, 07000559

MARYLAND

Carroll County

Slagle—Byers House (CARR-821), 1624
Littlestown Pike, Westminster, 07000566

Howard County

Cherry Grobe, HO-1, 2937 Jennings Chapel
Rd., Woodbine, 07000567

MICHIGAN**Berrien County**

Niles Downtown Historic District, Sycamore,
Main and Cedar bet. Front and 5th, Niles,
07000568

MISSOURI**Cape Girardeau County**

Bainbridge Ferry, (Cherokee Trail of Tears
MPS) Cty Rd. 630, Cape Girardeau,
07000573

Bainridge Ferry Rd., (Cherokee Trail of Tears
MPS) Cty Rd. 623, Cape Girardeau,
07000577

Byrd, Abraham, House, 2832 Ct. Rd. 442,
Jackson, 07000572 Green's Ferry,
(Cherokee Trail of Tears MPS) Address
Restricted, Cape Girardeau, 07000571

Crawford County

Brickey, Peter, House, (Cherokee Trail of
Tears MPS) Cty Rd. 703, Steelville,
07000575

Snelson—Brinker House, (Cherokee Trail of
Tears MPS) MO 8, Steelville, 07000576

Perry County

Eggers and Company General Store, 19 PCR
32B, Farrar, 07000570

Ralls County

Greenlawn Methodist Church and Cemetery,
Jct of MO J and Cty Rd. D, Perry, 07000569

Ripley County

Indian Ford, (Cherokee Trail of Tears MPS)
Address Restricted, Doniphan, 07000574

MONTANA**Yellowstone County**

Ruth, Harold and Marion, House, 111
Emerald Dr., Billings, 07000578

OHIO**Athens County**

Hocking Valley Coal Company Town Historic
District, (Little Cities of Black Diamonds—
Athens, Hocking, Perry Counties MPS)
Jackson Dr. and Arbor Dr., The Plains,
07000579

Cuyahoga County

Forest Hill Realty Sales Office, 2419 Lee
Blvd., Cleveland Heights, 07000580

Franklin County

Stevenson, Joshua, House, 5105 Bowen Rd.,
Canal Winchester, 07000581

Huron County

Norwalk Memorial Hospital, 269 W. Main
St., Norwalk, 07000582

PENNSYLVANIA**Bucks County**

Wrightstown Octagonal Schoolhouse, 2091
Second Street Pike, Wrightstown,
07000586

PUERTO RICO

San Juan Municipality Acueducto de San
Juan, Flamboyant St., San Juan, 07000585
Utuado Municipality Bateyes de Vivi, (Ball
Court/Plaza Sites of Puerto Rico and the

U.S. Virgin Islands MPS) Address
Restricted, Utuado, 07000584
Vega Baja Municipality Paso del Indio Site,
Address Restricted, Vega Baja, 07000583

RHODE ISLAND**Providence County**

rovidence Gas Company Purifier House, 200
Allens Ave., Providence, 07000589

SOUTH DAKOTA**Jackson County**

Pearl Hotel, South Main, Kadoka, 07000587

WISCONSIN**Barron County**

Chicago, St. Paul, Minneapolis and Omaha
Railroad Passsenger Station, 426 Tainter
Ave., Rice Lake, 07000588

A request for removal has been made for
the following resource:

IOWA**Ida County**

Turner Hall, SE corner of Keil and 2nd Sts.
Holstein, 75000691

[FR Doc. E7-10154 Filed 5-25-07; 8:45 am]

BILLING CODE 4312-51-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 337-TA-584]

**In the Matter of Certain Alendronate
Salts and Products Containing Same;
Notice of Commission Decision Not To
Review an Initial Determination
Extending the Target Date for
Completion of the Investigation**

AGENCY: International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that
the U.S. International Trade
Commission has determined not to
review an initial determination ("ID")
(Order No. 9) issued by the presiding
administrative law judge ("ALJ")
extending the target date for completion
of the above-captioned investigation to
February 25, 2008.

FOR FURTHER INFORMATION CONTACT:

Christal A. Sheppard, Esq., Office of the
General Counsel, U.S. International
Trade Commission, 500 E Street, SW.,
Washington, DC 20436, telephone (202)
708-2301. Copies of non-confidential
documents filed in connection with this
investigation are or will be available for
inspection during official business
hours (8:45 a.m. to 5:15 p.m.) in the
Office of the Secretary, U.S.
International Trade Commission, 500 E
Street, SW., Washington, DC 20436,
telephone (202) 205-2000. General
information concerning the Commission

may also be obtained by accessing its
Internet server at <http://www.usitc.gov>.
The public record for this investigation
may be viewed on the Commission's
electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired
persons are advised that information on
this matter can be obtained by
contacting the Commission's TDD
terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This
investigation was instituted on
September 22, 2006, based on a
complaint filed by Merck & Co., Inc., of
Whitehouse Station, New Jersey. The
complaint alleges violations of section
337 of the Tariff Act of 1930 (19 U.S.C.
1337) in the importation into the United
States, the sale for importation, and the
sale within the United States after
importation of certain alendronate salts
and products containing the same by
reason of infringement of claims 1-5 of
United States Patent No. 4,922,007. The
complainant requests that the ITC issue
a permanent limited exclusion order
and a permanent cease and desist order.
The complaint further alleges that an
industry exists as required by
subsection (a)(2) of section 337. The
complaint named CIPLA, Ltd., of
Mumbai, India as respondent in this
investigation.

On January 16, 2007, the ALJ issued
an ID (Order No. 9) extending the target
date of this investigation by five months
to February 25, 2008, and the deadline
for his final initial determination to
October 25, 2007. The Commission has
determined not to review this ID.

The authority for the Commission's
determination is contained in section
337 of the Tariff Act of 1930, as
amended (19 U.S.C. 1337), and in
section 210.42 of the Commission's
Rules of Practice and Procedure (19 CFR
210.42).

By order of the Commission.

Issued: May 22, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-10148 Filed 5-25-07; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE
COMMISSION**

[USITC SE-07-009]

**Government in the Sunshine Act
Meeting Notice**

AGENCY HOLDING THE MEETING: United
States International Trade Commission.

TIME AND DATE: May 31, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street SW.,
Washington, DC 20436, *Telephone:*
(202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA-711 and 713-716 (Second Review)(Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 15, 2007.)

5. Outstanding action jackets: none. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 24, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-10291 Filed 5-25-07; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0009]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Application to Register as an Importer of U.S. Munitions Import List Articles.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with 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 July 30, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Marie Pollard, Firearms and Explosives Import Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Register as an Importer of U.S. Munitions Import List Articles.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 4587 (5330.4). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The purpose of this information collection is to allow ATF to determine if the registrant qualifies to engage in the business of importing a firearm or firearms, ammunition, and the implements of war, and to facilitate the collection of registration fees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 300 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 150 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 22, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7-10211 Filed 5-25-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Semiconductor Test Consortium, Inc.

Notice is hereby given that, on April 3, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Michael Chiu (individual member), Somerville, MA; Octavian Scientific, Portland, Oregon; Wright Williams & Kelly, Inc., Pleasanton, CA; and Zhou Feng (individual member), Hougang, SINGAPORE have been added as parties to this venture. Also, John Cosley (individual member), EL Dorado Hills, CA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc., intends to file additional written notifications disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2003 (68 35913).

The last notification was filed with the Department on January 17, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 15, 2007 (72 FR 12199).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07-2634 Filed 5-25-07; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Office of Justice Programs****[OMB Number 1121-0243]****Agency Information Collection
Activities: Proposed Collection;
Comments Requested**

ACTION: 60-day notice of information collection under review: Grants Management System Online Application.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with 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 July 30, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Bruce Whitlock, (202) 353-1551, Office of The Chief Information Officer, Office of Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or Bruce.W.Whitlock@usdoj.gov.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.,

permitting electronic submission of responses.

Overview of this information

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Grants Management System Online Application.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* There is no form number, Office of The Chief Information Officer, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:* The primary respondents are State, Local or Tribal Governments applying for grants.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* An estimated 7422 grantees will respond to Grants Management System Online Application and on average it will take each of them 15 hours to complete the 4 applications.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 111,330 hours.

If additional information is required contact: Mrs. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 22, 2007.

Lynn Bryant,

*Department Clearance Officer, PRA,
Department of Justice.*

[FR Doc. E7-10209 Filed 5-25-07; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE**Office of Justice Programs****[OMB Number 1121-NEW]****Agency Information Collection
Activities: Proposed Collection;
Comments Requested**

ACTION: 60-day notice of information collection under review: 2007 Survey of Law Enforcement Gang Units.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with 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 July 30, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Matthew Hickman, (202) 353-1631, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or Matthew.Hickman@usdoj.gov.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* New Collection, Survey of Law Enforcement Gang Units, 2007.

(2) *The Title of the Form/Collection:* 2007 Survey of Law Enforcement Gang Units.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* The form number is LEGU-07, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well*

as a Brief *Abstract*: All law enforcement gang units in police agencies with 100 or more officers. This nationwide information collection will identify all large law enforcement agencies (those with 100 or more officers) in which there is a specialized unit staffed with full-time personnel that focuses primarily on gang activity. Information will be gathered about the operations, workload, policies, and procedures of these gang units. The information collected will provide a comprehensive look at the way in which large law enforcement agencies are organized to respond to gang problems and the types of gang prevention tactics that are employed. Summary measures of gang activity in the agencies' jurisdictions will supply some standardized metrics with which to compare jurisdictions.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond*: An estimated 450 law enforcement gang units will complete a 1-hour questionnaire (LEGU-07).

(6) *An Estimate of the Total Public Burden (in hours) Associated with the Collection*: The estimated public burden associated with this collection is 450 hours. (450 data collection forms completed by a commanding officer from each unit * one hour per form = 450 burden hours).

If additional information is required contact: Mrs. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 22, 2007.

Lynn Bryant,

*Department Clearance Officer, PRA,
Department of Justice.*

[FR Doc. E7-10212 Filed 5-25-07; 8:45 am]

BILLING CODE 4410-18-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07-040]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and

Trademark Office, and are available for licensing.

DATES: May 29, 2007.

FOR FURTHER INFORMATION CONTACT:

James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544-0013; fax (256) 544-0258.

NASA Case No. MFS-32407-1:
Oxidizer Compound For Rocket Propulsion;

NASA Case No. MFS-31968-1: Star Identification And Alignment System;

NASA Case No. MFS-32105-1-DIV: Ultrasonic Stir Welding Process And Apparatus.

Dated: May 21, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7-10157 Filed 5-25-07; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07-041]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 29, 2007.

FOR FURTHER INFORMATION CONTACT:

Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A-4, Moffett Field, CA 94035-1000; telephone (650) 604-5104; fax (650) 604-2767.

NASA Case No. ARC-16013-1:
Nanostructure Sensing and Transmission of Gas Data;

NASA Case No. ARC-16014-1:
Controlled Nanostructure Sensing and Transmission of Gas Data.

Dated: May 21, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7-10165 Filed 5-25-07; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07-042]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 29, 2007.

FOR FURTHER INFORMATION CONTACT:

Kaprice L. Harris, Attorney Advisor, Glenn Research Center at Lewis Field, Code 500-118, Cleveland, OH 44135; telephone (216) 433-5754; fax (216) 433-6790.

NASA Case No. LEW-17820-1:
Method For Ultraminiature Fiber Light Source;

NASA Case No. LEW-18072-1:
Benefits Of Acoustic Treatment Over A Rotor Casement For Turbomachinery Applications;

NASA Case No. LEW-17269-2:
Reverse-Bias Protected Solar Array With Integrated ByPass Battery;

NASA Case No. LEW-17945-1:
Portable Unit for Metabolic Analysis.

Dated: May 21, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7-10167 Filed 5-25-07; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07-043]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: May 29, 2007.

FOR FURTHER INFORMATION CONTACT:

Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771-0001;

telephone (301) 286-7351; fax (301) 286-9502.

NASA Case No. GSC-15002-3: Method And Associated Apparatus For Capturing, Servicing, And De-Orbiting Earth Satellites Using Robotics;

NASA Case No. GSC-15002-2: Method And Associated Apparatus For Capturing, Servicing, And De-Orbiting Earth Satellites Using Robotics;

NASA Case No. GSC-15002-4: Method And Associated Apparatus For Capturing, Servicing, And De-Orbiting Earth Satellites Using Robotics;

NASA Case No. GSC-15002-5: Method And Associated Apparatus For Capturing, Servicing, And De-Orbiting Earth Satellites Using Robotics;

NASA Case No. GSC-14952-1: Conformal Gripping Device.

Dated: May 21, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7-10168 Filed 5-25-07; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07-044]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, is the subject of a patent application that has been filed in the United States Patent and Trademark office, and is available for licensing.

DATES: May 29, 2007.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180-200, Pasadena, CA 91109; telephone (818) 354-7770.

NASA Case No. NPO-42965-1: Optical Device, System, And Method Of Generating High Angular Momentum Beams;

NASA Case No. NPO-43524-1: Accelerator System And Method Of Accelerating Particles;

NASA Case No. DRC-006-045: Method For Reducing The Refresh Rate Of Fiber Bragg Grating Sensors.

Dated: May 21, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7-10169 Filed 5-25-07; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07-045]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: May 29, 2007.

FOR FURTHER INFORMATION CONTACT:

Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, Houston, TX 77058-8452; telephone (281) 483-4871; fax (281) 483-6936.

NASA Case No. MSC-23933-1: Low-Impact Mating System;

NASA Case No. MSC-24142-1: Self-Deploying Space Truss;

NASA Case No. MSC-24207-1: Heat Rejection Sublimator;

NASA Case No. MSC-24169-1: Self-Regulating Control Of Parasitic Loads In A Fuel Cell Power System;

NASA Case No. MSC-24106-1: System Comprising Interchangeable Electronic Controllers And Corresponding Methods.

Dated: May 21, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7-10170 Filed 5-25-07; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07-046]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been

filed in the United States Patent and Trademark office, and are available for licensing.

DATES: May 29, 2007.

FOR FURTHER INFORMATION CONTACT:

Linda B. Blackburn, Patent Counsel, Langley Research Center, Mail Code 141, Hampton, VA 23681-2199; telephone (757) 864-3221; fax (757) 864-9190.

NASA Case No. LAR-17494-1: Templated Growth Of Carbon Nanotubes;

NASA Case No. LAR-17229-1: Thin-Film Evaporative Cooling For Side-Pumped Laser;

NASA Case No. LAR-17294-1: Wireless Sensing System Using Open-Circuit, Electrically-Conductive Spiral-Trace Sensor;

NASA Case No. LAR-17295-1: Damage Detection/Locating System Providing Thermal Protection;

NASA Case No. LAR-16874-1: Novel Aromatic/Aliphatic Diamine Derivatives For Advanced Compositions And Polymers.

Dated: May 21, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7-10171 Filed 5-25-07; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-08769]

Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. Sub-1382, for Termination of the License and Unrestricted Release of the Exxonmobil Refining & Supply C.O., Facility in Billings, Montana

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT:

Rachel S. Browder, M.S., Health Physicist, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV, U.S. NRC, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; telephone (817) 276-6552; fax number (817) 860-8188; or by e-mail: rsb3@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to NRC Source Materials License No. SUB-1382. This license is held by ExxonMobil Refining & Supply Co., (the Licensee) for its ExxonMobil Billings Refinery (the Facility) located at 700 ExxonMobil Road, Billings, Montana. Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action by letters dated February 10 and July 6, 2006. The NRC has prepared this Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51).

II. Environmental Assessment

Identification of Proposed Action

The proposed action would release the Facility for unrestricted use. NRC License No. SUB-1382 was issued on September 9, 1980, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to use depleted uranium (DU) catalysts in 84 furnace tubes of a F-551 Reformer Furnace (furnace) at a hydrogen manufacturing plant. Hydrogen carbon gas was passed through the tubes with the rings acting as a catalyst, to produce hydrogen and carbon dioxide. The Licensee used this process from 1980 to 1986.

In 1986, all of the furnace tubes were removed and surveyed. The tubes were replaced with a non-radioactive nickel-molybdenum catalyst. Residual radioactivity was detected at the bottom of some of the furnace tubes that had previously contained the DU catalysts. Those areas were decontaminated and a survey was subsequently performed. The survey results indicated that the residual radioactivity had been reduced to less than 83 becquerels per 100-square centimeter (Bq/100 cm²). The tubes were internally sandblasted and returned to service.

In 2005, the Licensee replaced all of the tubes during furnace maintenance. During the 2005 maintenance, several areas of the furnace were made accessible which were normally not accessible during operations. The Licensee performed surveys based on process knowledge of the system. The highest survey readings were found in the manifold that carried the product from the furnace tubes to the collection basin refractory drum. A pipe elbow was removed from the manifold which

allowed access to the manifold piping near the removal point. Four residual radioactivity measurements were taken upstream of the elbow. The mean of the measurements was 220 Bq/100 cm² (13,200 dpm/100 cm²), with the highest concentration measured as 645 Bq/100 cm² (38,700 dpm/100 cm²). There was no residual contamination that was distinguishable from background detected on the downstream side of the elbow or along the interior of the refractory drum. The elbow was disposed of as radioactive waste and replaced with a new elbow component. The licensee performed 100% surveys on the attachment points upstream of the manifold and downstream of the pipe elbow and did not measure any areas with concentrations exceeding the highest concentration observed in the accessible area of the manifold. Therefore, the NRC staff concluded that the highest measured concentration taken by the Licensee bounded the total activity in the manifold.

Based on process knowledge of the system and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that the furnace component contributed less than 0.01 millisievert/year (mSv/yr) (1 millirem(mrem)/year) and therefore, the Facility meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination. By letters of February 10 and July 6, 2006, the Licensee requested termination of its NRC source materials license.

The Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility and seeks the unrestricted use of its Facility which can be accomplished by the termination of its NRC source materials license.

Environmental Impacts of the Proposed Action

ExxonMobil Refining & Supply Co., is located on a 778 acre site in Billings, Montana. This site is primarily considered a rural area and is bounded by the Montana Rail Link and Interstate-90 on the south side and the Yellowstone River on the north side. The furnace is located within the processing area of the refinery, which is a restricted site. Access to the area is given by permission only, and the area

is actively monitored by security personnel.

The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by developing derived concentration guideline levels (DCGLs) for its Facility. The Licensee considered two site-specific exposure scenarios and two generic exposure scenarios as documented in NUREG-1640, "Radiological Assessments for Clearance of Materials from Nuclear Facilities." The exposure scenarios were analyzed for the critical group to demonstrate that the residual radioactivity remaining on the furnace components at the facility was less than the derived concentration guideline level (DCGL) corresponding to 0.01 mSv/yr (1 mrem/yr). The critical group is the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

The two site-specific scenarios analyzed the potential exposure to: (1) A worker due to continued furnace operation and, (2) an on-site demolition worker who uses a torch-cutter to cut the manifold piping into shorter lengths for disposal or recycling. The two generic scenarios analyzed the exposure to: (1) A resident living near an industrial landfill and who drinks the groundwater contaminated with landfill leachate, and (2) workers handling and processing steel slag for road construction. Based on the evaluation of all four exposure scenarios, the Licensee concluded that the critical group was the workers handling or processing steel slag. Therefore, this scenario was used as the bounding scenario. The calculated DCGL that would result in a dose of 0.01 mSv/yr (1 mrem/yr) to the critical group of a worker handling or processing steel slag was determined to be 400 Bq/100 cm² (24,000 dpm/100 cm²).

Based on surveys performed during 2005, the Licensee calculated that the residual low-level contamination within the furnace components remaining at the facility, were less than the calculated DCGL. There was one small area (100 cm²) inside the manifold that was contaminated at a concentration of 1.6 times the DCGL. The NRC staff determined that the elevated measurement still met the overall release criteria for the facility. The NRC reviewed the Licensee's methodology and proposed DCGL, and concluded that the proposed DCGL is acceptable for use as the release criteria at the Facility. The NRC confirmed the calculations, which substantiated that

the dose to the public would be less than 0.01 mSv/yr (1 mrem/yr) total effective dose equivalent (TEDE).

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG-1496) Volumes 1-3 (ML042310492, ML042320379, and ML042330385). Further, no incidents were recorded involving spills or releases of radioactive material at the Facility. Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC source materials license is in compliance with 10 CFR 20.1402. The NRC has found no other activities in the area that could result in cumulative environmental impacts. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the environmental impacts of the proposed action identified above, impact of alternatives to the proposed action must be considered. Alternatives to the proposed action discussed below are: (1) The no-action alternative, or (2) disposal of the low-level contaminated components at a low-level disposal facility and replace the respective equipment at the Licensee's facility.

1. *No-action alternative:* As an alternative to the proposed action, the staff could leave the license in place by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 40.42(d), requiring that decommissioning of source material facilities be completed and approved by the NRC after licensed activities cease. Additionally, this denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed

action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

2. *Environmental Impact of Alternative 2:* Another alternative to the proposed action is to dispose of the low-level contaminated equipment at a low-level waste disposal facility and to replace the affected equipment at the Licensee's facility. This alternative would increase the environmental impacts as a result of the air quality, noise and additional work force required during the removal and replacement process of the affected furnace components. There should not be an increase in occupational exposure because the cutting and removal of the component was bounded by the scenario for the proposed action, which was less than 1 mrem/yr. The second alternative, to dispose of the low-level contaminated equipment at a low-level disposal facility and replace the respective equipment at the Licensee's facility, is not a cost-effective alternative. The approval of the proposed action is protective of the health and safety of the public and is consistent with as low as reasonably achievable, and is the most cost-effective alternative.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Contacted

NRC provided a draft of the Environmental Assessment to Mr. Roy Kemp of the Montana Department of Public Health and Human Services, Division of Quality Assurance, for review on February 6, 2007. Mr. Kemp declined the opportunity to comment on the draft EA.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

On the basis of this EA, 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 that preparation of an environmental impact statement is not warranted.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NRC, "Radiological Assessment for Clearance of Materials from Nuclear Facilities," NUREG-1640, Volume 1, June 2003 (ML032250178).

2. Title 10 Code of Federal Regulations, Part 20, Subpart K, "Waste Disposal."

3. Title 10 Code of Federal Regulations, Part 40, "Domestic Licensing of Source Material."

4. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

5. ExxonMobil, "Radiological Survey & Dose Modeling for Termination of License SUB-1382" February 10, 2006, (ML060520239).

6. ExxonMobil, "Justification for Free Release of F-551 Furnace in Support of License Termination" July 6, 2006, (ML061910360).

7. Flanders, Scott D., Technical Review of Title 10 of the Code of Federal Regulations Part 20.2002 Request by ExxonMobil, Refining & Supply Company, October 6, 2006, (ML062760642).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. These documents may also be viewed electronically on public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas, this 21st day of May 2007.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

*Chief, Fuel Cycle and Decommissioning
Branch, Division of Nuclear Materials Safety,
Region IV.*

[FR Doc. E7-10260 Filed 5-25-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

NUREG-1556, Volume 21, “Consolidated Guidance About Materials Licenses Program-Specific Guidance About Possession Licenses for Production of Radioactive Material Using an Accelerator”; Draft Guidance Document for Comment

AGENCY: Nuclear Regulatory
Commission.

ACTION: Notice of availability for public
comment.

SUMMARY: The Nuclear Regulatory
Commission (NRC) has amended its
regulations to include jurisdiction over
certain radium sources, accelerator-
produced radioactive materials, and
certain naturally occurring radioactive
material, as required by the Energy
Policy Act of 2005 (EPAct), which was
signed into law on August 8, 2005. The
EPAct expanded the Atomic Energy Act
of 1954 definition of byproduct material
to include these radioactive materials.
Subsequently, these radioactive
materials were placed under NRC's
regulatory authority. NRC is revising its
regulations to provide a regulatory
framework that includes these newly
added radioactive materials. See SECY-
07-0062, “Final Rule: Requirements for
Expanded Definition of Byproduct
Material,” dated April 3, 2007, for
information on that rulemaking.

Two licensing guidance documents in
the NUREG-1556 series are being
revised along with these new
regulations to provide guidance related
to the new requirements: (1) NUREG-
1556, Volume 13, Revision 1,
“Consolidated Guidance About
Materials Licenses—Program-Specific
Guidance About Commercial
Radiopharmacy Licenses,” and (2)
NUREG-1556, Volume 9, Revision 2,
“Consolidated Guidance About
Materials Licenses—Program Specific
Guidance About Medical Use Licenses.”
A new volume in the NUREG-1556
series is also being developed to address
the production of radioactive material
using an accelerator. This NUREG is
entitled, “NUREG-1556, Volume 21,
“Consolidated Guidance About
Materials Licenses—Program-Specific
Guidance About Possession Licenses for

Production of Radioactive Material
Using an Accelerator.”

This notice is announcing the
availability of one of these three
licensing guidance documents for
public comment: NUREG-1556, Volume
21. NUREG-1556, Volume 13, Revision
1, and NUREG-1556, Volume 9,
Revision 2, will be available for public
comment in the near future by separate
notices in the **Federal Register**.

DATES: Please submit comments by June
28, 2007. Comments received after this
date will be considered if practical to do
so, but the NRC staff is able to ensure
consideration only for those comments
received on or before this date.

ADDRESSES: Volume 21, “Consolidated
Guidance About Materials Licenses—
Program-Specific Guidance About
Possession Licenses for Production of
Radioactive Material Using an
Accelerator” is available for inspection
and copying for a fee at the NRC's
Public Document Room (PDR), Public
File Area O-1F21, One White Flint
North, 11555 Rockville Pike, Rockville,
Maryland. Publicly available documents
created or received at the NRC after
November 1, 1999, are available
electronically at the NRC's Electronic
Reading Room at [http://www.nrc.gov/
NRC/ADAMS/index.html](http://www.nrc.gov/NRC/ADAMS/index.html). From this
site, the public can gain entry into the
NRC's Agencywide Document Access
and Management System (ADAMS),
which provides text and image files of
the NRC's public documents. The
ADAMS Accession Number for
NUREG-1556, Volume 21 is
ML071410035. If you do not have access
to ADAMS or if there are problems in
accessing the documents located in
ADAMS, contact the NRC PDR
Reference staff at 1-800-397-4209, 301-
415-4737, or by e-mail to pdr@nrc.gov.
The document will also be posted on
NRC's public Web site at: [http://
www.nrc.gov/reading-rm/doc-
collections/nuregs/staff/sr1556/](http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/) on the
“Consolidated Guidance About
Materials Licenses (NUREG-1556)” Web
site page.

A free single copy, to the extent of
supply, may be requested by writing to
Office of the Chief Information Officer,
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Washington, DC 20555-0001; facsimile:
301-415-2289; e-mail:
Distribution@nrc.gov.

Please submit comments to Chief,
Rulemakings, Directives, and Editing
Branch, Division of Administrative
Services, Office of Administration, U.S.
Nuclear Regulatory Commission,
Washington, DC, 20555-0001. You may

also deliver comments to 11545
Rockville Pike, Rockville, MD, between
7:30 a.m. and 4:30 p.m. Federal
workdays, or by e-mail to:
nrcprep@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Torre Taylor, Division of
Intergovernmental Liaison and
Rulemaking, Office of Federal and State
Materials and Environmental
Management Programs, U.S. Nuclear
Regulatory Commission, Washington,
DC 20555-0001, telephone (301) 415-
7900, e-mail: tmt@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the President
signed into law the EPAct. Among other
provisions, Section 651(e) of the EPAct
expanded the definition of byproduct
material as defined in Section 11e. of
the Atomic Energy Act of 1954 (AEA),
placing additional byproduct material
under the NRC's jurisdiction, and
required the Commission to provide a
regulatory framework for licensing and
regulating these additional byproduct
materials.

Specifically, Section 651(e) of the
EPAct expanded the definition of
byproduct material by: (1) adding any
discrete source of radium-226 that is
produced, extracted, or converted after
extraction, before, on, or after the date
of enactment of the EPAct for use for a
commercial, medical, or research
activity; or any material that has been
made radioactive by use of a particle
accelerator and is produced, extracted,
or converted after extraction, before, on,
or after the date of enactment of the
EPAct for use for a commercial,
medical, or research activity (Section
11e.(3) of the AEA); and (2) adding any
discrete source of naturally occurring
radioactive material, other than source
material, that the Commission, in
consultation with the Administrator of
the Environmental Protection Agency
(EPA), the Secretary of the Department
of Energy (DOE), the Secretary of the
Department of Homeland Security
(DHS), and the head of any other
appropriate Federal agency, determines
would pose a threat similar to the threat
posed by a discrete source of radium-
226 to the public health and safety or
the common defense and security; and
is extracted or converted after extraction
before, on, or after the date of enactment
of the EPAct for use in a commercial,
medical, or research activity (Section
11e.(4) of the AEA).

NRC is revising its regulations to
provide a regulatory framework that
includes these newly added radioactive
materials. See SECY-07-0062, “Final

Rule: Requirements for Expanded Definition of Byproduct Material," dated April 3, 2007, for information on that rulemaking.

Discussion

As part of the rulemaking effort to address the mandate of the EPAct, the NRC also evaluated the need to revise certain licensing guidance to provide necessary guidance to applicants in preparing license applications to include the use of the newly added radioactive materials as byproduct material. Two NUREG-1556 documents are being revised to provide additional guidance to licensees: (1) NUREG-1556, Volume 13, Revision 1, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Commercial Radiopharmacy Licenses," and (2) NUREG-1556, Volume 9, Revision 2, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Medical Use Licenses." Additionally, a new NUREG-1556 volume is also being developed to address production of radioactive material using an accelerator. This NUREG-1556 volume is entitled: Volume 21, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Possession Licenses for Production of Radioactive Material Using an Accelerator."

At this time, NRC is announcing the availability for public comment NUREG-1556, Volume 21, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Possession Licenses for Production of Radioactive Material Using an Accelerator." The remaining two NUREG-1556 volumes, (1) NUREG-1556, Volume 13, Revision 1, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Commercial Radiopharmacy Licenses," Draft Report for Comment, and (2) NUREG-1556, Volume 9, Revision 2, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Medical Use Licenses," will be available for public comment in the near future.

NUREG-1556, Volume 21, provides guidance on preparing a license application for the production of radioactive material using an accelerator(s). It also includes the criteria that NRC staff will use in evaluating license applications for this use. This document includes guidance that is specific to the activities that take place once radioactive materials are produced by the accelerator, which include material in the target and associated activation products. This document does not include information

for the operation of the accelerator as NRC does not regulate the accelerator or its operation.

Volume 21 provides guidance related to each of the items that applicants should address in their materials license application, which includes items such as radioactive material that will be produced and its purpose; information on individuals responsible for the radiation safety program; training for individuals that will handle radioactive material; description of the facilities and equipment used; and the radiation safety program. There are some aspects of producing radioactive materials using an accelerator that are unique to this type of use and are discussed in the document. Some examples include training and experience for individuals who will handle radioactive material during the maintenance and repair of the accelerator and other associated equipment, and guidance on the facility design and type of equipment needed to transfer and handle large radioactive materials with high activities. This document will also include guidance on the production and noncommercial distribution of positron emission tomography radioactive drugs to consortium members.

Dated at Rockville, Maryland, this 22nd day of May 2007.

For the Nuclear Regulatory Commission,
Dennis K. Rathbun,
Division Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7-10261 Filed 5-25-07; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC-11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC-11) will hold a meeting on Sunday, June 10, 2007, from 1 p.m. to 4:30 p.m. The meeting will be closed to the public from 1 p.m. to 3 p.m. and opened to the public from 3 p.m. to 4:30 p.m.

DATES: The meeting is scheduled for June 10, 2007, unless otherwise notified.

ADDRESSES: The meeting will be held at the Marriott Marquis Hotel, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT:

Laura Hellstern, DFO for ITAC-11 at (202)482-3222, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be considered.

- Overview of the structure/existence of trade advisory organizations, programs, and systems within Latin American governments, that assist and/or give voice to the needs of small and medium sized businesses in Latin America. Overview will be provided by Department of Commerce Commercial Officers and Trade Ministers from Latin American Countries.

Tiffany M. Moore,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. E7-10245 Filed 5-25-07; 8:45 am]

BILLING CODE 3190-W7-P

OFFICE OF PERSONNEL MANAGEMENT

[SF 2802 and SF 2802A]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2802, Application for Refund of Retirement Deductions (Civil Service Retirement System) is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. SF 2802A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

Approximately 3,741 SF 2802 forms are completed annually. We estimate it takes approximately one hour to complete the form. The annual estimated burden is 3,741 hours. Approximately 3,389 SF 2802A forms are processed annually. We estimate it takes approximately 15 minutes to complete this form. The annual burden

is 847 hours. The total annual burden is 4,588 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via e-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, OPM Desk Offices OMB.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Tricia Hollis,
Chief of Staff.

[FR Doc. 07-2632 Filed 5-25-07; 8:45 am]

BILLING CODE 6325-38-P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 92-19

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 92-19, Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS), is used by separated employees to apply for either

a deferred or a postponed FERS annuity benefit.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1,693 forms are completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual estimated burden is 1,693 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via e-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Tricia Hollis,
Chief of Staff.

[FR Doc. E7-10202 Filed 5-25-07; 8:45 am]

BILLING CODE 6325-38-P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for the Extension of a Currently Approved Information Collection: SF 2809

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to

the Office of Management and Budget (OMB) a request for the extension of a currently approved information collection. SF 2809, Health Benefit Election Form, is used by Federal employees, annuitants other than those under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) [including individuals receiving benefits from the Office of Workers' Compensation Programs], former spouses eligible for benefits under the Spouse Equity Act of 1984, and separated employees and former dependents eligible to enroll under the Temporary Continuation of Coverage provisions of the FEHB law (5 U.S.C. 8905a). A different form (OPM 2809) is used by CSRS and FERS annuitants whose health benefit enrollments are administered by OPM's Retirement Services Program.

Approximately 18,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 9,000 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via e-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Jay Fritz, Insurance Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.
Tricia Hollis,
Chief of Staff.
 [FR Doc. E7-10203 Filed 5-25-07; 8:45 am]
 BILLING CODE 6325-38-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of May 29, 2007:

A Closed Meeting will be held on Wednesday, May 30, 2007 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, May 30, 2007 will be:

Formal orders of investigations
 Institution and settlement of injunctive actions
 Institution and settlement of administrative proceedings of an enforcement nature
 Resolution of litigation claims
 Regulatory matter regarding a financial institution;
 Adjudicatory matters; and
 Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: May 23, 2007.

Nancy M. Morris,
Secretary.

[FR Doc. E7-10288 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55794; File No. SR-Amex-2007-45]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Generic Listing Standards for Index-Linked Securities and Adopt New Generic Listing Standards for Commodity-Linked Securities and Currency-Linked Securities

May 22, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 4, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On May 9, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt generic listing standards for commodity-linked securities ("Commodity-Linked Securities") and currency-linked securities ("Currency-Linked Securities") under new Sections 107E and 107F of the *Amex Company Guide*, respectively, and make changes with respect to trading halts and trading rules for index-linked securities ("Index-Linked Securities") under Section 107D of the *Amex Company Guide*. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and <http://www.amex.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enable the listing and trading of Commodity-Linked Securities and Currency-Linked Securities pursuant to Rule 19b-4(e) under the Act.³ The Exchange proposes to add new Sections 107E and 107F to the *Amex Company Guide* to provide generic listing standards for Commodity-Linked Securities and Currency-Linked Securities, respectively. In addition, the Exchange proposes to make changes to Section 107D with respect to trading halts and rules governing the trading of Index-Linked Securities.⁴

Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,⁵ if the Commission has approved, pursuant to Section 19(b) of the Act,⁶ the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for such product class.⁷ Amex is proposing to adopt generic listing standards under new Sections 107E and 107F of the *Company Guide* pursuant to which it will be able to trade Commodity-Linked Securities and Currency-Linked Securities⁸ without individual Commission approval of each such product pursuant to Section 19(b)(2) of the Act.⁹ The Exchange represents that within five (5) business days after commencement of trading of a

³ 17 CFR 240.19b-4(c).

⁴ E-mail from Jeffrey P. Burns, Associate General Counsel, Amex, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated May 21, 2007 (confirming the scope of the proposed rule change).

⁵ 17 CFR 240.19b-4(c)(1).

⁶ 17 U.S.C. 78s(b).

⁷ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (S7-13-98).

⁸ Commodity-Linked Securities and Currency-Linked Securities are similar to Index-Linked Securities. See Section 107D of the *Amex Company Guide*.

⁹ 15 U.S.C. 78s(b)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commodity-Linked Security or Currency-Linked Security in reliance on Section 107E and 107F of the Amex Company Guide, respectively, the Exchange will file a Form 19b-4(e).¹⁰

General Issuer and Issue Eligibility

The general criteria set forth in Section 107D of the Company Guide for Index-Linked Securities will equally apply to Commodity-Linked Securities and Currency-Linked Securities, respectively, in proposed Sections 107E(a)–(f) and 107F(a)–(f).¹¹ As with Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities will not give the holder thereof any right to receive a portfolio component or any other ownership right or interest in the portfolio or underlying components comprising the Commodity Reference Asset¹² or Currency Reference Asset,¹³ as applicable.

The Exchange will apply the following requirements to all issuers of Commodity-Linked and Currency-Linked Securities:

- The issuer will be expected to have a minimum tangible net worth of \$250,000,000. In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of \$150,000,000 and (ii) not to issue index-linked note offerings (including Commodity-Linked and Currency-Linked Securities), the original issue price of which, combined with all the issuer's other index-linked note offerings listed on a national securities exchange, exceeds 25% of the issuer's tangible net worth at the time of issuance; and
- The issuer must be in compliance with Rule 10A-3 under the Act.¹⁴

The Exchange will also apply the following requirements to each issue of Commodity-Linked and Currency-Linked Securities:

- The issue must have a minimum public distribution of at least one million trading units and a minimum of 400 public shareholders. This minimum

public distribution and minimum public shareholders requirement will not be applicable to an issue traded in thousand dollar denominations. In addition, the minimum public shareholders requirement will not apply if the securities are redeemable at the option of the holders thereof on at least a weekly basis;

- The issue must have a principal amount/aggregate market value of not less than \$4 million;
- The issue must have a term of at least one year, but not greater than thirty years;
- The issue must be the non-convertible debt of the issuer; and
- The issue must not base its payment at maturity on a multiple of the negative performance of the Commodity Reference Asset or Currency Reference Asset, as applicable, although the payment at maturity may or may not provide for a multiple of the positive performance of such Commodity Reference Asset or Currency Reference Asset.

Commodity-Linked Securities

Commodity-Linked Securities will also be subject to the specific criteria proposed in new Section 107E of the *Company Guide* for initial and continued listing. Commodity-Linked Securities will be securities that provide for the payment at maturity of a cash amount based on the performance of the Commodity Reference Asset.¹⁵ Such securities may or may not provide for the repayment of the original principal investment amount.

An issue of Commodity-Linked Securities must meet either of the following initial listing standards:

- The Commodity Reference Asset to which the Commodity-Linked Security is linked must have been reviewed and approved for the trading of Commodity-Based Trust Shares, options, or other derivatives by the Commission under Section 19(b)(2) of the Act¹⁶ and rules thereunder, and the conditions set forth in the Commission's order approving such Commodity Reference Asset, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for each component of a Commodity Reference Asset must be derived from a market (1) that is a SRO member or affiliate member of the Intermarket Surveillance Group ("ISG") or (2) with which the Exchange has a comprehensive surveillance sharing agreement. Pricing information for gold and silver bullion,

however, may be derived from the London Bullion Market Association in connection with Commodity-Linked Securities, without regard to provisions (1) and (2) above.

In addition, an issue of Commodity-Linked Securities must also meet the following initial listing criteria:

- The value of the Commodity Reference Asset must be calculated and widely disseminated on at least a 15-second basis during the time the corresponding Commodity-Linked Securities trade on the Exchange; and
- In the case of Commodity-Linked Securities that are periodically redeemable, the indicative value of the subject Commodity-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time such Commodity-Linked Securities trade on the Exchange.

The Exchange submits that it will commence delisting or removal proceedings if any of the foregoing initial listing criteria are not continuously maintained. However, a particular issue of Commodity-Linked Securities will not be delisted for a failure to have comprehensive surveillance sharing agreements in place if the underlying Commodity Reference Asset has at least 10 components, and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Commodity Reference Asset. The Exchange will also commence delisting or removal proceedings:

- If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than \$400,000;
- The value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of Section 107E of the *Company Guide*; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Currency-Linked Securities

Currency-Linked Securities will also be subject to the specific criteria in proposed new Section 107F of the *Company Guide* for initial and continued listing. Currency-Linked Securities will be securities that provide for the payment at maturity of a cash amount based on the performance of the

¹⁰ See 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

¹¹ See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001) (approving the general listing criteria for Index-Linked Securities).

¹² Proposed Section 107E defines "Commodity Reference Asset" to be one or more commodities, commodity futures, options or other commodity derivatives, Commodity-Based Trust Shares (as defined in Amex Rule 1200A), or a basket or index of any of the foregoing.

¹³ Proposed Section 107F defines "Currency Reference Asset" to be one or more currencies, commodity futures, options or other commodity derivatives, Currency Trust Shares (as defined in Amex Rule 1200B), or a basket or index of any of the foregoing.

¹⁴ 17 CFR 240.10A-3.

¹⁵ See *supra* note 12.

¹⁶ 15 U.S.C. 78s(b)(2).

Currency Reference Asset.¹⁷ Such securities may or may not provide for the repayment of the original principal investment amount.

An issue of Currency-Linked Securities must meet either of the following initial listing standards:

- The Currency Reference Asset to which the Currency-Linked Security is linked must have been reviewed and approved for the trading of Currency Trust Shares, options, or other derivatives by the Commission under Section 19(b)(2) of the Act¹⁸ and rules thereunder, and the conditions set forth in the Commission's order approving such Currency Reference Asset, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for each component of the Currency Reference Asset must be (1) the generally accepted spot price for the currency exchange rate in question or (2) derived from a market (a) which is an ISG SRO member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement and (b) which is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

In addition, an issue of Currency-Linked Securities must also meet the following initial listing criteria:

- The value of the Currency Reference Asset must be calculated and widely disseminated on at least a 15-second basis during the time the corresponding Currency-Linked Securities trade on the Exchange; and
- In the case of Currency-Linked Securities that are periodically redeemable, the indicative value of the subject Currency-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time such Currency-Linked Securities trade on the Exchange.

The Exchange submits that it will commence delisting or removal proceedings if any of the foregoing initial listing criteria are not continuously maintained. An issue of Currency-Linked Securities will not be delisted, however, for a failure to have comprehensive surveillance sharing agreements in place if the underlying Currency Reference Asset has at least 10 components, and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Currency Reference Asset. The Exchange will also

commence delisting or removal proceedings under any of the following circumstances:

- If the aggregate market value or the principal amount of the Currency-Linked Securities publicly held is less than \$400,000;
- If the value of the Currency Reference Asset is no longer calculated or available and a new Currency Reference Asset is substituted, unless the new Currency Reference Asset meets the requirements of Section 107F of the *Company Guide*; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Trading Halts

Proposed Sections 107E(h)(3) and 107F(h)(3) state that if the indicative value, the Commodity Reference Asset value, or Currency Reference Asset value, as the case may be, applicable to a series of Commodity-Linked or Currency-Linked Securities, is not being calculated and disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Similarly, with respect to the proposed changes in Section 107D, if the value of the underlying index is not being disseminated as required, the Exchange may halt trading of Index-Linked Securities during the day on which the interruption first occurs. If such interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Firewall Procedures

Proposed Sections 107E(i) and 107F(i) state that if an underlying index (or group of commodities or currencies, as the case may be) is maintained by a broker-dealer, the broker-dealer will be required to erect a "firewall" around the personnel responsible for the maintenance of such underlying index or who have access to information concerning changes and adjustments to the underlying index, and the underlying index will be calculated by a third party who is not a broker-dealer. In addition, any advisory committee, supervisory board, or similar entity that advises a Reporting Authority (as defined in Amex Rule 1000A-AEMI(b)(3)) or that makes decisions regarding the underlying index or portfolio composition, methodology,

and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable underlying index or portfolio. The Exchange submits that Amex Rules 1203A and 1203B, which impose certain restrictions on specialist firms and their affiliates, would also apply to the trading of Commodity-Linked and Currency-Linked Securities, respectively.

Surveillance

Proposed Sections 107E(j) and 107F(j) state that the Exchange will implement written surveillance procedures for Commodity-Linked and Currency-Linked Securities, respectively, including adequate comprehensive surveillance sharing agreements, as applicable. The Exchange represents that it will closely monitor activity in the Commodity-Linked and Currency-Linked Securities to identify and deter any potential improper trading activity. In addition, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of such securities. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, options, and exchange-traded funds. The Exchange states that it has developed procedures to closely monitor activity in such securities and the underlying indexes, instruments, and/or portfolios to identify and deter potential improper trading activity. To the extent applicable, the Exchange will also be able to obtain trading and beneficial holder information from the primary trading markets for the components comprising the Commodity Reference Assets or Currency Reference Assets, as the case may be, either pursuant to bilateral information sharing agreements with those markets or because those markets are SRO or affiliate members of ISG.

Applicable Exchange Rules

Proposed Sections 107D(k), 107E(k), and 107F(k) state that Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities, respectively, traded on the Exchange's equity trading floor will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules and the Exchange's regular trading hours (9:30 a.m. to 4 p.m. Eastern Time) will apply to transactions in such securities. Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities listed and traded as bond or debt securities will be subject to the

¹⁷ See *supra* note 13.

¹⁸ 15 U.S.C. 78s(b)(2).

rules applicable to bond or debt securities.

Information Circular

Upon evaluating the nature and complexity of a Commodity-Linked or Currency-Linked Security, as the case may be, the Exchange represents that it will prepare and distribute, if appropriate, an Information Circular to member organizations describing each product. Accordingly, the particular structure and corresponding risks of such securities will be highlighted and disclosed. The Information Circular will also disclose whether such securities will trade as equity or debt subject to appropriate trading rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, margin, and customer suitability requirements.¹⁹ In addition, the Information Circular will reference the requirement that Amex member organizations must deliver a prospectus to investors purchasing newly issued Commodity-Linked or Currency-Linked Securities, as the case may be, prior to or concurrently with the confirmation of a transaction.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,²⁰ in general, and Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

¹⁹ The Exchange states that the Information Circular will detail the Exchange's suitability rule that requires each member organization recommending a transaction in such securities: (1) To determine that such transaction is suitable for the customer and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. See Amex Rule 411.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-45 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-45. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-45 and should be submitted on or before June 19, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder

applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,²³ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

Generic Listing Standards for Commodity-Linked and Currency-Linked Securities

To list and trade Commodity-Linked and Currency-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act²⁴ and Rule 19b-4 thereunder.²⁵ However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) under the Act if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Commodity-Linked Securities and Currency-Linked Securities pursuant to Rule 19b-4(e) fulfill these requirements.

The Exchange's ability to rely on Rule 19b-4(e) to list and trade Commodity-Linked and Currency-Linked Securities that meet the requirements of proposed Sections 107E and 107F of the *Company Guide*, respectively, should reduce the time frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

The Commission has previously approved generic listing standards that are substantially similar to Amex's

²² In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78s(b)(1).

²⁵ 17 CFR 240.19b-4.

proposal.²⁶ The Commission believes that the proposed generic listing standards for Commodity-Linked and Currency-Linked Securities and the proposed changes to the generic listing standards for Index-Linked Securities should fulfill the intended objective of Rule 19b-4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.²⁷

Listing and Trading Index-Linked, Commodity-Linked, and Currency-Linked Securities

Taken together, the Commission finds that Amex's proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked, Commodity-Linked, and Currency-Linked Securities listed pursuant to Rule 19b-4(e) on the Exchange. All such securities listed under their respective generic standards will be subject to the full panoply of Amex rules and procedures that currently govern the trading of equity or debt securities on the Exchange, as applicable.

As set forth more fully above, Amex has proposed size, earnings, and minimum tangible net worth requirements for each issuer, as well as minimum public distribution and shareholder, principal amount/aggregate market value, and minimum term thresholds for each issuance of Commodity-Linked and Currency-Linked Securities. In addition, the Exchange's proposal requires that the assets (or their derivatives) underlying such securities must either have been reviewed and approved for trading by the Commission or their pricing information must be derived from certain required sources. These requirements are designed to ensure that the trading markets for the underlying components are adequately capitalized and sufficiently liquid. The Commission believes that these requirements should minimize the potential for manipulation.

The Commission also finds that, in the case of Commodity-Linked and Currency-Linked Securities with at least

10 components, the requirement that at least 90% of the dollar weight of the corresponding Commodity Reference Asset or Currency Reference Asset, as the case may be, must have comprehensive surveillance sharing agreements with the Exchange should permit the Exchange to identify potential trading and other violations of its rules. The Commission believes that such a requirement will contribute to the transparency of the Commodity Reference Asset or Currency Reference Asset. The Commission also notes that, by requiring pricing information for the relevant components to be readily available, the proposed listing standards of Sections 107E and 107F of the *Company Guide* should help ensure a fair and orderly market for Commodity-Linked and Currency-Linked Securities listed and traded pursuant to Rule 19b-4(e).

The Exchange has also developed delisting criteria that will permit it to suspend trading of Commodity-Linked and Currency-Linked Securities in circumstances that make further dealings in such products inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each such security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the underlying index for Index-Linked Securities, or the applicable Commodity Reference Asset or Currency Reference Asset or, in the case of Commodity-Linked and Currency-Linked Securities that are periodically redeemable, the corresponding indicative value, is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption and will commence delisting proceedings.

Surveillance

The Commission notes that any Commodity-Linked and Currency-Linked Securities approved for listing and trading would be subject to the Exchange's existing surveillance procedures governing equities, options, and exchange-traded funds, as well as procedures the Exchange represents it has developed to closely monitor activity in such securities and the underlying indexes and/or portfolios. The Exchange also has represented that its surveillance procedures are adequate to properly monitor the trading of

Commodity-Linked and Currency-Linked Securities listed pursuant to the proposed generic listing standards and that it will be able to obtain necessary trading and beneficial holder information from the primary trading markets for the underlying components, either pursuant to bilateral information sharing agreements with those markets or because those markets are full or affiliate members of ISG.

Information Memorandum

The Exchange has represented that it will distribute, as appropriate, an Information Memorandum to members describing the product, the specific structure of the product, and the corresponding risks of Commodity-Linked and Currency-Linked Securities. In addition, the Information Memorandum will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Commodity-Linked and Currency-Linked Securities to customers and the prospectus delivery requirements. The Memorandum will also identify and describe the applicable Exchange trading rules governing such securities.

Firewall Procedures

The Exchange has further represented that if the underlying index is maintained by a broker-dealer, such broker-dealer will establish a "firewall" around personnel responsible for the maintenance of such underlying index or who have access to information concerning changes and adjustments to the underlying index. As an added measure, a third-party who is not a broker-dealer will be required to calculate the value of the Commodity Reference Asset or Currency Reference Asset, as applicable. In addition, the Exchange has stated that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority (as defined in Amex Rule 1000A-AEMI(b)(3)) or that makes decisions regarding the underlying index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable underlying index or portfolio. With respect to trading on Amex, the Exchange has stated that, with respect to any issue of Commodity-Linked or Currency-Linked Securities, specialists and their affiliates will be restricted from making markets in and trading the components underlying the Commodity Reference Asset or Currency

²⁶ See Securities Exchange Act Release No. 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (approving generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities).

²⁷ The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular commodity- or currency-linked product.

Reference Asset, as the case may be, or any derivative instruments thereof.

Acceleration

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1 thereto, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Exchange requested accelerated approval of the proposal to facilitate the prompt listing and trading of Commodity-Linked Securities and Currency-Linked Securities based on the specified criteria of proposed Sections 107E and 107F of the Company Guide. The Commission notes that the Exchange's proposed changes to the generic listing standards for Index-Linked Securities and the proposed generic listing standards for Commodity-Linked and Currency-Linked Securities are based on previously approved listing standards for such securities²⁸ and presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Commodity-Linked Securities and Currency-Linked Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,²⁹ to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-Amex-2007-45), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-10195 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55786; File No. SR-CBOE-2007-15]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Amend CBOE's Membership Application Procedures

May 18, 2007.

I. Introduction

On February 14, 2007, 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 amend membership application procedures. The proposed rule change was published for comment in the **Federal Register** on April 10, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend Rule 3.9, entitled "Application Procedures and Approval or Disapproval," which requires any person applying to the Exchange to (i) have completed the Exchange's Member Orientation Program ("Orientation Program") and (ii) passed an Exchange Trading Member Qualification Exam ("Qualification Exam"). A person who fulfills these requirements but does not possess an authorized trading function for more than one year must complete the Orientation Program and pass the Qualification Exam again before becoming a member.⁴ If that person is not a member of the exchange for up to one year, he can submit an application to become a member again without having to complete the orientation program and the exam again.

CBOE proposed that PAR Officials and Order Book Officials ("OBOs"), as well as others acting in a similar capacity (*i.e.*, an exchange trading floor capacity), be included in the rule, because the functions they perform as

exchange employees are similar to the functions performed by members who are deemed to possess an authorized trading function.

In 2005, CBOE amended its rules to remove a Designated Primary Market-Maker's ("DPM's") obligation to act as an agent or Floor Broker in its allocated securities on the Exchange.⁵ At the same time, the Exchange designated a PAR Official to be responsible for handling certain orders in the same manner as they were formerly handled by the DPM.⁶ Specifically, the PAR Official is an Exchange employee or independent contractor designated by the Exchange to be responsible for (i) operating the PAR workstation; (ii) when applicable, maintaining the customer limit order book for the assigned option classes;⁷ and (iii) effecting proper executions of orders placed with him.

In addition to PAR Officials, the Exchange also employs OBOs whose responsibilities include, among other things, (i) maintaining the book with respect to the classes of options assigned to them, (ii) effecting proper executions of orders placed with them, (iii) displaying bids and offers, and (iv) monitoring the market for the classes of options assigned to them.

The Exchange may employ a former member, who acted in the capacity of a DPM before CBOE established the PAR Official position, to act on behalf of the Exchange in a trading floor capacity. If these PAR Officials and OBOs become members of the Exchange after working for the Exchange in a trading floor capacity for longer than one year, these individuals would have to complete the Orientation Program and pass the Qualification Exam again under current Rule 3.9, since it would have been longer than one year since they had been acting in a capacity that has an authorized trading function.

These PAR Officials and OBOs, while acting in an Exchange trading floor capacity, are ultimately acting in the same capacity as when they were operating in a DPM capacity before the CBOE established the PAR Official trading floor capacity. Therefore, the Exchange believes it is appropriate to amend its procedures to allow for the one-year period under CBOE Rule 3.9(g) to be applied to an individual who has acted in an Exchange trading floor capacity.

⁵ See Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (SR-CBOE-2005-46).

⁶ *Id.*

⁷ This provision will not apply to option classes that are on the CBOE's Hybrid System.

²⁸ See *supra* note 26.

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55570 (April 2, 2007), 72 FR 17961 (April 10, 2007) (the "Notice").

⁴ An individual "possesses an authorized trading function" if he is approved to act as a market maker, floor broker, remote market maker ("RMM") or nominee or person registered for an RMM or e-DPM organization.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the amendment to CBOE's rules to permit persons who had been acting in an exchange trading floor capacity within the last year to become members without completing the Orientation Program and passing the Qualification Examination again is a reasonable expansion of the exception to the rule. The functions performed by such persons are similar to those performed by members possessing an authorized trading function.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2007-15), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-10205 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55792, File No. SR-MSRB-2006-10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to Rule G-27, on Supervision, Rule G-8, on Recordkeeping, and Rule G-9, on Record Retention

May 22, 2007.

On November 24, 2006, the Municipal Securities Rulemaking Board ("MSRB"), 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 consisting of amendments to Rule G-27, on supervision, and the related recordkeeping and record retention requirements of Rules G-8 and G-9. The MSRB proposed that the amendments become effective six months after Commission approval of the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on December 20, 2006.³ The Commission received two comment letters regarding the proposal.⁴ On May 7, 2007, the MSRB filed a response to the comment letters.⁵ This order approves the proposed rule change.

The proposed amendments to Rule G-27 incorporate most of the NASD requirements contained in its Rules 3010 (Supervision) and 3012 (Supervisory Control System) in order to promote regulatory consistency and make these requirements specifically applicable to the municipal securities activities of securities firms and bank dealers. The MSRB intends generally that the provisions of Rule G-27 be read consistently with the analogous NASD provisions, unless the MSRB specifically indicates otherwise. The MSRB believes that adopting most of the requirements of NASD Rules 3010 and 3012 will help ensure a coordinated regulatory approach in the area of

supervision, and will facilitate inspection and enforcement.

SIFMA's comment letter requests clarification that the proposed rule change would allow principals to delegate day-to-day supervisory activities to non-principals. SIFMA points out that under current MSRB Rule G-27 and NASD Rule 3010, principals regularly delegate day-to-day supervisory activities to appropriately trained employees who are not principals even though the principals are ultimately responsible for supervision.

In response to SIFMA's request for clarification concerning delegation, the MSRB notes that the proposed rule change states that the MSRB intends generally that the provisions of Rule G-27 be read consistently with the analogous NASD provisions, unless the MSRB specifically indicates otherwise. Thus, relevant NASD interpretations would be presumed to apply to the comparable MSRB provision, subject to the MSRB's right to make distinctions when necessary and appropriate. The MSRB also notes that NASD has previously stated that "certain supervisory tasks may be delegated to a registered representative. However, in all cases, ultimate supervisory responsibility * * * must be assigned to one or more appropriately registered principals." [Emphasis in original.]⁶ The MSRB believes, and the Commission concurs, that this guidance applies equally to Rule G-27—both as currently written and pursuant to the proposed rule change.

Banc of America's comment letter supports the proposed rule change in principle but believes that the proposed rule change will, if adopted, create an unnecessary hardship on dealers in municipal securities, and ultimately to issuers of municipal securities, in one specific area. Banc of America understands the requirement to designate one or more appropriately registered principals in each office of supervisory jurisdiction ("OSJ") to mean that an appropriately registered municipal securities principal must be located on site in each OSJ. However, Banc of America believes this requirement is not practical in instances where a particular office's activities are such that the office meets the definition of an OSJ in the proposed rule change but there is a very small number of registered associates located in that office (and in many cases, only one). Banc of America further states that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54930 (December 13, 2006), 71 FR 76400 (December 20, 2006).

⁴ See letter from Leslie M. Norwood, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated January 31, 2007, and letter from Tab T. Stewart, Assistant General Counsel, Banc of America Securities ("Banc of America"), dated January 31, 2007.

⁵ See letter from Jill C. Finder, Associate General Counsel, MSRB, to Nancy M. Morris, Secretary, Commission, dated May 7, 2007.

⁶ See NASD Notice to Members 99-45 (June 1999), which provided guidance on supervisory responsibilities.

⁸ 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).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

requiring each small-staff OSJ to have an on-site municipal securities principal for supervision of the activities in that office adds an undue burden to dealers that, in many cases, is either impractical or not cost effective. Banc of America believes that if the proposed rule change is approved, dealers may be forced to close certain regional offices, since adding staff would not be cost effective; in turn, this could lead to a reduction in financing services, and/or increased borrowing costs, to issuers of municipal securities.

The MSRB states in its response that under current NASD requirements and the MSRB's proposed amendments, dealers must designate one or more appropriately registered principals in each OSJ and each such principal must be located on site in each OSJ. The MSRB understands that in the equities market, which is subject to NASD's supervisory requirements, there are many one-person offices which, as OSJs, are involved in structuring corporate financing. The MSRB further understands that such functions, when performed at an OSJ, are significant enough to warrant supervision by an on-site principal who is permanently located in that office. The MSRB concluded that in the case of the one-person OSJ described by Banc of America, the practical effect of the proposed rule change on bank dealers would be to require that one person to be registered as a municipal securities principal, just as NASD requires securities firms to register as a principal any one-person OSJ. The MSRB further noted that the purpose of the proposed rule change is to promote regulatory consistency, and that the MSRB does not believe that the situation described by Banc of America justifies deviating from this purpose. After considering Banc of America's comment letter and the MSRB's response, the Commission finds that the proposed rule change conforms Rule G-27 to the relevant NASD rules on supervision and does not believe that the proposed rule change is inconsistent with the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB⁷ and, in particular, the requirements of Section 15B(b)(2)(C) of the Act⁸ and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among

other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.⁹ In particular, the Commission finds that, by conforming Rule G-27 to the relevant NASD rules on supervision and thereby making such requirements specifically applicable to the municipal securities activities of securities firms and bank dealers, the proposed rule change will promote regulatory consistency by facilitating dealer compliance with such requirements, as well as by facilitating the inspection and enforcement thereof. The proposal will be effective six months after Commission approval, as requested by the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-MSRB-2006-10) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-10201 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55790; File No. SR-NASDAQ-2007-039]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change to Modify the Distributor Fee for Nasdaq Index Weighting Information

May 21, 2007.

On April 4, 2007, The NASDAQ Stock Market LLC ("Nasdaq") 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 decrease the distributor fee for the lowest pricing tier for Nasdaq Index

Weighting Information. According to Nasdaq, the lowest pricing tier is the most common option selected by existing customers. The proposed rule change was published for comment in the **Federal Register** on April 18, 2007.³ The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6(b)(4) of the Act,⁵ which requires, among other things, that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls, and that it not unfairly discriminate between customers, issuers, brokers, or dealers. Nasdaq proposes to decrease the distributor fee for the tier that encompasses one to 500 subscribers for Nasdaq Index Weighting Information from \$1,000 to \$300 in the case of unlimited frequency of distribution, and from \$500 to \$275 in the case of distribution once a month, quarter, or year. The remaining tiers of the fee schedules for Nasdaq Index Weighting Information (*i.e.*, fees for 501-999, 1,000-4,999, 5,000-9,999, and 10,000+ subscribers) will not change under this proposal. The Commission believes that decreasing the distributor fee for the lowest pricing tier for Nasdaq Index Weighting Information is beneficial to the recipients of such data and should encourage its broader distribution.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NASDAQ-2007-039) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-10207 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

³ See Securities Exchange Act Release No. 55620 (April 12, 2007), 72 FR 19569.

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

⁷ In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-4(b)(2)(C).

⁹ *Id.*

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55796; File No. SR-NYSE-2007-28]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change to Exempt Limited Partnerships From Certain of its Shareholder Approval Rules

May 22, 2007.

I. Introduction

On March 9, 2007, the New York Stock Exchange LLC (the “NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act (“Act”), and Rule 19b-4 thereunder,² a proposed rule change to exempt limited partnerships from certain of the Exchange’s shareholder approval rules. The proposed rule change was published for comment in the **Federal Register** on April 2, 2007.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to exempt limited partnerships from the obligation to obtain shareholder approval under the circumstances set forth in Manual Sections 312.03(b), (c), and (d) for the issuance of common stock and securities convertible into or exchangeable for common stock.⁴

Subject to certain exceptions specified therein, Manual Sections 312.03(b), (c), and (d) require listed issuers to obtain shareholder approval prior to the issuance of common stock or securities convertible into or exchangeable for common stock in any transaction or series of related transactions in the following situations:

- Where the potential dilution exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance to: (a) a director, officer or substantial security holder of the company (each a “Related

Party”); (b) a subsidiary, affiliate or other closely-related person of a Related Party; or (c) any company or entity in which a Related Party has a substantial direct or indirect interest.

- If the Related Party involved in a transaction covered by the preceding bullet is classified as such solely because such person is a substantial security holder, and if the issuance relates to a sale of stock for cash at a price at least as great as each of the book and market value of the issuer’s common stock, then shareholder approval will not be required unless the number of shares of common stock to be issued, or unless the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

- If: (a) the common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or (b) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock.

- If the issuance will result in a change of control of the issuer.

The Exchange stated that the policy underlying these requirements is that shareholders should have the right to vote on any issuance of common stock that is materially dilutive of either their voting or economic interest in the company, and that Nasdaq has similar shareholder approval requirements to those of the NYSE. The Exchange stated, however, that Nasdaq exempts limited partnerships (“LPs”) from those requirements,⁵ which the Exchange believes has placed it at a disadvantage in competing with Nasdaq for initial public offerings and transfers of LPs.

The Exchange stated several reasons that it believes LPs may be appropriately excluded from certain shareholder approval rules. First, the Exchange stated that to be treated as a partnership for federal tax purposes, an LP must ensure that 90% of its income

is derived from “qualified sources,” which generally refers only to income derived from natural resource-related activities. Most listed LPs are engaged in energy-related businesses. The typical business model of LPs in the energy industry is to use their capital to acquire assets (e.g., pipelines) that produce predictable revenue streams and to commit in their partnership agreements to distribute most of their profits to the LP’s unit holders. These LPs acquire assets frequently and pay for them by issuing additional LP units. The Exchange believes that the ability of an LP listed on Nasdaq to issue additional LP units without the expense and uncertainty of obtaining shareholder approval provides Nasdaq with an advantage over the Exchange in attracting and retaining listings of LPs.

The Exchange also stated its belief that an analysis of the policies regarding voting and economic dilution underpinning its shareholder approval requirements demonstrates that it is appropriate to exempt LPs from their application. Listed LPs generally provide very limited voting rights to their unit holders, and typically, control of the LP resides with the general partner (“GP”) and the LP’s board is that of the GP. The owner of the GP appoints the board and the common unit holders of the LP have no voting rights with respect to the election of directors. LP partnership agreements often provide that LP unit holders can vote only on a merger or dissolution of the LP or on any amendment to the partnership agreement that is adverse to their interests. As such, the Exchange believes that investors who buy LP units generally have no expectation that they will be able to vote. Therefore, the Exchange believes that the policy that shareholders should be able to vote on any stock issuances that are materially dilutive of their voting power is of less relevance to LPs than to regular corporations. Furthermore, the Exchange states that because LP unit holders generally do not have the right to elect directors, most LPs do not hold annual meetings. Therefore, it would not be possible for an LP to arrange for shareholder approval to be obtained in conjunction with an annual meeting, as would be possible for a regular company, and an LP could potentially have to call a special meeting every time it needed approval of an issuance pursuant to the shareholder approval rules.

The Exchange also believes that the economic dilution concerns underpinning the shareholder approval rules are also less relevant in the case of LPs. Listed LPs typically are required

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55528 (March 26, 2007), 71 FR 15747.

⁴ NYSE-listed limited partnerships would still be subject to the Exchange’s shareholder approval requirements for equity compensation plans. See NYSE Listed Company Manual Sections 303A.08 and 312.03(a). Moreover, the Commission notes that the filing does not in any way limit the applicability of the provisions of the Listed Company Manual relating to limited partnership roll-up transactions. See NYSE Listed Company Manual Section 105.

⁵ See Nasdaq Marketplace Rule 4360 (“Qualitative Listing Requirements for Nasdaq Issuers That Are Limited Partnerships”); see also Securities Exchange Act Release No. 30811 (June 15, 1992); 57 FR 28542 (June 25, 1992) (SR-NASD-91-58); see also Securities Exchange Act Release No. 34533 (August 15, 1994); 59 FR 43147 (August 22, 1994) (SR-NASD-93-3).

under their partnership agreements to distribute almost all of their earnings to their unit holders and specify a minimum quarterly distribution that the LP is required to make. As such, LPs will only invest in new assets if they know that those assets will be sufficiently accretive to earnings to pay the minimum quarterly distribution required for the additional units that are sold to raise the capital to pay for those assets.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In making this finding, the Commission notes that shareholder approval rules are extremely important because, among other things, such rules provide shareholders with a voice in transactions that are material to, and may have an effect on, their respective investments. However, for many of the reasons noted by the Exchange, the Commission agrees with the Exchange that treating LPs differently with respect to certain types of shareholder approval rules is appropriate given the use of LPs and the expectations of investors in such entities. The Commission believes, however, that the rationale for treating an LP differently than, for example, a traditional corporation with respect to shareholder input on equity compensation is less compelling. Accordingly, the Commission believes that it is beneficial from a corporate governance perspective that the Exchange will be retaining for LPs its rules regarding shareholder approval of equity compensation.⁸ Finally, in approving the proposed rule change to Manual Sections 312.03(b), (c), and (d), the Commission notes that the proposal

will conform the Exchange's rules to Nasdaq's comparable rules for limited partnerships.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2007-28) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-10200 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55793; File No. SR-NYSE-2007-34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Amend NYSE Rule 80A.40(b) To Update the Definition of "Program Trading," To Substitute Simplified Audit Trail Requirements, and To Make Conforming Amendments to NYSE Rule 410B

May 22, 2007.

On March 22, 2007, the New York Stock Exchange LLC ("NYSE" 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 that would (i) to amend NYSE Rule 80A.40 to eliminate the minimum dollar value from the definition of program trading, and (ii) substitute simplified audit trail requirements in place of the more cumbersome reporting requirements that currently apply to program trading. NYSE also proposed to make conforming amendments to NYSE Rule 410B. In connection with those changes, NYSE also would issue guidance regarding the definition of a "coordinated strategy," as that term is used in Rule 80A.40. The Commission published notice of the proposal in the **Federal Register** on April 17, 2007.³ The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and

finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5),⁶ which requires that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the NYSE has represented that it has carefully evaluated the change in definition of program trading and related changes effectuated in this proposed rule change, and the Exchange believes that these changes to the definition of program trading and the revised audit trail information should result in more effective surveillance of the market impact of program trading. Based on these representations, the Commission believes that the proposed rule change is reasonably designed to improve the quality of the program trading data for this vital surveillance program.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁷, that the proposed rule change (SR-NYSE-2007-34) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-10206 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

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 See NYSE Listed Company Manual Sections 303A.08 and 312.03(a).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

¹³ Securities Exchange Act Release No. 55615 (April 11, 2007), 72 FR 19225.

⁴ 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).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55789; File No. SR-NYSEArca-2007-34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Trading a Class of Options Without Designating a Lead Market Maker

May 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 3, 2007, NYSE Arca, Inc. (“NYSE Arca” 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 substantially prepared by the Exchange. On May 2, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comment 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

NYSE Arca is proposing to modify Exchange Rules 6.35, 6.38, 6.92, and 6.93 to allow an option issue to trade without designating a Lead Market Maker (“LMM”). In those options without an LMM, the Exchange will designate a Market Maker as the sender of a Principal Acting as Agent (“P/A”) Order³ through the Options Intermarket Linkage (“Linkage”).

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

The proposed rule changes would allow the Exchange to trade a class of options without designating an LMM, yet still meet the requirements of the Linkage Plan.⁴

An LMM designation on the Exchange obligates a Market Maker to a 99% quoting requirement in all appointed series of an underlying class,⁵ in return for up to a 40% guaranteed allocation on trades executed on the Exchange when the LMM is quoting at the national best bid or offer (“NBBO”).⁶ The Exchange states that, in large part, LMMs are designated in option classes to foster liquidity. The Exchange believes that certain highly liquid, highly active options classes, however, have sufficient participation by OTP Holders⁷ that there is no need for an LMM. In not designating an LMM in certain option issues, orders would be processed in price/time priority, meaning any market participant, regardless of status, may gain priority by improving the market. The Exchange believes that this change to price/time order execution will create more competition and liquidity in the selected option issues.

To accommodate the Linkage Plan, the Exchange proposes modifications to its Rules 6.35, 6.38, 6.92, and 6.93 to allow for the designation of an Exchange Market Maker, assigned on a rotating basis, as the responsible Intermarket Linkage Market Maker (“IMM”) on outbound P/A Orders.⁸ Under the terms of the Linkage Plan as applied in the NYSE Arca rules,⁹ the LMM currently is

the responsible party on outbound P/A Orders sent through the Linkage. Although the Exchange intends to rely solely on the use of its outbound routing broker to access away markets when the Exchange is not at the NBBO, there may be instances when the Exchange's routing broker is not available because of system malfunctions. As a result, the Exchange proposes that designated IMM be responsible for outbound P/A Orders sent through the Linkage. The IMM would be required to submit prior written instructions to the Exchange for routing of any P/A Orders the IMM may send through the Exchange to the Linkage.

Under Section 2(16)(a) of the Linkage Plan, however, a P/A Order may be routed to another exchange only through the principal account of a market maker that is authorized to represent customer orders, “reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent.” Market Makers on the Exchange other than LMMs, however, are not permitted to act as an agent on behalf of an order submitted to the Exchange, so as to avoid any appearance of a conflict of interest.¹⁰ In order to comply with the Linkage Plan, therefore, the Exchange proposes to amend Exchange Rule 6.38(a) to provide an exception for Market Makers acting as an IMM for the purpose of settling P/A Orders sent to away markets pursuant to Exchange Rules 6.92 and 6.93. This proposed exception is limited to Market Makers acting in the capacity of an IMM strictly for the purpose of settling P/A Orders sent over the Linkage. The proposed exception does not confer any other rights or create any other obligations to any Market Maker.

The Exchange also proposes to amend Exchange Rule 6.93 to clarify that the Exchange will be responsible for the receipt, processing, and execution of inbound Linkage orders received from other Participant exchanges. Inbound Linkage orders sent to NYSE Arca are routed directly to the trading system for immediate automatic execution; any remaining unexecuted portion, or any order not executable because a quote is no longer available, will be immediately

the General Counsel, NYSE Group, Inc., and Timothy C. Fox, Special Counsel, Division of Market Regulation, Commission, on May 16, 2007.

¹⁰ See Exchange Rule 6.38(b)(1), which provides that Market Makers other than LMMs are restricted from acting as a principal and an agent in the same issue on the same business day. See also Exchange Rule 6.38(b)(5), which provides Market Makers are restricted from acting as a floor broker in options covering the same underlying security to which its primary appointment extends.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Section 2(16)(a) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”) defines a P/A Order as an order for the principal account of a market maker that is authorized to represent customer orders, reflecting the terms of a related unexecuted customer order for which the market maker is acting as agent.

⁴ On July 28, 2000, the Commission approved Linkage proposed by Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca), and BSE joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

⁵ NYSE Arca Rule 6.37B(b).

⁶ NYSE Arca Rule 6.76B(a)(1)(A)(i).

⁷ See NYSE Arca Rule 1.1(q) for the definition of “OTP Holder.”

⁸ The IMM will be selected from the pool of all Market Makers who have been appointed in the particular class. Market Makers requesting appointment in the underlying class will need to agree to participate in the rotation of IMM assignment.

⁹ Telephone conversation between Peter Armstrong, Managing Director, Options, Office of

returned by the Exchange to the originating away market.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹¹ in general and furthers the objectives of Section 6(b)(5)¹² in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2007-34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-34. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2007-34 and should be submitted on or before June 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-10208 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55788; File No. SR-OCC-2006-19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Close-Out Netting Procedures

May 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 10, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on May 15, 2007, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would amend OCC's By-Laws and Rules to provide for close-out netting procedures to be followed in the highly unlikely event that OCC becomes insolvent or otherwise defaults on its clearing obligations. The proposed rule would clarify the impact of transactions between OCC and its Clearing Members on the capital requirements applicable to Clearing Members and other affiliated entities on a consolidated basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 200.30-3(a)(12).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Background

OCC has been asked by several of its Clearing Members to consider adopting a rule that would allow for close-out netting of obligations running between OCC and Clearing Members in the event of an OCC default or insolvency. Such a rule could reduce applicable capital requirements for a Clearing Member's parent company where the parent is a U.S. or non-U.S. bank or part of a Consolidated Supervised Entity ("CSE"). The absence of a netting agreement that would apply in a default or insolvency of OCC could cause the minimum capital requirement applicable to such a parent company and its subsidiaries on a consolidated basis to be substantially larger than it would be otherwise. In the absence of a netting agreement, applicable banking regulations generally prohibit offsetting the Clearing Member's obligations to OCC on short positions in options and on other obligations against the Clearing Member's credit exposure to OCC with respect to long options positions and other obligations of OCC. In addition, OCC believes that a close-out netting rule would clarify the accounting treatment of obligations between OCC and its Clearing Members.

The proposed rule change is designed to allow Clearing Members to comply with international standards under the Basel Capital Accord adopted by the Basel Committee on Banking Supervision relating to bilateral netting ("Basel Netting Standards").³ It is OCC's understanding that the capital rules applicable to most banks following the Basel Netting Standards require that an enforceable netting agreement be in place in order for mutual obligations between a Clearing Member that is a bank affiliate and a counterparty such as OCC to be treated on a net basis. The policy behind this requirement is to ensure that obligations that are treated on a net basis for capital purposes can actually be offset against one another in the event of the failure of the counterparty. In the absence of an enforceable netting agreement, there is concern that the representative of the failed counterparty (*i.e.*, OCC in this scenario) might be able to "cherry pick" under applicable insolvency law by assuming the benefit of contracts

representing an asset to the bankruptcy estate while rejecting contracts representing a liability. This would force the non-defaulting counterparty (*i.e.*, the Clearing Member in this scenario) to perform in full on its liabilities while sharing with other unsecured creditors in any amounts available for distribution from the bankruptcy estate to satisfy its claims. An enforceable netting agreement providing for so-called "close-out netting" in the event of a default or insolvency of OCC would avoid this potential result.

Chapter XI of OCC's Rules, Suspension of a Clearing Member, provides in considerable detail for liquidation of the accounts of an insolvent Clearing Member including provisions for close-out netting of the Clearing Member's obligations against its assets to the extent permitted by customer protection rules under the Act and under the Commodity Exchange Act ("CEA"). However, OCC's rules do not presently contain any provisions that specifically permit close-out netting in the event of a default or insolvency of OCC. Indeed, an OCC default or insolvency has always been considered so unlikely that OCC's rules do not contain any provisions whatever contemplating such events. OCC's management does not believe that an OCC default or insolvency has become any more likely. On the contrary, OCC's long track record of safe operation and continually improved methods of risk management suggest that such an event is more remote than ever. Nevertheless, the Basel Netting Standards make it desirable for OCC to put in place such a netting provision in order to clarify the capital requirements applicable on a consolidated basis to parent companies of Clearing Members that are subject to the Basel Netting Standards.

The Basel Netting Standards are not directly applicable to the determination of net capital requirements for broker-dealers under Commission Rule 15c3-1.⁴ However, some Clearing Members are subsidiaries of banks or bank holding companies that are subject to the Basel Netting Standards when computing capital requirements on a consolidated basis. In addition, several of OCC's largest Clearing Members have volunteered to participate in the Commission's CSE program. Finally, as noted below, OCC believes that a close-out netting rule would also clarify the accounting treatment of obligations

among OCC and its Clearing Members under FIN 39.⁵

The Basel Netting Standards and FIN 39 (collectively "Netting Standards") are stated in general terms and do not contain detailed requirements. OCC's proposed close-out netting procedures would, in the event of an OCC default or insolvency, expressly permit Clearing Members to treat their obligations to OCC on a net basis to the fullest extent consistent with the Commission's customer protection rules. However, the proposed rule change is also intended to protect the clearing system from being thrown out of balance or forced into a disorderly liquidation by a single Clearing Member's exercise of netting rights. Unlike typical, purely bilateral OTC derivatives relationships, OCC's contractual rights and obligations—while bilateral between OCC and any individual Clearing Member—represent a balanced structure in which every obligation owed by OCC to a Clearing Member is in turn matched by a corresponding obligation of a Clearing Member to OCC. The creation of individually exercisable netting rights that could be exercised independently by each Clearing Member in the event of an OCC default or insolvency could result in unfairness if no coordination is imposed.

The Basel Netting Standards

The Basel Netting Standards are contained in Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework—Comprehensive Version (June 2006) ("Basel II Accord"). The Basel Netting Standards provide that a bank⁶ may net transactions subject to any legally valid form of bilateral netting, including netting of bilateral obligations arising from novation, if the bank satisfies its national supervisor that it has a netting contract with the counterparty "which creates a single legal obligation, covering all included transactions, such that the bank would have either a claim to receive or obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions in the event a counterparty fails to perform due to any * * * default, bankruptcy, liquidation or similar circumstances."⁷

⁵ Financial Account Standards Board ("FASB") Interpretation No. 39, Offsetting of Amounts Related to Certain Contracts. FIN 39 specifies the circumstances in which assets and liabilities may be treated as offsetting in financial statements.

⁶ These same standards are also applied to bank holding companies.

⁷ Basel Committee on Banking Supervision, Basel Capital Accord: Treatment of Potential Exposure for

³ For more information on the Basel Committee on Banking Supervision and the Basel Netting Standards, see of the Bank for International Settlement's Web site at <http://www.bis.org>.

⁴ 17 CFR 240.15c3-1.

The Basel Netting Standards also require that the bank have certain “written and reasoned legal opinions that, in the event of a legal challenge, the relevant courts and administrative authorities would find the bank’s exposure to be the net amount.” The national supervisor must be satisfied that the netting is enforceable under the laws of each relevant jurisdiction. The proposed close-out netting procedures are intended to support such an opinion.

The Basel Netting Standards have been incorporated in applicable bank regulatory laws or regulations in various jurisdictions. For example, the substance of this standard appears in Article 12f of the Swiss Banking Ordinance. It has also been incorporated into the capital guidelines for various U.S. financial institutions.⁸

FDICIA and Bankruptcy Code

The proposed close-out netting procedures are designed to take advantage of the netting provisions of Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and the applicable provisions of the United States Bankruptcy Code. Section 404 of FDICIA generally validates netting contracts among members of clearing organizations notwithstanding any other provision of law.⁹ In order to qualify for this benefit, the “netting contract” must be between “members” of a “clearing organization,” as each of these terms is defined in FDICIA. OCC meets the definition of “clearing organization” under FDICIA, and both it and its Clearing Members meet the definition of “members.” Under FDICIA, the rules of a clearing organization are expressly included within the definition of “netting contract.” Accordingly, under Section 404 of FDICIA, the netting provisions of OCC’s By-Laws and Rules, including the proposed revised netting procedures, will be given effect in the event of OCC’s default or insolvency.

Section 362(b) of the United States Bankruptcy Code¹⁰ exempts from the automatic stay provisions of the Code the setoff by, among other parties, stockbrokers, commodity brokers or clearing agencies, of mutual debts or claims under commodity or securities

contracts. This section preserves OCC’s ability to net obligations between OCC and a suspended Clearing Member and similarly would protect the ability of Clearing Members to net obligations under the proposed netting procedures in the event of OCC’s default or insolvency. In addition, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”)¹¹ added to the Bankruptcy Code new subsection 362(o) which provides that the right of setoff and other relevant rights may not be stayed by any order of a court or administrative agency in any proceeding under the Bankruptcy Code.¹² This was a significant expansion of the protections for financial contracts under the Bankruptcy Code.

Prior Netting Filing and Clearing Member Comments

OCC previously submitted and subsequently withdrew a proposed rule change with respect to close-out netting (“Prior Netting Filing”).¹³ After reviewing the Prior Netting Filing, some Clearing Members questioned whether the netting procedures set forth in that filing satisfied the Netting Standards. Specifically, Clearing Members questioned whether:

1. The definition of insolvency in the Prior Netting Filing, which covered only voluntary or involuntary cases under Chapter 7, needed to be expanded to include other types of bankruptcies, particularly Chapter 11 cases, and non-bankruptcy defaults;
2. The procedures set forth in the Prior Netting Filing complied with the Netting Standards in light of the inability of the Clearing Members, as the non-defaulting parties, to initiate the netting process; and
3. The proposed procedures gave Clearing Members the ability to promptly net and close out positions as required to comply with the Netting Standards given the degree of control that OCC reserved to itself in the process.

After considering the Clearing Members’ comments, OCC withdrew the Prior Netting Filing and made modifications to the proposed netting provisions which are reflected in the current filing. The primary differences between the currently-proposed close-out netting procedures and those contained in the Prior Netting Filing is that the currently-proposed procedures:

1. Significantly expand the definition of insolvency to include non-bankruptcy defaults, specifically any failure by OCC to comply with an undisputed obligation to deliver money or property to a Clearing Member for a period of thirty days after the

obligation becomes due, and to include bankruptcy or insolvency proceedings under statutory provisions other than Chapter 11 of the U.S. Bankruptcy Code;

2. Provide that upon the occurrence of an event of default or insolvency, any Clearing Member that is neither suspended nor in default with regard to an obligation of OCC may provide a notice to OCC of its intention to terminate all cleared contracts and stock loan and borrow positions in all of its accounts; and

3. Establish a fixed termination time for all cleared contracts and stock loan and borrow positions, which would be the close of business on the third business day after OCC’s receipt of the prescribed notice from a Clearing Member, unless a different time is mandated by the Bankruptcy Code, and to provide that the liquidation settlement date will occur as promptly as practicable after the termination time; (the original provisions granted OCC the discretion to establish the termination time and provided that the liquidation settlement date would occur no earlier than the business day following the termination date).

OCC believes that the above modifications address the Clearing Members’ concerns while still permitting the liquidation process to proceed in an orderly manner and for the clearance system to remain in balance.

Overview of Proposed Rule Change

The proposed rule change consists of a single new Section 27, Close-Out Netting, of Article VI of OCC’s By-Laws, Clearance of Exchange Transactions. Consistent with the requirements of the Basel Netting Standards, the netting provision would be applicable in the event that OCC fails to perform its obligations with respect to cleared contracts as the result of defaults by OCC in performing its obligations under its rules, or as the result of bankruptcy, a liquidation of OCC or similar circumstances. The proposed close-out netting procedures are drafted in such a way that they would only be triggered by an event of default, as defined in new Section 27(a). The rule would not be triggered by any delay in performance that is permitted under OCC’s By-Laws or Rules. For example, Section 19 of Article VI permits OCC to take specified actions, including suspension of settlement obligations, in the event of a shortage of underlying securities. These delays would not be considered an event of default under Section 27 and therefore would not allow a Clearing Member to initiate the close-out netting procedures. In the event of such delays OCC would notify Clearing Members of the reason for the delay.

Under the proposed close-out netting procedures, in the event of a default or insolvency by OCC, OCC would be

Off-Balance Sheet Items (April 1995), at Annex, p.4. The relevant bilateral netting standards under this 1995 publication were not overridden by the Basel II Accord. See also Basel II Accord at p.213. Basel II also allows cross-product netting.

⁸ See e.g., Regulations of the Office of the Comptroller of the Currency applicable to national banks set forth at 12 CFR, Part 3, Appendix A (adopted July 1, 2002), section (3)(b)(5)(ii)(B).

⁹ 12 U.S.C. 4403.

¹⁰ 11 U.S.C. 362(b).

¹¹ Public Law 109–8, 119 Stat. 23 (2005).

¹² 11 U.S.C. 362(o).

¹³ File No. SR–OCC–2005–17.

required to provide notice of the default or insolvency to the Commission, the CFTC, all Clearing Members, any clearing organizations with which OCC has cross-margining or cross-guarantee agreements, and all markets for which OCC clears transactions. The proposed procedures further provide that in the event of an OCC default, any Clearing Member, so long as it is not suspended or in default, may provide a written notice to OCC of its intent to initiate the liquidation process with regard to its own contracts and stock loan and borrow positions. This notice would, however, trigger a liquidation of cleared contracts and positions of all Clearing Members. This procedure is necessary because liquidating contracts and positions of less than all Clearing Members would result in an imbalance of the clearing system and therefore be unworkable. The proposed procedures establish the close of business on the third business day after OCC's receipt of the liquidation notice from a Clearing Member as the termination time, unless the Bankruptcy Code prescribes a different time.

The proposed close-out netting procedures provide that when a triggering event occurs, rights and obligations within and between accounts of each Clearing Member will be netted to the same extent as if the Clearing Member had been suspended and its accounts were being liquidated under Chapter XI of the Rules. This is an appropriate result in that those rules generally provide for the netting of assets against liabilities to the extent permitted under applicable law, including the customer protection rules referred to above. Assets remaining after all legally permissible offsets would be returned to the Clearing Member entitled to them, and the Clearing Member would remain obligated to OCC only to the extent of any remaining net liabilities following such permitted offsets.

If close-out netting were ever required because of the default or insolvency of OCC, it seems likely that there would be no market available in which to liquidate positions in cleared contracts through market transactions. Accordingly, the proposed procedures contain a provision for valuation of open cleared contracts based upon market values of underlying interests and provide a reasonable means for OCC to fix all necessary values of assets and liabilities for purposes of the netting. Under the procedures, OCC is to provide valuations as promptly as practicable, but in any event within thirty days of the termination time.

Valuations would be based upon available market information.

FIN 39: Offsetting of Amounts Related to Certain Contracts

In addition to the potential benefit of the proposed close-out netting procedures with respect to capital requirements applicable to certain Clearing Members and their affiliates on a consolidated basis under the Basel Netting Standards, OCC believes that the proposed close-out netting procedures should also clarify the accounting treatment of mutual obligations running between OCC and its Clearing Members. OCC's Clearing Members most commonly prepare their financial statements using United States generally accepted accounting principles ("US GAAP"). FIN 39 responds to certain questions relating to the circumstances in which assets and liabilities may be treated as offsetting in financial statements. FIN 39 is an interpretation of Accounting Principles Board ("APB") Opinion No. 10 which states: "It is a general principle of accounting that the offsetting of assets and liabilities in the balance sheet is improper except where a right of setoff exists." FIN 39 provides a definition of a right of setoff and a statement of the conditions under which a right of setoff exists. The definition is as follows: "A right of setoff is a debtor's legal right, by contract or otherwise, to discharge all or a portion of the debt owed to another party by applying against the debt an amount that the other party owes to the debtor." FIN 39, paragraph 5 contains the following four conditions under which a right of setoff exists:

(a) Each of *two* parties owes the other determinable amounts. [Emphasis in original.]

(b) The reporting party has the right to set off the amount owed with the amount owed by the other party.

(c) The reporting party intends to set off.

(d) The right of setoff is enforceable at law.

It is the obligation of Clearing Members to determine their application of U.S. GAAP but we expect that proposed new Section 27 will allow them to conclude that conditions (a), (b), and (d) will be met. (Condition (c) deals with intent which is a factual question.)

Discussion of Specific Provisions of Section 27

The text of proposed new Section 27 of Article VI of the By-Laws is largely self-explanatory in light of the foregoing discussion of its purpose. A few comments may nevertheless be helpful.

Under proposed Sections 27(a) and (b), if OCC should ever give notice of its default or insolvency and a Clearing Member in turn provide a notice of termination, the termination time may be later than the time at which a Clearing Member's liquidation notice is given.¹⁴ This leaves open at least the theoretical possibility that, if there are trading days or hours left between the time the notice is given and the termination time, market participants could attempt to engage in closing transactions at prices determined in the market to avoid being subject to a forced liquidation at prices fixed by OCC.¹⁵

Proposed Section 27(b) provides that in the event of a default or insolvency and the requisite notice by a Clearing Member, positions of all Clearing Members will be liquidated to the maximum extent permitted by law and the By-Laws and Rules. The limitations on netting under OCC's By-Laws and Rules are in general those mandated by applicable law, such as the Commission's Rule 15c3-3. For example, where a Clearing Member carries both proprietary and customer account types netting across accounts could cause the Clearing Member to be in violation of Rule 15c3-3 and other customer protection rules. Accordingly, Section 27 generally provides for netting within and not across different accounts, with specific exceptions set forth in Section 27(d). In addition, CEA segregation rules require separate segregation of customer funds of futures customers. Accordingly, netting across futures segregated funds accounts and other accounts is also generally prohibited. Otherwise, the provisions of Section 27(d) are intended to maximize netting where consistent with customer protection rules. While securities market makers and specialists are generally not customers within the meaning of Rule 15c3-3, they are ordinarily "customers" within the meaning of the Commission's hypothecation rules.¹⁶ OCC has historically not permitted setoff between market-maker accounts and customer accounts in which positions of other

¹⁴ Under proposed Section 27(b), the termination time would be the close of business on the third business day following a Clearing Member's liquidation notice unless the Bankruptcy Code prescribes a different time. Under Section 502(b) of the Bankruptcy Code, claims against a debtor are valued as of the date of the filing of the bankruptcy petition, and accordingly in the event of a bankruptcy the termination time would be on the date of the filing of the petition.

¹⁵ Such activity of market participants could start at the time of OCC's default notice rather than the time of the liquidation notice although as a practical matter a liquidation notice would likely closely follow the default notice.

¹⁶ 17 CFR 240.8c-1 and 240.15c2-1.

securities customers are carried. This separation has been preserved in Section 27(d)(3).

The proposed rule change is consistent with Section 17A of the Act because it promotes the safeguarding of securities and funds and reduces costs to persons facilitating transactions by and on behalf of investors by providing Clearing Members that are a part of a CSE with the opportunity to reduce their applicable capital requirements. In addition, the proposed rule change would clarify the accounting treatment of obligations between OCC and each of its Clearing Members. The proposed rule change is not inconsistent with the rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

OCC received comments on the Prior Netting Filing from certain Clearing Members by telephone. These comments are discussed above under the heading "Prior Netting Filing and Clearing Member Comments." A draft of the proposed rule change was submitted to the Dealer Accounting Committee of the Securities Industry Association for review, and the rule change as filed reflects certain comments made by the Committee. OCC has not otherwise solicited written comments on the Prior Netting Filing or this filing, and none have been 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 the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2006-19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2006-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at <http://www.optionsclearing.com>.

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-OCC-2006-19 and should be submitted on or before June 19, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-10196 Filed 5-25-07; 8:45 am]

BILLING CODE 8010-01-P

¹⁷ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10859]

Maine Disaster Number ME-00007

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maine (FEMA-1693-DR), dated 4/25/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 4/15/2007 through 4/23/2007.

DATES: *Effective Date:* 5/16/2007.

Physical Loan Application Deadline Date: 6/25/2007.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Maine, dated 4/25/2007, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Washington

All other information in the original declaration remains unchanged.
of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7-10198 Filed 5-25-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10880]

Massachusetts Disaster # MA-00010

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Massachusetts (FEMA-1701-DR), dated 5/16/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 4/15/2007 through 4/25/2007.

DATES: *Effective Date:* 5/16/2007.

Physical Loan Application Deadline Date: 7/16/2007.

ADDRESSES: Submit completed loan applications to :

U.S. Small Business Administration,
Processing and Disbursement Center,
14925 Kingsport Road, Fort Worth, TX
76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 5/16/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Barnstable, Berkshire, Dukes, Essex,
Franklin, Hampden, Hampshire,
Plymouth.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10880. (Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7-10199 Filed 5-25-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code Public Law 92-463, notice is hereby given that the U.S. Small Business Administration, National Small Business Development Center Advisory Board will host a public meeting via conference call to discuss such matters that may be

presented by members, and the staff of the U.S. Small Business Administration or interested others. The conference call will take place at the U.S. Small Business Administration on Tuesday, June 19, 2007 at 1 p.m. Eastern Standard Time.

The purpose of the meeting is to discuss the upcoming Board Site Visit to the Ohio Small Business Development Center network on July 8-11, 2007; and the draft white paper regarding Small Business Development Center program management. Anyone wishing to attend the board conference call must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-7045 or fax (202) 481-0681.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7-10197 Filed 5-25-07; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2007-0041]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/ Department of the Treasury/Internal Revenue Service (IRS))—Match 1305

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal computer matching program, which is expected to begin October 1, 2007.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with the IRS.

DATES: SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965-8582 or writing to the Associate Commissioner, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: May 17, 2007

Manuel J. Vaz,

Acting Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with Internal Revenue Service (IRS)

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions under which IRS agrees to disclose to SSA certain return information necessary, to verify an individual's self-certification of

eligibility for prescription drug subsidy assistance under section 1860D-14 of the Social Security Act (Act) (42 U.S.C. 1395w-114), as added by section 101 of Public Law 108-173, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). Pursuant to section 1860D-14 of the Act, SSA will determine whether the individual is an individual described in section 1860D-14(a).

C. Authority for Conducting the Matching Program

Section 6103(1)(7) of the Internal Revenue Code (26 U.S.C. 6103(1)(7)) authorizes the IRS to disclose return information with respect to unearned income to Federal, State, and local agencies administering certain benefit programs under the Social Security Act. Section 1860D-14 of title I of the MMA requires the Commissioner of SSA to verify the eligibility of an individual who seeks to be considered as an individual eligible for the prescription drug subsidy under the MMA, and who self-certifies his/her income, resources and family size.

D. Categories of Records and Individuals Covered by the Matching Program

SSA will provide the IRS with identifying information with respect to applicants for and recipients of the Medicare Part D Prescription Drug Subsidy from the Medicare Database (MDB File) system of records, SSA/ORSIS 60-0321, originally published at 69 FR 77816 (December 28, 2004), and as revised at 71 FR 42159 (July 25, 2006). IRS will extract return information with respect to unearned income from the Information Returns Master File (IRMF), Treasury/IRS 22.061, as published at 66 FR 63797 (December 10, 2001), using the same extract as the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) program. SSA will maintain return information provided by the IRS through this match in the MBD File system of records.

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met. [FR Doc. E7-10263 Filed 5-25-07; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[PUBLIC NOTICE 5817]

Culturally Significant Objects Imported for Exhibition Determinations: "The Unknown Monet: Pastels 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 "The Unknown Monet: Pastels 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 Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, from on or about June 24, 2007, until on or about September 16, 2007, and at possible additional exhibitions or 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 Julie Simpson, 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: May 21, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7-10254 Filed 5-25-07; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 5803]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, June

28, 2007, in room 6103, at U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC. The purpose of the meeting is to prepare for the 53rd session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for July 23 through 27, to be held at the Royal Horticultural Halls and Conference Centre, 81 Vincent Square, London, England.

Items of principal interest on the agenda are:

- Routing of ships, ship reporting and related matters.
- Revision of the performance standards for integrated navigation systems (INS) and integrated bridge systems (IBS).
- Evaluation of the use of Electronic Chart Display and Information System (ECDIS) and Electronic Navigational Chart (ENC) development.
- Carriage requirements for a bridge navigational watch alarm system.
- Development of guidelines for the installation of shipborne radar equipment.
- Amendments to the International Regulations for Preventing Collisions at Sea (COLREGS) Annex I related to color specification of light.
- International Telecommunication Union (ITU) matters, including Radiocommunication ITU-R Study Group 8.
- Guidelines for the control of ships in an emergency.
- Development of performance standards for navigation lights, navigation light controllers and associated equipment.
- Worldwide radio navigation system (WWRNS).
- Development of an e-navigation strategy.
- Development of carriage requirements for ECDIS.
- Guidelines for uniform operating limitations for high-speed craft.
- Guidelines on the layout of safety centers on passenger ships.
- Casualty analysis.
- Consideration of International Association of Classification Societies (IACS) unified interpretations.

Members of the public may attend these meetings up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting to Edward.J.LaRue@uscg.mil. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (CG-3PWN), Room 1407, 2100 2nd Street SW., Washington, DC 20593-0001 or by calling: (202) 372-1564.

Dated: May 18, 2007.

Michael E. Tousley,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E7-10255 Filed 5-25-07; 8:45 am]

BILLING CODE 4710-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Craig Municipal Airport, Jacksonville, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Jacksonville Airport Authority under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On December 22, 2006, the FAA determined that the noise exposure maps submitted by the Jacksonville Airport Authority under Part 150 were in compliance with applicable requirements. On May 14, 2007, the FAA approved the Craig Municipal Airport noise compatibility program. All of the recommendations of the program were approved.

DATES: *Effective Date:* The effective date of the FAA's approval of the Craig Municipal Airport Noise Compatibility Program is May 14, 2007.

FOR FURTHER INFORMATION CONTACT: Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazelton National Dr., Suite 400, Orlando, Florida 32822-5024, *phone number:* 407-812-6331. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Craig Municipal Airport, effective May 14, 2007.

Under Section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible

land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport operator with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in FAR part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the

FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

Jacksonville Airport Authority submitted to the FAA on February 14, 2006, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 2004, through November 2005. The Craig Municipal Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on December 22, 2006. Notice of the determination was published in the **Federal Register** on December 22, 2006.

The Craig Municipal Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the year 2006 to the year 2009. It was requested that FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 47504 of the Act. The FAA began its review of the Program on December 22, 2006, and was required by a provisions of the Act to approve or disapprove the program within 180-days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained nine (9) proposed actions for noise mitigation on the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective May 14, 2007.

Outright approval was granted for eight of the specific program elements. Operational measure number five (5) was approved in part and does not extend to the use of monitoring equipment for enforcement of any voluntary measure.

These determinations are set forth in detail in a Record of Approval signed by the FAA on May 14, 2007. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Jacksonville Airport Authority. The Record of Approval also will be available on-line at: http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/

Issued in Orlando, Florida on May 22, 2007.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 07-2645 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

DATES: The meeting will be held June 19-21, 2007 from 9-5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805 Washington, DC 20036. *Point of Contact:* Rudy Ruana; *Telephone:* 202-833-9339; e-mail: rruana@rtca.org

Note: Dress is Business Casual.

FOR FURTHER INFORMATION CONTACT: (1) 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 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203 meeting. The agenda will include:

- *June 19:*
 - Opening Plenary Session (Welcome and Introductory Remarks, Approval of Ninth Plenary Summary).
 - Review SC-203 Progress Since
 - Presentations to the Plenary.
 - Workgroup 1: Work Plan; boundary Setting; Human Factors Key Consideration.
 - Workgroup 2: UAS Contro and Communications Link Spectrum Consideration: UAS Control and Communications Link Security Considerations.
 - Workgroup 3: Sensor Capabilities Overview; DSA Safety Metrics.
 - Plenary Adjourns.

- Workgroups 1,2, and 3 Breakout.
- *June 20:*
 - Workgroups 1, 2, and 3 Breakouts.
- *June 21:*
 - Workgroups 1, 2, and 3 Breakouts.
 - Plenary Reconvenes.
 - Closing Plenary Session (Action Item Review, Other Business, Date, Place and Time of Next Plenary, Adjourn).

Attendance is open to the interested public but limited to space availability. 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**. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on May 21, 2007.

Francisco Estrada C.

RTCA Advisory Committee.

[FR Doc. 07-2646 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Red River Valley & Western Railroad

[Waiver Petition Docket Number FRA-2004-17993]

The Red River Valley & Western Railroad (RRVW) has petitioned FRA to grant a waiver of compliance from the Safety Glazing Standards of 49 CFR part 223, for a change within an existing waiver, docket number noted above. The request is to allow Locomotive Number RRVW 1213 to service new business within an extended 25-mile radius of Breckenridge, MN. There has been no record of vandalism or any record of any accident/incident and/or injury to any railroad employee prior to the issuance of the present glazing waiver and up to present time. The track speed will remain the same and will not exceed 25 miles per hour. Most of the

area is remote and not heavily populated.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2004-17993) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

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). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC on May 21, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7-10172 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****[Docket: PHMSA-98-4957]****Request for Public Comments and Office of Management and Budget Approval of an Existing Information Collection (2137-0598)****AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.**ACTION:** Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice requests public participation in the Office of Management and Budget (OMB) approval process for the renewal of existing leak detection information collection. PHMSA invites the public to submit comments over the next 60 days on whether the existing information collection is necessary for the proper performance of the functions of the Department of Transportation.

DATES: Submit comments on or before July 30, 2007.

ADDRESSES: Reference Docket No. PHMSA-98-4957 and submit in one of the following ways:

- **DOT Web Site:** <http://dms.dot.gov>. To submit comments on the DOT electronic docket site, click "Comment/Submissions," click "Continue," fill in the requested information, click "Continue," enter your comment, then click "Submit."

- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001. Effective May 21, 2007, the U.S. Postal Service will deliver all mail to the new DOT headquarters at 1200 New Jersey Avenue, SE. (East Building), Washington, DC 20590.

- **Hand Delivery:** DOT Docket Management System; 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. On May 25, 2007, at the close of business, the DOT Dockets office will close its operations and re-open on May 30, 2007.

- **E-Gov Web Site:** <http://www.regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: Identify the docket number, PHMSA-98-4957, at the

beginning of your comments. Mail your comments and send two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at <http://www.regulations.gov>, and may access all comments received by DOT at <http://dms.dot.gov> by performing a simple search for the docket number.

Note: PHMSA posts all comments without changes or edits to <http://dms.dot.gov>, including any personal information provided.

Privacy Act

Anyone can search the electronic form of all comments received in response to 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.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477), and is on the Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Joy Kadnar at (202) 366-0568, or by e-mail at joy.kadnar@dot.gov.

SUPPLEMENTARY INFORMATION: Sections 195.134 and 195.444 of the Federal pipeline safety regulations require operators of hazardous liquid pipeline facilities installing new computational pipeline monitoring (CPM) leak detection systems or replacing components of existing CPM systems to comply with section 4.2 of American Petroleum Institute (API) recommended practice API 1130, "Computational Pipeline Monitoring for Liquid Pipelines." API 1130 section 4.2 provides information collection and maintenance guidance on many factors such as measurement capabilities, communications reliability, pipeline operating condition, and product type. PHMSA reviews the information during pipeline inspection. The information supports the pipeline inspection and improves pipeline safety by providing early detection of a pipeline leak. A copy of API 1130 is available in the docket.

Pursuant to 44 U.S.C. 3506(c)(2)(A) of the PRA, PHMSA invites comments on whether the renewal of the existing leak detection information collection is necessary for the proper performance of the functions of the Department of Transportation. As used in this notice, the term "information collection" includes all work related to the preparing and disseminating information in accordance with the recordkeeping requirements. The comments may include (1) whether the

information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Type of Information Collection

Request: Renewal of Existing Collection.

Title of Information Collection:

Incorporation by Reference of Industry Standard on Leak Detection.

Respondents: 50.

Estimated Total Annual Burden on

Respondents: 100.

Estimated Cost: \$6,475.

Issued in Washington, DC on May 3, 2007.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E7-10204 Filed 5-25-07; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 7 Committee of the Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 20, 2007.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227, or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Committee of the Taxpayer Advocacy Panel will be held Wednesday, June 20, 2007 from 2 p.m. to 3:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be

limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or you can contact us at <http://www.improveirs.org>.

Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Janice Spinks. Miss Spinks can be reached at 1-888-912-1227 or 206-220-6096.

The agenda will include the following:
Various IRS issues.

Dated: May 20, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7-10159 Filed 5-25-07; 8:45 am]

BILLING CODE 4830-01-P

UNITED STATES INSTITUTE OF PEACE

Notice of Sunshine Act Meeting

DATE/TIME: Wednesday, June 13, 2007 (9 a.m.–8 p.m.) Thursday, June 14, 2007 (9:30 a.m.–4 p.m.)

LOCATION: NDU—National War College, Roosevelt Hall, Ft. McNair, 300 5th Avenue, Washington, DC.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States

Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98-525.

AGENDA: June 2007 Board Meeting; Approval of Minutes of the One Hundred Twenty-Sixth Meeting (March 12, 2007) of the Board of Directors; Chairman's Report; President's Report; Program Updates; Selection of National Peace Essay Contest Winners; Selection of Peace Scholars; Other General Issues.

CONTACT: Tessie F. Higgs, Executive Office, Telephone: (202) 429-3836.

Dated: May 22, 2007.

Patricia P. Thompson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 07-2648 Filed 5-24-07; 11:09 am]

BILLING CODE 6820-AR-M



Federal Register

**Tuesday,
May 29, 2007**

Part II

Department of Homeland Security

U.S. Customs and Border Protection

**Distribution of Continued Dumping and
Subsidy Offset to Affected Domestic
Producers; Notice**

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of intent to distribute offset for Fiscal Year 2007.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is the U.S. Customs and Border Protection's notice of intent to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2007 in connection with countervailing duty orders, antidumping duty orders, or findings under the Antidumping Act of 1921. This document sets forth the case name and number of each order or findings for which funds may become available for distribution, together with the list of affected domestic producers, based on the list supplied by the United States International Trade Commission (USITC) associated with each order or finding, who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers to file certifications to claim a distribution in relation to the listed orders or findings.

DATES: Certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by July 30, 2007. Any certification received after July 30, 2007 will be denied, making claimants ineligible for the distribution.

ADDRESSES: Certifications and any other correspondence should be addressed to the Assistant Commissioner, Office of Finance, U.S. Customs and Border Protection, Revenue Division, Attention: Leigh Redelman, P.O. Box 68940, Indianapolis, IN 46268. Any delivery by an express or courier service requiring a street address may be addressed to 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278.

FOR FURTHER INFORMATION CONTACT: For general questions regarding preparation of certifications, contact Leigh Redelman, Revenue Division, (317) 614-4462. For questions regarding legal aspects, contact William G. Rosoff, Office of International Trade, Regulations and Rulings, (202) 572-8807.

SUPPLEMENTARY INFORMATION:

Background

The Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 ("Act"). The provisions of the CDSOA are contained in title X (sections 1001-1003) of the Act.

The CDSOA, in section 1003 of the Act, amended title VII of the Tariff Act of 1930, as amended, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921 will be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term "affected domestic producer" means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) who:

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order that has been entered,

(B) remains in operation continuing to produce the product covered by a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921, and

(C) if a company, has not been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding, *e.g.*, opposed the petition or otherwise presented evidence in opposition to the petition.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to U.S. Customs and Border Protection (CBP) a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC has supplied CBP with the list of individual antidumping and countervailing duty cases, and the affected domestic producers associated with each case who are potentially

eligible to receive an offset. This list appears at the end of this document. Claimants who are not on the USITC list but believe they are nonetheless eligible for a CDSOA distribution under one or more antidumping and/or countervailing duty cases must, as do all claimants that expressly appear on the list, file their certification(s) within 60 days after this notice is published. Certifications not timely filed within the requisite 60 days will be summarily denied.

Regulations Implementing the CDSOA

It is noted that CBP published Treasury Decision (T.D.) 01-68 (Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers) in the **Federal Register** (66 FR 48546) on September 21, 2001, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of title 19, CFR, (19 CFR part 159, subpart F (§§ 159.61-159.64)). In order to aid affected domestic producers with the filing of their certifications, more specific guidance is provided in this notice.

Notice of Intent To Distribute Offset

This document announces that CBP intends to distribute to affected domestic producers the assessed antidumping or countervailing duties that are available for distribution in Fiscal Year 2007 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. Section 159.62(a) of title 19 (19 CFR 159.62(a)) provides that CBP will publish such a notice of intention to distribute assessed duties at least 90 calendar days before the end of a fiscal year. Failure to publish said notice at least 90 calendar days before the end of the fiscal year shall in no way impact an affected domestic producer's obligation to file a timely certification within 60 days after the notice is published.

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification for each order or finding under which a distribution is sought, to CBP, indicating the affected domestic producer's desire to receive a distribution. To be eligible to obtain a distribution, certifications must be received by CBP no later than 60 calendar days after the date of publication of this notice of intent to distribute in the **Federal Register**. All certifications not received by the 60th

day will not be eligible to receive a distribution.

As required by 19 CFR 159.62(b), this notice provides the case name and number of the order or finding concerned, as well as the specific instructions for filing a certification under § 159.63 to claim a distribution. Section 159.62(b) also provides that the dollar amounts subject to distribution that are contained in the Special Account for each listed order or finding are to appear in this notice. However, these dollar amounts were not available in time for inclusion in this publication. The preliminary amounts will be posted on the CBP Web site (<http://www.cbp.gov>), for purposes of enabling affected domestic producers to determine whether it would be worthwhile to file a certification in a given case. The final amounts available for distribution may be higher or lower than the preliminary amounts.

CBP will provide general information to claimants regarding the preparation of certification(s). However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete and accurate so as to demonstrate the eligibility of the domestic producer for the distribution requested. Failure to ensure that the certification is correct, complete, and accurate as provided in this notice will result in the domestic producer not receiving a distribution.

Specifically, to obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification containing the required information detailed below as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming. Certifications should be submitted to the Assistant Commissioner, Office of Finance, Revenue Division. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

A successor to a company that was an affected domestic producer at the time of acquisition should consult 19 CFR 159.61(b)(1)(i). We note that the successor company may assume joint and several liability for the return of any overpayments arising under § 159.64(c)(3) that were previously paid to the predecessor. CBP may require the successor company to provide documents to support its eligibility to

receive a distribution as set out in § 159.63(e).

A member company (or its successor) of an association that appears on the list of affected domestic producers in this notice, where the member company itself does not appear on the list, should consult 19 CFR 159.61(b)(1)(ii). Specifically, for a certification under 19 CFR 159.61(b)(1)(ii), the claimant must name the association of which it is a member and specifically establish that it was a member of the association at the time the association filed the petition with the USITC and establish that the company is a current member of the association. In order to promote accurate filings and more efficiently process the distributions, we offer the following guidance. If claimants are members of an association but the association does not file on their behalf, each association will need to provide their members with a statement which contains notarized company specific information including dates of membership, and an original signature from an authorized representative of the association. An association filing a certification on behalf of a member must also provide a power of attorney or other evidence of legal authorization from each of the affected domestic producers it is representing. An association filing a certification on behalf of a member is responsible for verifying the accuracy of the member's financial records, which support their claim, and is responsible for that certification. Any association filing a certification on behalf of a member is responsible for verifying the legal sufficiency and accuracy of the member's financial records, which support the claim and may be liable for repayment of any claim found to have been paid in error.

The association may file a certification in its own right to claim an offset for that order or finding, but its qualifying expenditures would be limited to those expenditures that the association itself has incurred after the date of the order or finding in connection with the particular case.

As provided in 19 CFR 159.63(a), certifications to obtain a distribution of an offset must be received by CBP no later than 60 calendar days after the date of publication of the notice of intent in the **Federal Register**. All certifications received after the 60-day deadline will be summarily denied, making claimants ineligible for the distribution regardless of whether or not they appeared on the USITC list.

A list of all certifications received will be published on the CBP website shortly after the receipt deadline. This

publication will not confirm acceptance or validity of the certification, but merely receipt of the certification. Due to the high volume of certifications, CBP is unable to respond to individual telephone or written inquiries regarding the status of a certification appearing on the list.

While there is no required format for a certification, CBP has developed a standard certification form to aid claimants in filing certifications. The certification form is available at <http://www.pay.gov> under Public Form Name entitled CDSOA. The certification form can also be found following this **Federal Register** Notice. The certification form can be submitted electronically through <http://www.pay.gov> or by mail. All certifications not submitted electronically must include original signatures.

Regardless of the format for a certification, per 19 CFR 159.63(b), the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (producer/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The mailing address of the domestic producer (if a post office box, the physical street address must also appear) including, if applicable, a specific room number or department;
6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s), mailing address and, if available, facsimile transmission number(s) and electronic mail (e-mail) address(es) for the person(s). Correspondence from CBP will be directed to the designated contact(s) by either mail or phone or both;
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled "Amount Claimed for Distribution";
11. A statement of eligibility, as described in the section below entitled "Eligibility to Receive Distribution"; and

12. For certifications not submitted electronically through <http://www.pay.gov>, an original signature by an individual legally authorized to bind the producer.

Qualifying Expenditures Which May Be Claimed for Distribution

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred by the affected domestic producer after the issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within certain categories. For the convenience and ease of the domestic parties, CBP is providing guidance on what the agency takes into consideration when making a calculation for each of the following categories: (1) Manufacturing facilities: (Any facility used for the transformation of raw material into a finished product that is the subject of the related order or finding); (2) Equipment: (Goods that are used in a business environment to aid in the manufacturing of a product that is the subject of the related order or finding); (3) Research and development: (Seeking knowledge and determining the best techniques for production of the product that is the subject of the related order or finding); (4) Personnel training: (Teaching of specific useful skills to personnel, that will improve performance in the production process of the product that is the subject of the related order or finding); (5) Acquisition of technology: (Acquisition of applied scientific knowledge and materials to achieve an objective in the production process of the product that is the subject of the related order or finding); (6) Health care benefits for employees paid for by the employer: (Health care benefits paid to employees who are producing the specific product that is the subject of the related order or finding); (7) Pension benefits for employees paid for by the employer: (Pension benefits paid to employees who are producing the specific product that is the subject of the related order or finding); (8) Environmental equipment, training, or technology: (Equipment, training, or technology used in the production of the product that is the subject of the related order or finding, that will assist in preventing potentially harmful factors from impacting the environment); (9) Acquisition of raw materials and other inputs: (Purchase of unprocessed materials or other inputs needed for the production of the product that is the subject of the related order or finding); and (10) Working

capital or other funds needed to maintain production: (Assets of a business that can be applied to its production of the product that is the subject of the related order or finding).

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must indicate: (1) The total amount of any qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category; (2) The total amount of those expenditures which have been the subject of any prior distribution for the order or finding being certified under 19 U.S.C. 1675c; and (3) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in item "(1)" above minus the total amount that was the subject of any prior distribution as noted in item "(2)" above). In accordance with 19 CFR 159.63(b)(2)(i)–(b)(2)(iii), CBP will deduct the amount of any prior distribution from the producer's claimed amount for that case. Total amounts disbursed by CBP under the CDSOA for Fiscal Years 2001 through 2006 are available on the CBP Web site.

Additionally, under 19 CFR 159.61(c), these qualifying expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must relate to a specific case.

Eligibility To Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer. Also, the domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (19 CFR 159.63(b)(3)(i)).

Furthermore, under 19 CFR 159.63(b)(3)(ii), where a party is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

Moreover, as required by 19 U.S.C. 1675c(b)(1) and 19 CFR 159.63(b)(3)(iii), the certification must include

information as to whether the domestic producer remains in operation at the time the certifications are filed and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer will not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and 19 CFR 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company that opposed the investigation or was acquired by a business related to a company that opposed the investigation. If a domestic producer has been so acquired, the producer will not be considered an affected domestic producer entitled to receive a distribution.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled "Verification of Certification").

Review and Correction of Certification

A certification that is submitted in response to this notice of distribution and received within 60 calendar days after the date of publication of the notice in the **Federal Register** may, at CBP's sole discretion, be subject to review before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 business days after the close of the 60 calendar-day filing period, as provided in 19 CFR 159.63(c). CBP must receive a corrected certification from the affected domestic producer and/or an association filing on behalf of an association member within 10 business days from the date of the original denial letter. Failure to receive a correct certification will result in denial as an untimely submission of a correct certification. It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete, and satisfactory so as to

demonstrate the eligibility of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete, and satisfactory will result in the domestic producer not receiving a distribution.

Verification of Certification

Certifications are subject to CBP's verification. Claimants may also be required to provide copies of additional records for further review by CBP. Therefore, parties are required to maintain records supporting their claims for a period of five years after the filing of the certification (19 CFR 159.63(d)). The records must support each qualifying expenditure enumerated in the certification and they must support how the qualifying expenditures are determined to be related to the production of the product

covered by the order or finding. Although CBP will accept comments and information from the public and other domestic producers, CBP retains complete discretion regarding the initiation and conduct of investigations stemming from such information.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the affected domestic producer, the total dollar amount claimed by the party on the certification, as well as the total dollar amount that CBP actually disburses to that affected domestic producer as an offset, will be available for disclosure to the public, as specified in 19 CFR 159.63(e). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this

information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in CBP's rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive an offset.

Dated: May 23, 2007.

Elaine P. Killoran,

Acting Assistant Commissioner, Office of Finance.

Department of Homeland Security
U.S. Customs and Border Protection
Continued Dumping and Subsidy Offset Act of 2000 Form

OMB No. 1651-0086

Claimant's Information

1. Claimant's Name: _____
(As it appears on USITC List or Association Membership List, if applicable)
(If person's name list Last Name, First Name)
2. Mailing Address: _____
3. Address 2: _____
4. City: _____
5. State: _____
6. ZIP/Postal Code: _____
- ☐ Check here if Mailing Address is a PO Box.
(Street Address is required when Mailing Address is a PO Box)
7. Street Address: _____
8. Address 2: _____
9. City: _____
10. State: _____
11. ZIP/Postal Code: _____
12. Business Type (select one):
- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Corporation
13. Number Type (select one and enter number below):
- ☐ Social Security Number
- ☐ Employee Identification Number
- ☐ Federal Tax Identification Number
- Enter Number Here _____

Contact Information (Primary Contact For All Certification Related Inquiries)

14. Contact Person: _____ 15. Contact Email: _____
16. Contact Phone: _____ 17. Contact Fax: _____
- (If Different From Claimant's Mailing Address)
18. Address: _____
19. Address 2: _____
20. City: _____
21. State: _____
22. ZIP/Postal Code: _____

OMB No. 1651-0086

Federal Register Notice Information

23. Date of Federal Register Notice: _____

24. Are you claiming a CDSOA distribution as a successor company? ☐ Yes ☐ No

If YES, please provide the name of the company and the date of the succession:

Name _____ Date _____

25. Are you an association, coalition, or cooperative that appears on the USITC list and files on behalf of your members? ☐ Yes ☐ No
(See 19 C.F.R. 159.61(b)(ii))

If YES, please provide Power of Attorney within 10 days of filing certification. Please mail Power of Attorney to the following address:

Assistant Commissioner
Office of Finance
Bureau of Customs and Border Protection
Revenue Division
Attn: Leigh Redelman
PO Box 68940
Indianapolis, IN 4626826. Are you filing as a member of an association, coalition, or cooperative that appears on the USITC list? ☐ Yes ☐ No

If YES, please provide name of organization and the date you became a member:

Name _____ Start Date _____

Qualifying Expenditures for Current Year

27. Manufacturing Facilities	_____
28. Equipment	_____
29. Research and Development	_____
30. Personnel Training	_____
31. Acquisition of Technology	_____
32. Health Care Benefits for Employees Paid For by the Employer	_____
33. Pension Benefits for Employees Paid For by the Employer	_____
34. Environmental Equipment, Training or Technology	_____
35. Acquisition of Raw Materials and Other Inputs	_____
36. Working Capital or Other Funds Needed to Maintain Production	_____
37. Total Amount of Qualifying Expenditures Currently Certified	_____
38. Total Amount of Qualifying Expenditures Previously Certified	_____
39. Total Amount of Qualifying Expenditures Currently and Previously Certified	_____

41. List Case Information For All The Cases With The Same Qualifying Expenditures On The Lines Provided Below

*Formula (Total Amt of Qualifying Expenditures Currently and Previously Certified - Prior Year Distributions = Net Amt)

CBP Form 7401 (03/06)

OMB No. 1651-0086

Statement of Eligibility

42. _____ (Claimant's Name as it appears on USITC List or Association Membership List, if applicable) desire to receive a distribution and is eligible to receive a distribution as an affected domestic producer. I affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distributions previously have been made.

43. _____ (Claimant's Name as it appears on USITC List or Association Membership List, if applicable) remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought.

44. _____ (Claimant's Name as it appears on USITC List or Association Membership List, if applicable) has not been acquired by a company that opposed the investigation or acquired by a business related to a company that opposed the investigation.

Certification

The information contained in this certification is true and accurate to the best of the knowledge and belief, under penalty of law, of the claimant and the claimant has records to support the qualifying expenditures being claimed.

45. Print Name of Person(s) Legally Authorized to Bind Producer

46. Date

47. Signature of Person(s) Legally Authorized to Bind Producer

48. Title of Person(s) Legally Authorized to Bind Producer

49. By submitting this certification, the certifier, _____, states that they are legally authorized to bind the producer and that information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law and the domestic producer has records to support the qualifying expenditures being claimed.

Privacy and Paperwork Reduction Act Statement

This statement is provided pursuant to the Privacy Act of 1974 (P.L. 93-579) for individuals seeking distributions under the Continued Dumping and Subsidy Offset Act of 2000 (19 U.S.C. § 1675c, as amended). The requested information is collected under the authority of 19 U.S.C. 1675c. The information collected on this form will be used by CBP to determine a claimant's eligibility for a distribution under the Continued Dumping and Subsidy Offset Act of 2000. Furnishing the information on this form is voluntary, however, failure to provide all requested information may result in denial of your certification. The name of the claimant, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that CBP actually disburses to that claimant as an offset, will be available for disclosure to the public, as specified in 19 C.F.R. § 159.63. Public Law 104-134 (April 26, 1996) requires that any person doing business with the Federal government furnish a social security number or tax identification number.

We estimate this form will take an average of 1 hour to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to CBP Office of Finance Revenue Division. The OMB number, 1651-0086, is currently valid. CBP may not collect this information, and you are not required to respond, unless this number is displayed.

CBP Form 7401 (03/06)

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-122-006	AA1921-49	Steel Jacks/Canada	Bloomfield Manufacturing (formerly Harrah Manufacturing) Seaburn Metal Products Duval
A-122-047	AA1921-127	Elemental Sulphur/Canada	Amstar Sugar
A-122-085	731-TA-3	Sugar and Syrups/Canada	Northwest Food Producers' Association Oregon Caneberry Commission Rader Farms Ron Roberts Shuksan Frozen Food Washington Red Raspberry Commission
A-122-401	731-TA-196	Red Raspberries/Canada	Alhambra Foundry Allegheny Foundry Bingham & Taylor Campbell Foundry Charlotte Pipe & Foundry Deeter Foundry East Jordan Foundry Le Baron Foundry Municipal Castings Neenah Foundry Opelika Foundry Pinkerton Foundry Tyler Pipe US Foundry & Manufacturing Vulcan Foundry
A-122-503	731-TA-263	Iron Construction Castings/Canada	CF&I Steel Copperweld Tubing Cyclops KPC Lone Star Steel LTV Steel Maverick Tube Quanex US Steel
A-122-506	731-TA-276	Oil Country Tubular Goods/Canada	Allied Industrial Workers of America American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America
A-122-601	731-TA-312	Brass Sheet and Strip/Canada	Industrial Union Department, AFL-CIO International Association of Machinists and Aerospace Workers International Brotherhood of Electrical Workers International Union of Electronic, Electrical, Technical, Salaried and Machine Workers Philips Electronic Components Group United Steelworkers of America Zenith Electronics
A-122-605	731-TA-367	Color Picture Tubes/Canada	Bethlehem Steel CF&I Steel
A-122-804	731-TA-422	Steel Rails/Canada	Magnesium Corporation of America Armco Steel
A-122-814	731-TA-528	Pure Magnesium/Canada	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries LTV Steel Lukens Steel National Steel Nextech Rouge Steel Co Sharon Steel
A-122-822	731-TA-614	Corrosion-Resistant Carbon Steel Flat Products/Canada.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-122-823	731-TA-575	Cut-to-Length Carbon Steel Plate/Canada	Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
A-122-830	731-TA-789	Stainless Steel Plate in Coils/Canada	Allegheny Ludlum Armco Steel J&L Specialty Steel Lukens Steel North American Stainless
A-122-838	731-TA-928	Softwood Lumber/Canada	71 Lumber Co Almond Bros Lbr Co Anthony Timberlands Balfour Lbr Co Ball Lumber Banks Lumber Company Barge Forest Products Co Beadles Lumber Co Bearden Lumber Bennett Lumber Big Valley Band Mill Bighorn Lumber Co Inc Blue Mountain Lumber Buddy Bean Lumber Burgin Lumber Co Ltd Burt Lumber Company C&D Lumber Co Ceda-Pine Veneer Cersosimo Lumber Co Inc Charles Ingram Lumber Co Inc Charleston Heart Pine Chesterfield Lumber Chips Chocorua Valley Lumber Co Claude Howard Lumber Clearwater Forest Industries CLW Inc CM Tucker Lumber Corp Coalition for Fair Lumber Imports Executive Committee Cody Lumber Co Collins Pine Co Collums Lumber Columbus Lumber Co Contoocook River Lumber Conway Guiteau Lumber Cornwright Lumber Co Crown Pacific Daniels Lumber Inc Dean Lumber Co Inc Deltic Timber Corporation Devils Tower Forest Products DiPrizio Pine Sales Dorchester Lumber Co DR Johnson Lumber East Brainerd Lumber Co East Coast Lumber Company Eas-Tex Lumber ECK Wood Products

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Ellingson Lumber Co Elliott Sawmilling Empire Lumber Co Evergreen Forest Products Excalibur Shelving Systems Inc Exley Lumber Co FH Stoltze Land & Lumber Co FL Turlington Lbr Co Inc Fleming Lumber Flippo Lumber Floragen Forest Products Frank Lumber Co Franklin Timber Co Fred Tebb & Sons Fremont Sawmill Frontier Resources Garrison Brothers Lumber Co and Subsidiaries Georgia Lumber Gilman Building Products Godfrey Lumber Granite State Forest Prod Inc Great Western Lumber Co Greenville Molding Inc Griffin Lumber Company Guess Brothers Lumber Gulf Lumber Gulf States Paper Guy Bennett Lumber Hampton Resources Hancock Lumber Hankins Inc Hankins Lumber Co Harrigan Lumber Harwood Products Haskell Lumber Inc Hatfield Lumber Hedstrom Lumber Herrick Millwork Inc HG Toler & Son Lumber Co Inc HG Wood Industries LLC Hogan & Storey Wood Prod Hogan Lumber Co Hood Industries HS Hoffer & Sons Lumber Co Inc Hubbard Forest Ind Inc HW Culp Lumber Co Idaho Veneer Co Industrial Wood Products Intermountain Res LLC International Paper J Franklin Jones Lumber Co Inc Jack Batte & Sons Inc Jasper Lumber Company JD Martin Lumber Co JE Jones Lumber Co Jerry G Williams & Sons JH Knighton Lumber Co Johnson Lumber Company Jordan Lumber & Supply Joseph Timber Co JP Haynes Lbr Co Inc JV Wells Inc JW Jones Lumber Keadle Lumber Enterprises Keller Lumber King Lumber Co Konkolville Lumber Langdale Forest Products Laurel Lumber Company Leavitt Lumber Co Leesville Lumber Co Limington Lumber Co Longview Fibre Co

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Lovell Lumber Co Inc M Kendall Lumber Co Manke Lumber Co Marriner Lumber Co Mason Lumber MB Heath & Sons Lumber Co MC Dixon Lumber Co Inc Mebane Lumber Co Inc Metcalf Lumber Co Inc Millry Mill Co Inc Moose Creek Lumber Co Moose River Lumber Morgan Lumber Co Inc Mount Yonah Lumber Co Nagel Lumber New Kearsarge Corp New South Nicolet Hardwoods Nieman Sawmills SD Nieman Sawmills WY North Florida Northern Lights Timber & Lumber Northern Neck Lumber Co Ochoco Lumber Co Olon Belcher Lumber Co Owens and Hurst Lumber Packaging Corp of America Page & Hill Forest Products Paper, Allied-Industrial, Chemical and Energy Workers International Union Parker Lumber Pate Lumber Co Inc PBS Lumber Pedigo Lumber Co Piedmont Hardwood Lumber Co Pine River Lumber Co Pinecrest Lumber Co Pleasant River Lumber Co Pleasant Western Lumber Inc Plum Creek Timber Pollard Lumber Portac Potlatch Potomac Supply Precision Lumber Inc Pruitt Lumber Inc R Leon Williams Lumber Co RA Yancey Lumber Rajala Timber Co Ralph Hamel Forest Products Randy D Miller Lumber Rappahannock Lumber Co Regulus Stud Mills Inc Riley Creek Lumber Roanoke Lumber Co Robbins Lumber Robertson Lumber Roseburg Forest Products Co Rough & Ready RSG Forest Products Rushmore Forest Products RY Timber Inc Sam Mabry Lumber Co Scotch Lumber SDS Lumber Co Seacoast Mills Inc Seago Lumber Seattle-Snohomish Seneca Sawmill Shaver Wood Products Shearer Lumber Products Shuqualak Lumber SI Storey Lumber

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Sierra Forest Products Sierra Pacific Industries Sigfridson Wood Products Silver City Lumber Inc Somers Lbr & Mfg Inc South & Jones South Coast Southern Forest Industries Inc Southern Lumber St Laurent Forest Products Starfire Lumber Co Steely Lumber Co Inc Stimson Lumber Summit Timber Co Sundance Lumber Superior Lumber Swanson Superior Forest Products Inc Swift Lumber Tamarack Mill Taylor Lumber & Treating Inc Temple-Inland Forest Products Thompson River Lumber Three Rivers Timber Thrift Brothers Lumber Co Inc Timco Inc Tolleson Lumber Toney Lumber TR Miller Mill Co Tradewinds of Virginia Ltd Travis Lumber Co Tree Source Industries Inc Tri-State Lumber TTT Studs United Brotherhood of Carpenters and Joiners Viking Lumber Co VP Kiser Lumber Co Walton Lumber Co Inc Warm Springs Forest Products Westvaco Corp Wilkins, Kaiser & Olsen Inc WM Shepherd Lumber Co WR Robinson Lumber Co Inc Wrenn Brothers Inc Wyoming Sawmills Yakama Forest Products Younce & Ralph Lumber Co Inc Zip-O-Log Mills Inc
A-122-840	731-TA-954	Carbon and Certain Alloy Steel Wire Rod/Canada ..	AmeriSteel Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills North Dakota Wheat Commission
A-122-847	731-TA-1019B	Hard Red Spring Wheat/Canada	General Housewares
A-201-504	731-TA-297	Porcelain-on-Steel Cooking Ware/Mexico	Burdette Coward
A-201-601	731-TA-333	Fresh Cut Flowers/Mexico	California Floral Council Floral Trade Council Florida Flower Association Gold Coast Uanko Nursery Hollandia Wholesale Florist Manatee Fruit Monterey Flower Farms Topstar Nursery
A-201-802	731-TA-451	Gray Portland Cement and Clinker/Mexico	Alamo Cement Blue Circle BoxCrow Cement Calaveras Cement

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-201-805	731-TA-534	Circular Welded Nonalloy Steel Pipe/Mexico	Capitol Aggregates Centex Cement Florida Crushed Stone Gifford-Hill Hanson Permanente Cement Ideal Basic Industries Independent Workers of North America (Locals 49, 52, 89, 192 and 471) International Union of Operating Engineers (Local 12) National Cement Company of Alabama National Cement Company of California Phoenix Cement Riverside Cement Southdown Tarmac America Texas Industries Allied Tube & Conduit American Tube Bull Moose Tube Century Tube CSI Tubular Products Cyclops Laclede Steel LTV Tubular Products Maruichi American Sharon Tube USX Western Tube & Conduit Wheatland Tube
A-201-806	731-TA-547	Carbon Steel Wire Rope/Mexico	Bridon American Macwhyte Paulsen Wire Rope The Rochester Corporation United Automobile, Aerospace and Agricultural Implement Workers (Local 960) Williamsport Wire-rope Works Wire Rope Corporation of America
A-201-809	731-TA-582	Cut-to-Length Carbon Steel Plate/Mexico	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
A-201-817	731-TA-716	Oil Country Tubular Goods/Mexico	IPSCO Koppel Steel Maverick Tube Newport Steel North Star Steel US Steel USS/Kobe
A-201-820	731-TA-747	Fresh Tomatoes/Mexico	Accomack County Farm Bureau Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee and Virginia Tomato Growers Florida Farm Bureau Federation Florida Fruit and Vegetable Association Florida Tomato Exchange Florida Tomato Growers Exchange Gadsden County Tomato Growers Association South Carolina Tomato Association
A-201-822	731-TA-802	Stainless Steel Sheet and Strip/Mexico	Allegheny Ludlum Armco Bethlehem Steel Carpenter Technology Corp

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-201-827	731-TA-848	Large-Diameter Carbon Steel Seamless Pipe/Mexico.	J&L Specialty Steel North American Stainless United Steelworkers of America North Star Steel
A-201-828	731-TA-920	Welded Large Diameter Line Pipe/Mexico	Timken US Steel United Steelworkers of America USS/Kobe American Cast Iron Pipe Berg Steel Pipe Bethlehem Steel Napa Pipe/Oregon Steel Mills Saw Pipes USA Stupp US Steel
A-201-830	731-TA-958	Carbon and Certain Alloy Steel Wire Rod/Mexico	AmeriSteel Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills American Spring Wire Corp Insteel Wire Products Co Sivaco Georgia LLC Strand Tech Martin Inc Sumiden Wire Products Corp
A-201-831	731-TA-1027 ...	Prestressed Concrete Steel Wire Strand/Mexico	Aqualon Co a Division of Hercules Inc AmeriSteel
A-201-834	731-TA-1085 ...	Purified Carboxymethylcellulose/Mexico	Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills
A-274-804	731-TA-961	Carbon and Certain Alloy Steel Wire Rod/Trinidad & Tobago.	Burdette Coward California Floral Council Floral Trade Council Florida Flower Association Gold Coast Uanko Nursery Hollandia Wholesale Florist Manatee Fruit Monterey Flower Farms Pajaro Valley Greenhouses Topstar Nursery
A-301-602	731-TA-329	Fresh Cut Flowers/Colombia	Florida Crushed Stone Southdown Tarmac America
A-307-803	731-TA-519	Gray Portland Cement and Clinker/Venezuela	Allied Tube & Conduit American Tube Bull Moose Tube Century Tube CSI Tubular Products Cyclops Laclede Steel LTV Tubular Products Maruichi American Sharon Tube USX Western Tube & Conduit Wheatland Tube
A-307-805	731-TA-537	Circular Welded Nonalloy Steel Pipe/Venezuela	AIMCOR Alabama Silicon
A-307-807	731-TA-570	Ferrosilicon/Venezuela	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-307-820	731-TA-931	Silicomanganese/Venezuela	American Alloys Globe Metallurgical Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech United Autoworkers of America (Local 523) United Steelworkers of America (Locals 2528, 3081, 5171 and 12646) Eramet Marietta Paper, Allied-Industrial, Chemical and Energy Workers international Union, Local 5-0639
A-331-602	731-TA-331	Fresh Cut Flowers/Ecuador	Burdette Coward California Floral Council Floral Trade Council Florida Flower Association Gold Coast Uanko Nursery Hollandia Wholesale Florist Manatee Fruit Monterey Flower Farms Topstar Nursery Atlantic Salmon of Maine Cooke Aquaculture US DE Salmon Global Aqua USA Island Aquaculture Maine Coast Nordic Scan Am Fish Farms Treats Island Fisheries Trumpet Island Salmon Farm
A-337-803	731-TA-768	Fresh Atlantic Salmon/Chile	LK Bowman Modern Mushroom Farms Monterey Mushrooms Mount Laurel Canning Mushroom Canning Southwood Farms Sunny Dell Foods United Canning
A-337-804	731-TA-776	Preserved Mushrooms/Chile	A&A Berry Farms Bahler Farms Bear Creek Farms David Burns Columbia Farms Columbia Fruit George Culp Dobbins Berry Farm Enfield Firestone Packing George Hoffman Farms Heckel Farms Wendell Kreder Curt Maberry Maberry Packing Mike & Jean's Nguyen Berry Farms Nick's Acres North Fork Parson Berry Farm Pickin 'N' Pluckin Postage Stamp Farm Rader RainSweet Scenic Fruit Silverstar Farms Tim Straub Thoeny Farms Townsend Tsugawa Farms Udike Berry Farms Van Laeken Farms
A-337-806	731-TA-948	Individually Quick Frozen Red Raspberries/Chile	Alhambra Foundry Allegheny Foundry Bingham & Taylor Campbell Foundry Charlotte Pipe & Foundry
A-351-503	731-TA-262	Iron Construction Castings/Brazil	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-351-505	731-TA-278	Malleable Cast Iron Pipe Fittings/Brazil	Deeter Foundry East Jordan Foundry Le Baron Foundry Municipal Castings Neenah Foundry Opelika Foundry Pinkerton Foundry Tyler Pipe US Foundry & Manufacturing Vulcan Foundry Grinnell Stanley G Flagg Stockham Valves & Fittings U-Brand Ward Manufacturing
A-351-602	731-TA-308	Carbon Steel Butt-Weld Pipe Fittings/Brazil	Ladish Mills Iron Works Steel Forgings Tube Forgings of America Weldbend
A-351-603	731-TA-311	Brass Sheet and Strip/Brazil	Allied Industrial Workers of America American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America
A-351-605	731-TA-326	Frozen Concentrated Orange Juice/Brazil	Alcoma Packing B&W Canning Berry Citrus Products Caulkins Indiantown Citrus Citrus Belle Citrus World Florida Citrus Mutual
A-351-804	731-TA-439	Industrial Nitrocellulose/Brazil	Hercules
A-351-806	731-TA-471	Silicon Metal/Brazil	American Alloys Globe Metallurgical International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693) Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech SiMETCO Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60) United Steelworkers of America (Locals 5171, 8538 and 12646)
A-351-809	731-TA-532	Circular Welded Nonalloy Steel Pipe/Brazil	Allied Tube & Conduit American Tube Bull Moose Tube Century Tube CSI Tubular Products Cyclops Laclede Steel LTV Tubular Products Maruichi American Sharon Tube USX Western Tube & Conduit Wheatland Tube
A-351-817	731-TA-574	Cut-to-Length Carbon Steel Plate/Brazil	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-351-819	731-TA-636	Stainless Steel Wire Rod/Brazil	Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America AL Tech Specialty Steel Armco Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-351-820	731-TA-641	Ferrosilicon/Brazil	AIMCOR Alabama Silicon American Alloys Globe Metallurgical Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech United Autoworkers of America (Local 523) United Steelworkers of America (Locals 2528, 3081, 5171 and 12646)
A-351-824	731-TA-671	Silicomanganese/Brazil	Elkem Metals Oil, Chemical and Atomic Workers (Local 3-639)
A-351-825	731-TA-678	Stainless Steel Bar/Brazil	AL Tech Specialty Steel Carpenter Technology Crucible Specialty Metals Electralloy Republic Engineered Steels Slater Steels Talley Metals Technology United Steelworkers of America
A-351-826	731-TA-708	Seamless Pipe/Brazil	Koppel Steel Quanex Timken
A-351-828	731-TA-806	Hot-Rolled Carbon Steel Flat Products/Brazil	United States Steel Acme Steel Bethlehem Steel California Steel Industries Gallatin Steel Geneva Steel Gulf States Steel Independent Steelworkers IPSCO Ispat/Inland LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Weirton Steel Wheeling-Pittsburgh Steel Corp
A-351-832	731-TA-953	Carbon and Certain Alloy Steel Wire Rod/Brazil	AmeriSteel Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills
A-351-840	731-TA-1089 ...	Certain Orange Juice/Brazil	A Duda & Sons Inc Alico Inc John Barnelt Ben Hill Griffin Inc Bliss Citrus BTS A Florida General Partnership Cain Groves California Citrus Mutual Cedar Haven Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Citrus World Inc Clonts Groves Inc Davis Enterprises Inc D Edwards Dickinson Evans Properties Inc Florida Citrus Commission Florida Farm Bureau Federation Florida Fruit & Vegetable Association Florida State of Department of Citrus Flying V Inc GBS Groves Inc Graves Brothers Co H&S Groves Hartwell Groves Inc Holly Hill Fruit Products Co Jack Melton Family Inc K-Bob Inc L Dicks Inc Lake Pickett Partnership Inc Lamb Revocable Trust Gerilyn Rebecca S Lamb Trustee Lykes Bros Inc Martin J McKenna Orange & Sons Inc Osgood Groves William W Parshall PH Freeman & Sons Pierie Grove Raymond & Melissa Pierie Roper Growers Cooperative Royal Brothers Groves Seminole Tribe of Florida Inc Silverman Groves/Rilla Cooper Smoak Groves Inc Sorrells Groves Inc Southern Gardens Groves Corp Southern Gardens Processing Corp Southern Groves Citrus Sun Ag Inc Sunkist Growers Inc Texas Citrus Exchange Texas Citrus Mutual Texas Produce Association Travis Wise Management Inc Uncle Matt's Fresh Inc Varn Citrus Growers Inc
A-351-837	731-TA-1024 ...	Prestressed Concrete Steel Wire Strand/Brazil	American Spring Wire Corp Insteel Wire Products Co Sivaco Georgia LLC Strand Tech Martin Inc Sumiden Wire Products Corp
A-357-007	731-TA-157	Carbon Steel Wire Rod/Argentina	Atlantic Steel Continental Steel Georgetown Steel North Star Steel Raritan River Steel
A-357-405	731-TA-208	Barbed Wire and Barbless Wire Strand/Argentina ...	CF&I Steel Davis Walker Forbes Steel & Wire Oklahoma Steel Wire
A-357-802	731-TA-409	Light-Walled Rectangular Tube/Argentina	Bull Moose Tube Hannibal Industries Harris Tube Maruichi American Searing Industries Southwestern Pipe
A-357-804	731-TA-470	Silicon Metal/Argentina	Western Tube & Conduit American Alloys Elkem Metals Globe Metallurgical International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693) Oil, Chemical and Atomic Workers (Local 389)

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-357-809	731-TA-707	Seamless Pipe/Argentina	Silicon Metaltech SiMETCO SKW Alloys Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60) United Steelworkers of America (Locals 5171, 8538 and 12646) Koppel Steel Quanex Timken United States Steel IPSCO Koppel Steel Lone Star Steel Maverick Tube Newport Steel North Star Steel US Steel USS/Kobe
A-357-810	731-TA-711	Oil Country Tubular Goods/Argentina	AH Meyer & Sons Adee Honey Farms Althoff Apiaries American Beekeeping Federation American Honey Producers Association Anderson Apiaries Arroyo Apiaries Artesian Honey Producers B Weaver Apiaries Bailey Enterprises Barkman Honey Basler Honey Apiary Beals Honey Bears Paw Apiaries Beaverhead Honey Bee Biz Bee Haven Honey Belliston Brothers Apiaries Big Sky Honey Bill Rhodes Honey Richard E Blake Curt Bronnenbery Brown's Honey Farms Brumley's Bees Buhmann Apiaries Carys Honey Farms Chaparrel Honey Charles Apiaries Mitchell Charles Collins Honey Conor Apiaries Coy's Honey Farm Dave Nelson Apiaries Delta Bee Eisele's Pollination & Honey Ellingsoa's Elliott Curtis & Sons Charles L Emmons, Sr Gause Honey Gene Brandi Apiaries Griffith Honey Haff Apiaries Hamilton Bee Farms Hamilton Honey Happie Bee Harvest Honey Harvey's Honey Hiatt Honey Hoffman Honey Hollman Apiaries Honey House Honeybee Apiaries Gary M Honl Rand William Honl and Sydney Jo Honl
A-357-812	731-TA-892	Honey/Argentina	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			James R & Joann Smith Trust Jaynes Bee Products Johnston Honey Farms Larry Johnston Ke-An Honey Kent Honeybees Lake-Indianhead Honey Farms Lamb's Honey Farm Las Flores Apiaries Mackrill Honey Farms & Sales Raymond Marquette Mason & Sons Honey McCoy's Sunny South Apiaries Merrimack Valley Apiaries & Evergreen Honey Met 2 Honey Farm Missouri River Honey Mitchell Brothers Honey Monda Honey Farm Montana Dakota Honey Northern Bloom Honey Noye's Apiaries Oakes Honey Oakley Honey Farms Old Mill Apiaries Opp Honey Oro Dulce Peterson's "Naturally Sweet" Honey Potoczak Bee Farms Price Apiaries Pure Sweet Honey Farms Robertson Pollination Service Robson Honey William Robson Rosedale Apiaries Ryan Apiaries Schmidt Honey Farms Simpson Apiaries Sioux Honey Association Smoot Honey Solby Honey Stahlman Apiaries Steve E Parks Apiaries Stroope Bee & Honey T&D Honey Bee Talbott's Honey Terry Apiaries Thompson Apiaries Triple A Farm Tropical Blossom Honey Tubbs Apiaries Venable Wholesale Walter L Wilson Buzz 76 Apiaries Wiebersiek Honey Farms Wilmer Farms Brent J Woodworth Wooten's Golden Queens Yaddof Apiaries
A-357-814	731-TA-898	Hot-Rolled Steel Products/Argentina	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp Jessop Steel
A-401-040	AA1921-114	Stainless Steel Plate/Sweden	
A-401-601	731-TA-316	Brass Sheet and Strip/Sweden	Allied Industrial Workers of America

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-401-603	731-TA-354	Stainless Steel Hollow Products/Sweden	American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper International Association of Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America AL Tech Specialty Steel Allegheny Ludlum Steel ARMCO Carpenter Technology Crucible Materials Damacus Tubular Products Specialty Tubing Group Emerson Power Transmission Kubar Bearings MPB Rollway Bearings Torrington
A-401-801	731-TA-397-A	Ball Bearings/Sweden	Emerson Power Transmission Kubar Bearings MPB Rollway Bearings Torrington
A-401-801	731-TA-397-B	Cylindrical Roller Bearings/Sweden	Emerson Power Transmission MPB Rollway Bearings Torrington
A-401-805	731-TA-586	Cut-to-Length Carbon Steel Plate/Sweden	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
A-401-806	731-TA-774	Stainless Steel Wire Rod/Sweden	AL Tech Specialty Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-401-808	731-TA-1087 ...	Purified Carboxymethylcellulose/Sweden	Aqualon Co a Division of Hercules Inc
A-403-801	731-TA-454	Fresh and Chilled Atlantic Salmon/Norway	Heritage Salmon The Coalition for Fair Atlantic Salmon Trade
A-405-802	731-TA-576	Cut-to-Length Carbon Steel Plate/Finland	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
A-405-803	731-TA-1084 ...	Purified Carboxymethylcellulose/Finland	Aqualon Co a Division of Hercules Inc
A-412-801	731-TA-399-A	Ball Bearings/United Kingdom	Emerson Power Transmission Kubar Bearings McGill Manufacturing Co MPB Rexnord Inc Rollway Bearings Torrington
A-412-801	731-TA-399-B	Cylindrical Roller Bearings/United Kingdom	Emerson Power Transmission MPB Rollway Bearings Torrington

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-412-803	731-TA-443	Industrial Nitrocellulose/United Kingdom	Hercules
A-412-805	731-TA-468	Sodium Thiosulfate/United Kingdom	Calabrian
A-412-814	731-TA-587	Cut-to-Length Carbon Steel Plate/United Kingdom ..	Bethlehem Steel
			California Steel Industries
			Geneva Steel
			Gulf States Steel
			Inland Steel Industries
			Lukens Steel
			National Steel
			Nextech
			Sharon Steel
			Theis Precision Steel
			Thompson Steel
			US Steel
			United Steelworkers of America
A-412-818	731-TA-804	Stainless Steel Sheet and Strip/United Kingdom	Allegheny Ludlum
			Armco Steel
			Bethlehem Steel
			Butler Armco Independent Union
			Carpenter Technology Corp
			J&L Specialty Steel
			North American Stainless
			United Steelworkers of America
			Zanesville Armco Independent Organization
A-412-822	731-TA-918	Stainless Steel Bar/United Kingdom	Carpenter Technology
			Crucible Specialty Metals
			Electralloy
			Empire Specialty Steel
			Republic Technologies International
			Slater Steels
			United Steelworkers of America
A-421-701	731-TA-380	Brass Sheet and Strip/Netherlands	Allied Industrial Workers of America
			American Brass
			Bridgeport Brass
			Chase Brass & Copper
			Hussey Copper
			International Association of Machinists & Aerospace Workers
			Mechanics Educational Society of America (Local 56)
			The Miller Company
			North Coast Brass & Copper
			Olin
			Pegg Metals
			Revere Copper Products
			United Steelworkers of America
A-421-804	731-TA-608	Cold-Rolled Carbon Steel Flat Products/Netherlands	Armco Steel
			Bethlehem Steel
			California Steel Industries
			Gulf States Steel
			Inland Steel Industries
			LTV Steel
			National Steel
			Nextech
			Rouge Steel Co
			Sharon Steel
			Theis Precision Steel
			Thompson Steel
			US Steel
			United Steelworkers of America
			WCI Steel
			Weirton Steel
A-421-805	731-TA-652	Aramid Fiber/Netherlands	E I du Pont de Nemours
A-421-807	731-TA-903	Hot-Rolled Steel Products/Netherlands	Bethlehem Steel
			Gallatin Steel
			Independent Steelworkers
			IPSCO
			LTV Steel
			National Steel
			Nucor
			Rouge Steel Co
			Steel Dynamics
			US Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-421-811	731-TA-1086 ...	Purified Carboxymethylcellulose/Netherlands	United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp Aqualon Co a Division of Hercules Inc
A-423-077	AA1921-198	Sugar/Belgium	Florida Sugar Marketing and Terminal Association
A-423-602	731-TA-365	Industrial Phosphoric Acid/Belgium	Albright & Wilson FMC Hydrite Chemical Monsanto Stauffer Chemical Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
A-423-805	731-TA-573	Cut-to-Length Carbon Steel Plate/Belgium	Allegheny Ludlum Armco Steel Lukens Steel North American Stainless United Steelworkers of America
A-423-808	731-TA-788	Stainless Steel Plate in Coils/Belgium	Lonza Pfizer Hercules
A-427-001	731-TA-44	Sorbitol/France	Florida Sugar Marketing and Terminal Association PQ Allied Industrial Workers of America American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America
A-427-009	731-TA-96	Industrial Nitrocellulose/France	Emerson Power Transmission Kubar Bearings McGill Manufacturing Co MPB Rexnord Inc Rollway Bearings Torrington
A-427-078	AA1921-199	Sugar/France	Emerson Power Transmission MPB Rollway Bearings Torrington
A-427-098	731-TA-25	Anhydrous Sodium Metasilicate/France	Emerson Power Transmission McGill Manufacturing Co Rexnord Inc Rollway Bearings Torrington
A-427-602	731-TA-313	Brass Sheet and Strip/France	Bethlehem Steel Inland Steel Industries USS/Kobe Steel Armco Steel Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel
A-427-801	731-TA-392-A	Ball Bearings/France	
A-427-801	731-TA-392-B	Cylindrical Roller Bearings/France	
A-427-801	731-TA-392-C	Spherical Plain Bearings/France	
A-427-804	731-TA-553	Hot-Rolled Lead and Bismuth Carbon Steel Products/France.	
A-427-808	731-TA-615	Corrosion-Resistant Carbon Steel Flat Products/France.	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-427-811	731-TA-637	Stainless Steel Wire Rod/France	Inland Steel Industries LTV Steel Lukens Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel AL Tech Specialty Steel Armco Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-427-814	731-TA-797	Stainless Steel Sheet and Strip/France	Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp North American Stainless United Steelworkers of America Zanesville Armco Independent Organization
A-427-816	731-TA-816	Cut-to-Length Carbon Steel Plate/France	Bethlehem Steel Geneva Steel IPSCO Steel National Steel US Steel United Steelworkers of America
A-427-818	731-TA-909	Low Enriched Uranium/France	United States Enrichment Corp USEC Inc
A-427-820	731-TA-913	Stainless Steel Bar/France	Carpenter Technology Crucible Specialty Metals Electralloy Empire Specialty Steel Republic Technologies International Slater Steels United Steelworkers of America
A-428-082	AA1921-200	Sugar/Germany	Florida Sugar Marketing and Terminal Association
A-428-602	731-TA-317	Brass Sheet and Strip/Germany	Allied Industrial Workers of America American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America
A-428-801	731-TA-391-A	Ball Bearings/Germany	Emerson Power Transmission Kubar Bearings McGill Manufacturing Co MPB Rexnord Inc Rollway Bearings Torrington
A-428-801	731-TA-391-B	Cylindrical Roller Bearings/Germany	Emerson Power Transmission MPB Rollway Bearings Torrington
A-428-801	731-TA-391-C	Spherical Plain Bearings/Germany	Emerson Power Transmission Rollway Bearings Torrington
A-428-802	731-TA-419	Industrial Belts/Germany	The Gates Rubber Company The Goodyear Tire and Rubber Company
A-428-803	731-TA-444	Industrial Nitrocellulose/Germany	Hercules

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-428-807	731-TA-465	Sodium Thiosulfate/Germany	Calabrian
A-428-814	731-TA-604	Cold-Rolled Carbon Steel Flat Products/Germany ...	Armco Steel Bethlehem Steel California Steel Industries Gulf States Steel Inland Steel Industries LTV Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel
A-428-815	731-TA-616	Corrosion-Resistant Carbon Steel Flat Products/ Germany.	Armco Steel Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries LTV Steel Lukens Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel
A-428-816	731-TA-578	Cut-to-Length Carbon Steel Plate/Germany	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
A-428-820	731-TA-709	Seamless Pipe/Germany	Koppel Steel Quanex Timken United States Steel
A-428-821	731-TA-736	Large Newspaper Printing Presses/Germany	Rockwell Graphics Systems
A-428-825	731-TA-798	Stainless Steel Sheet and Strip/Germany	Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp J&L Specialty Steel North American Stainless United Steelworkers of America Zanesville Armco Independent Organization
A-428-830	731-TA-914	Stainless Steel Bar/Germany	Carpenter Technology Crucible Specialty Metals Electralloy Empire Specialty Steel Republic Technologies International Slater Steels United Steelworkers of America
A-437-601	731-TA-341	Tapered Roller Bearings/Hungary	L&S Bearing Timken Torrington

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-437-804	731-TA-426	Sulfanilic Acid/Hungary	Nation Ford Chemical
A-447-801	731-TA-340C ..	Solid Urea/Estonia	Agrico Chemical
			American Cyanamid
			CF Industries
			First Mississippi
			Mississippi Chemical
			Terra International
			WR Grace
A-449-804	731-TA-878	Steel Concrete Reinforcing Bar/Latvia	AB Steel Mill Inc
			AmeriSteel
			Auburn Steel
			Birmingham Steel
			Border Steel
			Cascade Steel Rolling Mills Inc
			CMC Steel Group
			Co-Steel Inc
			Marion Steel
			North Star Steel Co
			Nucor Steel
			Rebar Trade Action Coalition
			Riverview Steel
			Sheffield Steel
			TAMCO
A-451-801	731-TA-340D ..	Solid Urea/Lithuania	TXI-Chaparral Steel Co
			Agrico Chemical
			American Cyanamid
			CF Industries
			First Mississippi
			Mississippi Chemical
			Terra International
			WR Grace
A-455-802	731-TA-583	Cut-to-Length Carbon Steel Plate/Poland	Bethlehem Steel
			California Steel Industries
			Geneva Steel
			Gulf States Steel
			Inland Steel Industries
			Lukens Steel
			National Steel
			Nextech
			Sharon Steel
			Theis Precision Steel
			Thompson Steel
			US Steel
A-455-803	731-TA-880	Steel Concrete Reinforcing Bar/Poland	United Steelworkers of America
			AB Steel Mill Inc
			AmeriSteel
			Auburn Steel
			Birmingham Steel
			Border Steel
			Cascade Steel Rolling Mills Inc
			CMC Steel Group
			Co-Steel Inc
			Marion Steel
			North Star Steel Co
			Nucor Steel
			Rebar Trade Action Coalition
			Riverview Steel
			Sheffield Steel
			TAMCO
A-469-007	731-TA-126	Potassium Permanganate/Spain	TXI-Chaparral Steel Co
A-469-803	731-TA-585	Cut-to-Length Carbon Steel Plate/Spain	Carus Chemical
			Bethlehem Steel
			California Steel Industries
			Geneva Steel
			Gulf States Steel
			Inland Steel Industries
			Lukens Steel
			National Steel
			Nextech
			Sharon Steel
			Theis Precision Steel
			Thompson Steel
			US Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-469-805	731-TA-682	Stainless Steel Bar/Spain	United Steelworkers of America AL Tech Specialty Steel Carpenter Technology Crucible Specialty Metals Electralloy Republic Engineered Steels Slater Steels Talley Metals Technology United Steelworkers of America
A-469-807	731-TA-773	Stainless Steel Wire Rod/Spain	AL Tech Specialty Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-469-810	731-TA-890	Stainless Steel Angle/Spain	Slater Steels United Steelworkers of America
A-469-814	731-TA-1083	Chlorinated Isocyanurates/Spain	BioLab Inc Clearon Corp Occidental Chemical Corp Nation Ford Chemical
A-471-806	731-TA-427	Sulfanilic Acid/Portugal	Minnesota Mining & Manufacturing
A-475-059	AA1921-167	Pressure-Sensitive Plastic Tape/Italy	Allied Industrial Workers of America
A-475-601	731-TA-314	Brass Sheet and Strip/Italy	American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America
A-475-703	731-TA-385	Granular Polytetrafluoroethylene/Italy	E I du Pont de Nemours ICI Americas
A-475-801	731-TA-393-A	Ball Bearings/Italy	Emerson Power Transmission Kubar Bearings McGill Manufacturing Co MPB Rexnord Inc Rollway Bearings Torrington
A-475-801	731-TA-393-B	Cylindrical Roller Bearings/Italy	Emerson Power Transmission MPB Rollway Bearings Torrington
A-475-802	731-TA-413	Industrial Belts/Italy	The Gates Rubber Company The Goodyear Tire and Rubber Company
A-475-811	731-TA-659	Grain-Oriented Silicon Electrical Steel/Italy	Allegheny Ludlum Armco Steel Butler Armco Independent Union United Steelworkers of America Zanesville Armco Independent Union
A-475-814	731-TA-710	Seamless Pipe/Italy	Koppel Steel Quanex Timken United States Steel
A-475-816	731-TA-713	Oil Country Tubular Goods/Italy	Bellville Tube IPSCO Koppel Steel Lone Star Steel Maverick Tube Newport Steel North Star Steel US Steel USS/Kobe
A-475-818	731-TA-734	Pasta/Italy	A Zerega's Sons American Italian Pasta Borden D Merlino & Sons Dakota Growers Pasta Foulds

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-475-820	731-TA-770	Stainless Steel Wire Rod/Italy	Gilster-Mary Lee Gooch Foods Hershey Foods LaRinascente Macaroni Co Pasta USA Philadelphia Macaroni ST Specialty Foods AL Tech Specialty Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-475-822	731-TA-790	Stainless Steel Plate in Coils/Italy	Allegheny Ludlum Armco Steel J&L Specialty Steel Lukens Steel North American Stainless United Steelworkers of America
A-475-824	731-TA-799	Stainless Steel Sheet and Strip/Italy	Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp J&L Specialty Steel North American Stainless United Steelworkers of America Zanesville Armco Independent Organization
A-475-826	731-TA-819	Cut-to-Length Carbon Steel Plate/Italy	Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel National Steel US Steel United Steelworkers of America
A-475-828	731-TA-865	Stainless Steel Butt-Weld Pipe Fittings/Italy	Flo-Mac Inc Gerlin Markovitz Enterprises Shaw Alloy Piping Products Taylor Forge Stainless
A-475-829	731-TA-915	Stainless Steel Bar/Italy	Carpenter Technology Crucible Specialty Metals Electralloy Empire Specialty Steel Republic Technologies International Slater Steels United Steelworkers of America
A-479-801	731-TA-445	Industrial Nitrocellulose/Yugoslavia	Hercules
A-484-801	731-TA-406	Electrolytic Manganese Dioxide/Greece	Chemetals Kerr-McGee Rayovac
A-485-601	731-TA-339	Solid Urea/Romania	Agrico Chemical American Cyanamid CF Industries First Mississippi Mississippi Chemical Terra International
A-485-602	731-TA-345	Tapered Roller Bearings/Romania	WR Grace L&S Bearing Timken
A-485-801	731-TA-395	Ball Bearings/Romania	Torrington Emerson Power Transmission Kubar Bearings MPB Rollway Bearings Torrington
A-485-803	731-TA-584	Cut-to-Length Carbon Steel Plate/Romania	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-485-805	731-TA-849	Small-Diameter Carbon Steel Seamless Pipe/Romania.	Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America Koppel Steel
A-485-806	731-TA-904	Hot-Rolled Steel Products/Romania	North Star Steel Sharon Tube Timken US Steel United Steelworkers of America USS/Kobe Vision Metals' Gulf States Tube Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
A-489-501	731-TA-273	Welded Carbon Steel Pipe and Tube/Turkey	Allied Tube & Conduit American Tube Bernard Epps Bock Industries Bull Moose Tube Central Steel Tube Century Tube Copperweld Tubing Cyclops Hughes Steel & Tube Kaiser Steel Laclede Steel Maruichi American Maverick Tube Merchant Metals Phoenix Steel Pittsburgh Tube Quanex Sharon Tube Southwestern Pipe UNR-Leavitt Welded Tube Western Tube & Conduit Wheatland Tube
A-489-602	731-TA-364	Aspirin/Turkey	Dow Chemical Monsanto
A-489-805	731-TA-735	Pasta/Turkey	Norwich-Eaton A Zerega's Sons American Italian Pasta Borden D Merlino & Sons Dakota Growers Pasta Foulds Gilster-Mary Lee Gooch Foods Hershey Foods LaRinascente Macaroni Co Pasta USA Philadelphia Macaroni ST Specialty Foods
A-489-807	731-TA-745	Steel Concrete Reinforcing Bar/Turkey	AmeriSteel Auburn Steel Birmingham Steel Commercial Metals Marion Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-507-502	731-TA-287	Raw In-Shell Pistachios/Iran	New Jersey Steel Blackwell Land California Pistachio Orchard Keenan Farms Kern Pistachio Hulling & Drying Los Ranchos de Poco Pedro Pistachio Producers of California TM Duche Nut
A-508-604	731-TA-366	Industrial Phosphoric Acid/Israel	Albright & Wilson FMC Hydrite Chemical Monsanto Stauffer Chemical
A-533-502	731-TA-271	Welded Carbon Steel Pipe and Tube/India	Allied Tube & Conduit American Tube Bernard Epps Bock Industries Bull Moose Tube Central Steel Tube Century Tube Copperweld Tubing Cyclops Hughes Steel & Tube Kaiser Steel Laclede Steel Maruichi American Maverick Tube Merchant Metals Phoenix Steel Pittsburgh Tube Quanex Sharon Tube Southwestern Pipe UNR-Leavitt Welded Tube Western Tube & Conduit Wheatland Tube
A-533-806	731-TA-561	Sulfanilic Acid/India	R-M Industries
A-533-808	731-TA-638	Stainless Steel Wire Rod/India	AL Tech Specialty Steel Armco Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-533-809	731-TA-639	Forged Stainless Steel Flanges/India	Gerlin Ideal Forging Maass Flange Markovitz Enterprises
A-533-810	731-TA-679	Stainless Steel Bar/India	AL Tech Specialty Steel Carpenter Technology Crucible Specialty Metals Electralloy Republic Engineered Steels Slater Steels Talley Metals Technology United Steelworkers of America
A-533-813	731-TA-778	Preserved Mushrooms/India	LK Bowman Modern Mushroom Farms Monterey Mushrooms Mount Laurel Canning Mushroom Canning Southwood Farms Sunny Dell Foods United Canning
A-533-817	731-TA-817	Cut-to-Length Carbon Steel Plate/India	Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel National Steel Tuscaloosa Steel US Steel United Steelworkers of America
A-533-820	731-TA-900	Hot-Rolled Steel Products/India	Bethlehem Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
A-533-823	731-TA-929	Silicomanganese/India	Eramet Marietta Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639
A-533-824	731-TA-933	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/India.	DuPont Teijin Films
			Mitsubishi Polyester Film LLC SKC America Inc Toray Plastics (America)
A-533-828	731-TA-1025	Prestressed Concrete Steel Wire Strand/India	American Spring Wire Corp Insteel Wire Products Co Sivaco Georgia LLC Strand Tech Martin Inc
			Sumiden Wire Products Corp
A-533-838	731-TA-1061	Carbazole Violet Pigment 23/India	Allegheny Color Corp Barker Fine Color Inc Clariant Corp
			Nation Ford Chemical Co Sun Chemical Co
A-533-843	731-TA-1096	Certain Lined Paper School Supplies/India	Fay Paper Products Inc MeadWestvaco Consumer & Office Products Norcom Inc Pacon Corp Roaring Spring Blank Book Co Top Flight Inc
			United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW)
A-538-802	731-TA-514	Cotton Shop Towels/Bangladesh	Milliken
A-549-502	731-TA-252	Welded Carbon Steel Pipe and Tube/Thailand	Allied Tube & Conduit American Tube Bernard Epps Bock Industries Bull Moose Tube Central Steel Tube Century Tube Copperweld Tubing Cyclops Hughes Steel & Tube Kaiser Steel Laclede Steel Maruichi American Maverick Tube Merchant Metals Phoenix Steel Pittsburgh Tube Quanex Sharon Tube Southwestern Pipe UNR-Leavitt Welded Tube Western Tube & Conduit Wheatland Tube
A-549-601	731-TA-348	Malleable Cast Iron Pipe Fittings/Thailand	Grinnell Stanley G Flagg Stockham Valves & Fittings U-Brand Ward Manufacturing
A-549-807	731-TA-521	Carbon Steel Butt-Weld Pipe Fittings/Thailand	Hackney Ladish

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-549-812	731-TA-705	Furfuryl Alcohol/Thailand	Mills Iron Works
A-549-813	731-TA-706	Canned Pineapple/Thailand	Steel Forgings
			Tube Forgings of America
			QO Chemicals
			International Longshoreman's and Warehouseman's Union
A-549-817	731-TA-907	Hot-Rolled Steel Products/Thailand	Maui Pineapple
			Bethlehem Steel
			Gallatin Steel
			Independent Steelworkers
			IPSCO
			LTV Steel
			National Steel
			Nucor
			Rouge Steel Co
			Steel Dynamics
			US Steel
			United Steelworkers of America
			WCI Steel Inc
			Weirton Steel
A-549-820	731-TA-1028 ...	Prestressed Concrete Steel Wire Strand/Thailand ...	Wheeling-Pittsburgh Steel Corp
			American Spring Wire Corp
			Insteel Wire Products Co
			Sivaco Georgia LLC
			Strand Tech Martin Inc
A-549-821	731-TA-1045 ...	Polyethylene Retail Carrier Bags/Thailand	Sumiden Wire Products Corp
			Aargus Plastics Inc
			Advance Polybags Inc
			Advance Polybags (Nevada) Inc
			Advance Polybags (Northeast) Inc
			Alpha Industries Inc
			Alpine Plastics Inc
			Ampac Packaging LLC
			API Enterprises Inc
			Command Packaging
			Continental Poly Bags Inc
			Durabag Co Inc
			Europackaging LLC
			Genpak LLC (formerly Continental Superbag LLC)
			Genpak LLC (formerly Strout Plastics)
			Hilex Poly Co LLC
			Inteplast Group Ltd
			PCL Packaging Inc
			Poly-Pak Industries Inc
			Roplast Industries Inc
			Superbag Corp
			Unistar Plastics LLC
			Vanguard Plastics Inc
A-552-801	731-TA-1012 ...	Certain Frozen Fish Fillets/Vietnam	VS Plastics LLC
			America's Catch Inc
			Aquafarms Catfish Inc
			Carolina Classics Catfish Inc
			Catfish Farmers of America
			Consolidated Catfish Companies Inc
			Delta Pride Catfish Inc
			Fish Processors Inc
			Guidry's Catfish Inc
			Haring's Pride Catfish
			Harvest Select Catfish (Alabama Catfish Inc)
			Heartland Catfish Co (TT&W Farm Products Inc)
			Prairie Lands Seafood (Illinois Fish Farmers Cooperative)
			Pride of the Pond
			Pride of the South Catfish Inc
			Prime Line Inc
			Seabrook Seafood Inc
			Seacat (Arkansas Catfish Growers)
			Simmons Farm Raised Catfish Inc
			Southern Pride Catfish LLC
A-557-805	731-TA-527	Extruded Rubber Thread/Malaysia	Verret Fisheries Inc
A-557-809	731-TA-866	Stainless Steel Butt-Weld Pipe Fittings/Malaysia	Globe Manufacturing
			North American Rubber Thread
			Flo-Mac Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-557-813	731-TA-1044 ...	Polyethylene Retail Carrier Bags/Malaysia	Gerlin Markovitz Enterprises Shaw Alloy Piping Products Taylor Forge Stainless Aargus Plastics Inc Advance Polybags Inc Advance Polybags (Nevada) Inc Advance Polybags (Northeast) Inc Alpha Industries Inc Alpine Plastics Inc Ampac Packaging LLC API Enterprises Inc Command Packaging Continental Poly Bags Inc Durabag Co Inc Europackaging LLC Genpak LLC (formerly Continental Superbag LLC) Genpak LLC (formerly Strout Plastics) Hilex Poly Co LLC Inteplast Group Ltd PCL Packaging Inc Poly-Pak Industries Inc Roplast Industries Inc Superbag Corp Unistar Plastics LLC Vanguard Plastics Inc VS Plastics LLC
A-559-502	731-TA-296	Small Diameter Standard and Rectangular Pipe and Tube/Singapore.	Allied Tube & Conduit American Tube Bull Moose Tube Cyclops Hannibal Industries Laclede Steel Pittsburgh Tube Sharon Tube Western Tube & Conduit Wheatland Tube
A-559-601	731-TA-370	Color Picture Tubes/Singapore	Industrial Union Department, AFL-CIO International Association of Machinists & Aerospace Workers International Brotherhood of Electrical Workers International Union of Electronic, Electrical, Technical, Salaried and Machine Workers Philips Electronic Components Group United Steelworkers of America Zenith Electronics
A-559-801	731-TA-396	Ball Bearings/Singapore	Emerson Power Transmission Kubar Bearings McGill Manufacturing Co MPB Rexnord Inc Rollway Bearings Torrington
A-559-802	731-TA-415	Industrial Belts/Singapore	The Gates Rubber Company The Goodyear Tire and Rubber Company
A-560-801	731-TA-742	Melamine Institutional Dinnerware/Indonesia	Carlisle Food Service Products Lexington United Plastics Manufacturing
A-560-802	731-TA-779	Preserved Mushrooms/Indonesia	LK Bowman Modern Mushroom Farms Monterey Mushrooms Mount Laurel Canning Mushroom Canning Southwood Farms Sunny Dell Foods United Canning
A-560-803	731-TA-787	Extruded Rubber Thread/Indonesia	North American Rubber Thread
A-560-805	731-TA-818	Cut-to-Length Carbon Steel Plate/Indonesia	Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel National Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-560-811	731-TA-875	Steel Concrete Reinforcing Bar/Indonesia	Tuscaloosa Steel US Steel United Steelworkers of America AB Steel Mill Inc AmeriSteel Birmingham Steel Border Steel Cascade Steel Rolling Mills Inc CMC Steel Group Co-Steel Inc Marion Steel North Star Steel Co Nucor Steel Rebar Trade Action Coalition Riverview Steel Sheffield Steel TAMCO
A-560-812	731-TA-901	Hot-Rolled Steel Products/Indonesia	TXI-Chaparral Steel Co Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel
A-560-815	731-TA-957	Carbon and Certain Alloy Steel Wire Rod/Indonesia	Wheeling-Pittsburgh Steel Corp AmeriSteel Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills
A-560-818	731-TA-1097 ...	Certain Lined Paper School Supplies/Indonesia	Fay Paper Products Inc MeadWestvaco Consumer & Office Products Norcom Inc Pacon Corp Roaring Spring Blank Book Co Top Flight Inc United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW)
A-565-801	731-TA-867	Stainless Steel Butt-Weld Pipe Fittings/Philippines ..	Flo-Mac Inc Gerlin Markovitz Enterprises Shaw Alloy Piping Products Taylor Forge Stainless
A-570-001	731-TA-125	Potassium Permanganate/China	Carus Chemical
A-570-002	731-TA-130	Chloropicrin/China	LCP Chemicals & Plastics Niklor Chemical
A-570-003	731-TA-103	Cotton Shop Towels/China	Milliken Texel Industries Wikit
A-570-007	731-TA-149	Barium Chloride/China	Chemical Products
A-570-101	731-TA-101	Greige Polyester Cotton Printcloth/China	Alice Manufacturing Clinton Mills Dan River Greenwood Mills Hamrick Mills M Lowenstein Mayfair Mills Mount Vernon Mills

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-501	731-TA-244	Natural Bristle Paint Brushes/China	Baltimore Brush Bestt Liebco Elder & Jenks EZ Paint H&G Industries Joseph Lieberman & Sons Purdy Rubberset Thomas Paint Applicators Wooster Brush
A-570-502	731-TA-265	Iron Construction Castings/China	Alhambra Foundry Allegheny Foundry Bingham & Taylor Campbell Foundry Charlotte Pipe & Foundry Deeter Foundry East Jordan Foundry Le Baron Foundry Municipal Castings Neenah Foundry Opelika Foundry Pinkerton Foundry Tyler Pipe US Foundry & Manufacturing Vulcan Foundry
A-570-504	731-TA-282	Petroleum Wax Candles/China	The AI Root Company Candle Artisans Inc Candle-Lite Cathedral Candle Colonial Candle of Cape Cod General Wax & Candle Lenox Candles Lumi-Lite Candle Meuch-Kreuzer Candle National Candle Association Will & Baumer WNS
A-570-506	731-TA-298	Porcelain-on-Steel Cooking Ware/China	General Housewares
A-570-601	731-TA-344	Tapered Roller Bearings/China	L&S Bearing Timken Torrington
A-570-802	731-TA-441	Industrial Nitrocellulose/China	Hercules
A-570-803	731-TA-457-A	Axes and Adzes/China	Council Tool Co Inc Warwood Tool Woodings-Verona
A-570-803	731-TA-457-B	Bars and Wedges/China	Council Tool Co Inc Warwood Tool Woodings-Verona
A-570-803	731-TA-457-C	Hammers and Sledges/China	Council Tool Co Inc Warwood Tool Woodings-Verona
A-570-803	731-TA-457	Picks and Mattocks/China	Council Tool Co Inc Warwood Tool Woodings-Verona
A-570-804	731-TA-464	Sparklers/China	BJ Alan Diamond Sparkler Elkton Sparkler
A-570-805	731-TA-466	Sodium Thiosulfate/China	Calabrian
A-570-806	731-TA-472	Silicon Metal/China	American Alloys Elkem Metals Globe Metallurgical International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693) Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech SiMETCO SKW Alloys Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60) United Steelworkers of America (Locals 5171, 8538 and 12646)
A-570-808	731-TA-474	Chrome-Plated Lug Nuts/China	Consolidated International Automotive Key Manufacturing

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-811	731-TA-497	Tungsten Ore Concentrates/China	McGard Curtis Tungsten US Tungsten
A-570-814	731-TA-520	Carbon Steel Butt-Weld Pipe Fittings/China	Hackney Ladish Mills Iron Works Steel Forgings Tube Forgings of America
A-570-815	731-TA-538	Sulfanilic Acid/China	R-M Industries
A-570-819	731-TA-567	Ferrosilicon/China	AIMCOR Alabama Silicon American Alloys Globe Metallurgical Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech United Autoworkers of America (Local 523) United Steelworkers of America (Locals 2528, 3081, 5171 and 12646)
A-570-822	731-TA-624	Helical Spring Lock Washers/China	Illinois Tool Works
A-570-825	731-TA-653	Sebacic Acid/China	Union Camp
A-570-826	731-TA-663	Paper Clips/China	ACCO USA Labelon/Noesting TRICO Manufacturing
A-570-827	731-TA-669	Cased Pencils/China	Blackfeet Indian Writing Instrument Dixon-Ticonderoga Empire Berol Faber-Castell General Pencil JR Moon Pencil Musgrave Pen & Pencil Panda Writing Instrument Manufacturers Association, Pencil Section
A-570-828	731-TA-672	Silicomanganese/China	Elkem Metals Oil, Chemical and Atomic Workers (Local 3-639)
A-570-830	731-TA-677	Coumarin/China	Rhone-Poulenc
A-570-831	731-TA-683	Fresh Garlic/China	A&D Christopher Ranch Belridge Packing Colusa Produce Denice & Filice Packing El Camino Packing The Garlic Company Vessey and Company
A-570-832	731-TA-696	Pure Magnesium/China	Dow Chemical International Union of Operating Engineers (Local 564) Magnesium Corporation of America United Steelworkers of America (Local 8319)
A-570-835	731-TA-703	Furfuryl Alcohol/China	QO Chemicals
A-570-836	731-TA-718	Glycine/China	Chatterm Hampshire Chemical
A-570-840	731-TA-724	Manganese Metal/China	Elkem Metals Kerr-McGee
A-570-842	731-TA-726	Polyvinyl Alcohol/China	Air Products and Chemicals
A-570-844	731-TA-741	Melamine Institutional Dinnerware/China	Carlisle Food Service Products Lexington United Plastics Manufacturing
A-570-846	731-TA-744	Brake Rotors/China	Brake Parts Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers Iroquois Tool Systems Kelsey Hayes Kinetic Parts Manufacturing Overseas Auto Parts Wagner Brake
A-570-847	731-TA-749	Persulfates/China	FMC
A-570-848	731-TA-752	Crawfish Tail Meat/China	A&S Crawfish Acadiana Fisherman's Co-Op Arnaudville Seafood Atchafalaya Crawfish Processors Basin Crawfish Processors Bayou Land Seafood Becnel's Meat & Seafood

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Bellard's Poultry & Crawfish Bonanza Crawfish Farm Cajun Seafood Distributors Carl's Seafood Catahoula Crawfish Choplin SFD CJ's Seafood & Purged Crawfish Clearwater Crawfish Crawfish Processors Alliance Harvey's Seafood Lawtell Crawfish Processors Louisiana Premium Seafoods Louisiana Seafood LT West Phillips Seafood Prairie Cajun Wholesale Seafood Dist Riceland Crawfish Schexnider Crawfish Seafood International Distributors Sylvester's Processors Teche Valley Seafood
A-570-849	731-TA-753	Cut-to-Length Carbon Steel Plate/China	Acme Metals Inc Bethlehem Steel Geneva Steel Gulf States Steel Lukens Inc National Steel US Steel United Steelworkers of America
A-570-850	731-TA-757	Collated Roofing Nails/China	Illinois Tool Works International Staple and Machines Stanley-Bostitch
A-570-851	731-TA-777	Preserved Mushrooms/China	LK Bowman Modern Mushroom Farms Monterey Mushrooms Mount Laurel Canning Mushroom Canning Southwood Farms Sunny Dell Foods United Canning
A-570-852	731-TA-814	Creatine Monohydrate/China	Pfanstiehl Laboratories
A-570-853	731-TA-828	Aspirin/China	Rhodia
A-570-855	731-TA-841	Non-Frozen Apple Juice Concentrate/China	Coloma Frozen Foods Green Valley Apples of California Knouse Foods Coop Mason County Fruit Packers Coop Tree Top
A-570-856	731-TA-851	Synthetic Indigo/China	Buffalo Color United Steelworkers of America
A-570-860	731-TA-874	Steel Concrete Reinforcing Bar/China	AB Steel Mill Inc AmeriSteel Auburn Steel Birmingham Steel Border Steel Cascade Steel Rolling Mills Inc CMC Steel Group Co-Steel Inc Marion Steel North Star Steel Co Nucor Steel Rebar Trade Action Coalition Riverview Steel Sheffield Steel TAMCO
A-570-862	731-TA-891	Foundry Coke/China	TXI-Chaparral Steel Co ABC Coke Citizens Gas and Coke Utility Erie Coke Sloss Industries Corp Tonawanda Coke United Steelworkers of America
A-570-863	731-TA-893	Honey/China	AH Meyer & Sons Adeo Honey Farms

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Althoff Apiaries American Beekeeping Federation American Honey Producers Association Anderson Apiaries Arroyo Apiaries Artesian Honey Producers B Weaver Apiaries Bailey Enterprises Barkman Honey Basler Honey Apiary Beals Honey Bears Paw Apiaries Beaverhead Honey Bee Biz Bee Haven Honey Belliston Brothers Apiaries Big Sky Honey Bill Rhodes Honey Richard E Blake Curt Bronnenbery Brown's Honey Farms Brumley's Bees Buhmann Apiaries Carys Honey Farms Chaparrel Honey Charles Apiaries Mitchell Charles Collins Honey Conor Apiaries Coy's Honey Farm Dave Nelson Apiaries Delta Bee Eisele's Pollination & Honey Ellingsoa's Elliott Curtis & Sons Charles L Emmons, Sr Gause Honey Gene Brandi Apiaries Griffith Honey Haff Apiaries Hamilton Bee Farms Hamilton Honey Happie Bee Harvest Honey Harvey's Honey Hiatt Honey Hoffman Honey Hollman Apiaries Honey House Honeybee Apiaries Gary M Honl Rand William Honl and Sydney Jo Honl James R & Joann Smith Trust Jaynes Bee Products Johnston Honey Farms Larry Johnston Ke-An Honey Kent Honeybees Lake-Indianhead Honey Farms Lamb's Honey Farm Las Flores Apiaries Mackrill Honey Farms & Sales Raymond Marquette Mason & Sons Honey McCoy's Sunny South Apiaries Merrimack Valley Apiaries & Evergreen Honey Met 2 Honey Farm Missouri River Honey Mitchell Brothers Honey Monda Honey Farm Montana Dakota Honey Northern Bloom Honey Noye's Apiaries

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Oakes Honey Oakley Honey Farms Old Mill Apiaries Opp Honey Oro Dulce Peterson's "Naturally Sweet" Honey Potoczak Bee Farms Price Apiaries Pure Sweet Honey Farms Robertson Pollination Service Robson Honey William Robson Rosedale Apiaries Ryan Apiaries Schmidt Honey Farms Simpson Apiaries Sioux Honey Association Smoot Honey Solby Honey Stahlman Apiaries Steve E Parks Apiaries Stroope Bee & Honey T&D Honey Bee Talbot's Honey Terry Apiaries Thompson Apiaries Triple A Farm Tropical Blossom Honey Tubbs Apiaries Venable Wholesale Walter L Wilson Buzz 76 Apiaries Wiebersiek Honey Farms Wilmer Farms Brent J Woodworth Wooten's Golden Queens Yaddof Apiaries
A-570-864	731-TA-895	Pure Magnesium (Granular)/China	Concerned Employees of Northwest Alloys Magnesium Corporation of America United Steelworkers of America United Steelworkers of America (Local 8319)
A-570-865	731-TA-899	Hot-Rolled Steel Products/China	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
A-570-866	731-TA-921	Folding Gift Boxes/China	Field Container Harvard Folding Box Sterling Packaging Superior Packaging
A-570-867	731-TA-922	Automotive Replacement Glass Windshields/China	PPG Industries Safelite Glass Viracon/Curvlite Inc Visteon Corporation
A-570-868	731-TA-932	Folding Metal Tables and Chairs/China	Krueger International McCourt Manufacturing Meco Virco Manufacturing
A-570-873	731-TA-986	Ferrovanadium/China	Bear Metallurgical Co Shieldalloy Metallurgical Corp
A-570-875	731-TA-990	Non-Malleable Cast Iron Pipe Fittings/China	Anvil International Inc Buck Co Inc Frazier & Frazier Industries Ward Manufacturing Inc
A-570-877	731-TA-1010 ...	Lawn and Garden Steel Fence Posts/China	Steel City Corp

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-878	731-TA-1013 ...	Saccharin/China	PMC Specialties Group Inc
A-570-879	731-TA-1014 ...	Polyvinyl Alcohol/China	Celanese Ltd
A-570-880	731-TA-1020 ...	Barium Carbonate/China	E I du Pont de Nemours & Co
A-570-881	731-TA-1021 ...	Malleable Iron Pipe Fittings/China	Chemical Products Corp
			Anvil International Inc
			Buck Co Inc
A-570-882	731-TA-1022 ...	Refined Brown Aluminum Oxide/China	Ward Manufacturing Inc
			C-E Minerals
			Treibacher Schleifmittel North America Inc
A-570-884	731-TA-1034 ...	Certain Color Television Receivers/China	Washington Mills Co Inc
			Five Rivers Electronic Innovations LLC
			Industrial Division of the Communications Workers of America (IUECWA)
			International Brotherhood of Electrical Workers (IBEW)
A-570-886	731-TA-1043 ...	Polyethylene Retail Carrier Bags/China	Aargus Plastics Inc
			Advance Polybags Inc
			Advance Polybags (Nevada) Inc
			Advance Polybags (Northeast) Inc
			Alpha Industries Inc
			Alpine Plastics Inc
			Ampac Packaging LLC
			API Enterprises Inc
			Command Packaging
			Continental Poly Bags Inc
			Durabag Co Inc
			Europackaging LLC
			Genpak LLC (formerly Continental Superbag LLC)
			Genpak LLC (formerly Strout Plastics)
			Hilex Poly Co LLC
			Inteplast Group Ltd
			PCL Packaging Inc
			Poly-Pak Industries Inc
			Roplast Industries Inc
			Superbag Corp
			Unistar Plastics LLC
			Vanguard Plastics Inc
			VS Plastics LLC
A-570-887	731-TA-1046 ...	Tetrahydrofurfuryl Alcohol/China	Penn Specialty Chemicals Inc
A-570-888	731-TA-1047 ...	Ironing Tables and Certain Parts Thereof/China	Home Products International Inc
A-570-890	731-TA-1058 ...	Wooden Bedroom Furniture/China	American Drew
			American of Martinsville
			Bassett Furniture Industries Inc
			Bebe Furniture
			Carolina Furniture Works Inc
			Carpenters Industrial Union Local 2093
			Century Furniture Industries
			Country Craft Furniture Inc
			Craftique
			Crawford Furniture Mfg Corp
			EJ Victor Inc
			Forest Designs
			Harden Furniture Inc
			Hart Furniture
			Higdon Furniture Co
			IUE Industrial Division of CWA Local 82472
			Johnston Tombigbee Furniture Mfg Co
			Kincaid Furniture Co Inc
			L & J G Stickley Inc
			Lea Industries
			Michels & Co
			MJ Wood Products Inc
			Mobel Inc
			Modern Furniture Manufacturers Inc
			Moosehead Mfg Co
			Oakwood Interiors
			O'Sullivan Industries Inc
			Pennsylvania House Inc
			Perdues Inc
			Sandberg Furniture Mfg Co Inc
			Stanley Furniture Co Inc
			Statton Furniture Mfg Assoc
			T Copeland & Sons

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-570-891	731-TA-1059 ...	Hand Trucks and Certain Parts Thereof/China	Teamsters, Chauffeurs, Warehousemen and Helpers Local 991 Tom Seely Furniture UBC Southern Council of Industrial Workers Local Union 2305 United Steelworkers of America Local 193U Vaughan Furniture Co Inc Vaughan-Bassett Furniture Co Inc Vermont Tubbs Webb Furniture Enterprises Inc B&P Manufacturing Gleason Industrial Products Inc Harper Trucks Inc Magline Inc Precision Products Inc Wesco Industrial Products Inc
A-570-892	731-TA-1060 ...	Carbazole Violet Pigment 23/China	Allegheny Color Corp Barker Fine Color Inc Clariant Corp Nation Ford Chemical Co Sun Chemical Co
A-570-894	731-TA-1070 ...	Certain Tissue Paper Products/China	American Crepe Corp Cindus Corp Eagle Tissue LLC Flower City Tissue Mills Co and Subsidiary Garlock Printing & Converting Corp Green Mtn Specialties Inc Hallmark Cards Inc Pacon Corp Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO ("PACE") Paper Service LTD Putney Paper Seaman Paper Co of MA Inc
A-570-895	731-TA-1069 ...	Certain Crepe Paper Products/China	American Crepe Corp Cindus Corp Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO ("PACE") Seaman Paper Co of MA Inc
A-570-896	731-TA-1071 ...	Alloy Magnesium/China	Garfield Alloys Inc Glass, Molders, Pottery, Plastics & Allied Workers International Local 374 Halaco Engineering MagReTech Inc United Steelworkers of America Local 8319
A-570-899	731-TA-1091 ...	Artists' Canvas/China	US Magnesium LLC Duro Art Industries ICG/Holliston Mills Inc Signature World Class Canvas LLC Tara Materials Inc
A-570-898	731-TA-1082 ...	Chlorinated Isocyanurates/China	BioLab Inc Clearon Corp Occidental Chemical Corp
A-570-901	731-TA-1095 ...	Certain Lined Paper School Supplies/China	Fay Paper Products Inc MeadWestvaco Consumer & Office Products Norcom Inc Pacon Corp Roaring Spring Blank Book Co Top Flight Inc United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW) Committee to Preserve American Color Television Independent Radionic Workers of America Industrial Union Department, AFL-CIO International Brotherhood of Electrical Workers International Union of Electrical, Radio and Machine Workers
A-580-507	731-TA-279	Malleable Cast Iron Pipe Fittings/Korea	Grinnell Stanley G Flagg Stockham Valves & Fittings U-Brand Ward Manufacturing

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-580-601	731-TA-304	Top-of-the-Stove Stainless Steel Cooking Ware/Korea.	Farberware Regal Ware Revere Copper & Brass WearEver/Proctor Silex
A-580-603	731-TA-315	Brass Sheet and Strip/Korea	Allied Industrial Workers of America American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America
A-580-605	731-TA-369	Color Picture Tubes/Korea	Industrial Union Department, AFL-CIO International Association of Machinists & Aerospace Workers International Brotherhood of Electrical Workers International Union of Electronic, Electrical, Technical, Salaried and Machine Workers Philips Electronic Components Group United Steelworkers of America Zenith Electronics
A-580-803	731-TA-427	Small Business Telephone Systems/Korea	American Telephone & Telegraph Comdial Eagle Telephonic Hercules
A-580-805	731-TA-442	Industrial Nitrocellulose/Korea	E I du Pont de Nemours
A-580-807	731-TA-459	Polyethylene Terephthalate Film/Korea	Hoechst Celanese ICI Americas
A-580-809	731-TA-533	Circular Welded Nonalloy Steel Pipe/Korea	Allied Tube & Conduit American Tube Bull Moose Tube Century Tube CSI Tubular Products Cyclops Laclede Steel LTV Tubular Products Maruichi American Sharon Tube USX Western Tube & Conduit Wheatland Tube
A-580-810	731-TA-540	Welded ASTM A-312 Stainless Steel Pipe/Korea ...	Avesta Sandvik Tube Bristol Metals Crucible Materials Damascus Tubular Products United Steelworkers of America
A-580-811	731-TA-546	Carbon Steel Wire Rope/Korea	Bridon American Macwhyte Paulsen Wire Rope The Rochester Corporation United Automobile, Aerospace and Agricultural Implement Workers (Local 960) Williamsport Wire-rope Works Wire Rope Corporation of America
A-580-812	731-TA-556	DRAMs of 1 Megabit and Above/Korea	Micron Technology NEC Electronics Texas Instruments
A-580-813	731-TA-563	Stainless Steel Butt-Weld Pipe Fittings/Korea	Flo-Mac Inc Gerlin Markovitz Enterprises Shaw Alloy Piping Products Taylor Forge Stainless
A-580-815	731-TA-607	Cold-Rolled Carbon Steel Flat Products/Korea	Armco Steel Bethlehem Steel California Steel Industries Gulf States Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-580-816	731-TA-618	Corrosion-Resistant Carbon Steel Flat Products/Korea.	Inland Steel Industries LTV Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel Armco Steel
A-580-825	731-TA-715	Oil Country Tubular Goods/Korea	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries LTV Steel Lukens Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel Bellville Tube IPSCO Koppel Steel Lone Star Steel Maverick Tube Newport Steel North Star Steel US Steel USS/Kobe
A-580-829	731-TA-772	Stainless Steel Wire Rod/Korea	AL Tech Specialty Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-580-831	731-TA-791	Stainless Steel Plate in Coils/Korea	Allegheny Ludlum Armco Steel J&L Specialty Steel Lukens Steel North American Stainless United Steelworkers of America
A-580-834	731-TA-801	Stainless Steel Sheet and Strip/Korea	Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp J&L Specialty Steel North American Stainless United Steelworkers of America Zanesville Armco Independent Organization
A-580-836	731-TA-821	Cut-to-Length Carbon Steel Plate/Korea	Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel National Steel Tuscaloosa Steel US Steel United Steelworkers of America
A-580-839	731-TA-825	Polyester Staple Fiber/Korea	Arteva Specialties Sarl E I du Pont de Nemours Intercontinental Polymers Wellman
A-580-841	731-TA-854	Structural Steel Beams/Korea	Northwestern Steel and Wire

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-580-844	731-TA-877	Steel Concrete Reinforcing Bar/Korea	Nucor Nucor-Yamato Steel TXI-Chaparral Steel United Steelworkers of America AB Steel Mill Inc AmeriSteel Auburn Steel Birmingham Steel Border Steel Cascade Steel Rolling Mills Inc CMC Steel Group Co-Steel Inc Marion Steel North Star Steel Co Nucor Steel Rebar Trade Action Coalition Riverview Steel Sheffield Steel TAMCO TXI-Chaparral Steel Co
A-580-846	731-TA-889	Stainless Steel Angle/Korea	Slater Steels United Steelworkers of America
A-580-847	731-TA-916	Stainless Steel Bar/Korea	Carpenter Technology Crucible Specialty Metals Electralloy Empire Specialty Steel Republic Technologies International Slater Steels United Steelworkers of America
A-580-850	731-TA-1017	Polyvinyl Alcohol/Korea	Celanese Ltd E I du Pont de Nemours & Co
A-580-852	731-TA-1026	Prestressed Concrete Steel Wire Strand/Korea	American Spring Wire Corp Insteel Wire Products Co Sivaco Georgia LLC Strand Tech Martin Inc Sumiden Wire Products Corp
A-583-008	731-TA-132	Small Diameter Carbon Steel Pipe and Tube/Taiwan.	Allied Tube & Conduit American Tube Bull Moose Tube Copperweld Tubing J&L Steel Kaiser Steel Merchant Metals Pittsburgh Tube Southwestern Pipe Western Tube & Conduit
A-583-009	731-TA-135	Color Television Receivers/Taiwan	Committee to Preserve American Color Television Independent Radionic Workers of America Industrial Union Department, AFL-CIO International Brotherhood of Electrical Workers International Union of Electrical, Radio and Machine Workers
A-583-080	AA1921-197	Carbon Steel Plate/Taiwan	Bethlehem Steel China Steel US Steel
A-583-505	731-TA-277	Oil Country Tubular Goods/Taiwan	CF&I Steel Copperweld Tubing Cyclops KPC Lone Star Steel LTV Steel Maverick Tube Quanex US Steel
A-583-507	731-TA-280	Malleable Cast Iron Pipe Fittings/Taiwan	Grinnell Stanley G Flagg Stockham Valves & Fittings U-Brand Ward Manufacturing
A-583-508	731-TA-299	Porcelain-on-Steel Cooking Ware/Taiwan	General Housewares
A-583-603	731-TA-305	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan.	Farberware

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-583-605	731-TA-310	Carbon Steel Butt-Weld Pipe Fittings/Taiwan	Regal Ware Revere Copper & Brass WearEver/Proctor Silex Ladish Mills Iron Works Steel Forgings Tube Forgings of America Weldbend
A-583-803	731-TA-410	Light-Walled Rectangular Tube/Taiwan	Bull Moose Tube Hannibal Industries Harris Tube Maruichi American Searing Industries Southwestern Pipe Western Tube & Conduit
A-583-806	731-TA-428	Small Business Telephone Systems/Taiwan	American Telephone & Telegraph Comdial Eagle Telephonic
A-583-810	731-TA-475	Chrome-Plated Lug Nuts/Taiwan	Consolidated International Automotive Key Manufacturing McGard
A-583-814	731-TA-536	Circular Welded Nonalloy Steel Pipe/Taiwan	Allied Tube & Conduit American Tube Bull Moose Tube Century Tube CSI Tubular Products Cyclops Laclede Steel LTV Tubular Products Maruichi American Sharon Tube USX Western Tube & Conduit Wheatland Tube
A-583-815	731-TA-541	Welded ASTM A-312 Stainless Steel Pipe/Taiwan	Avesta Sandvik Tube Bristol Metals Crucible Materials Damascus Tubular Products United Steelworkers of America
A-583-816	731-TA-564	Stainless Steel Butt-Weld Pipe Fittings/Taiwan	Flo-Mac Inc Gerlin Markovitz Enterprises Shaw Alloy Piping Products Taylor Forge Stainless Illinois Tool Works
A-583-820	731-TA-625	Helical Spring Lock Washers/Taiwan	Gerlin Ideal Forging Maass Flange Markovitz Enterprises
A-583-821	731-TA-640	Forged Stainless Steel Flanges/Taiwan	Air Products and Chemicals Carlisle Food Service Products Lexington United Plastics Manufacturing
A-583-824	731-TA-729	Polyvinyl Alcohol/Taiwan	Illinois Tool Works International Staple and Machines Stanley-Bostitch
A-583-825	731-TA-743	Melamine Institutional Dinnerware/Taiwan	Micron Technology AL Tech Specialty Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-583-826	731-TA-759	Collated Roofing Nails/Taiwan	Allegheny Ludlum Armco Steel J&L Specialty Steel Lukens Steel North American Stainless United Steelworkers of America
A-583-827	731-TA-762	SRAMs/Taiwan	Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp
A-583-828	731-TA-775	Stainless Steel Wire Rod/Taiwan	
A-583-830	731-TA-793	Stainless Steel Plate in Coils/Taiwan	
A-583-831	731-TA-803	Stainless Steel Sheet and Strip/Taiwan	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-583-833	731-TA-826	Polyester Staple Fiber/Taiwan	J&L Specialty Steel North American Stainless United Steelworkers of America Zanesville Armco Independent Organization Arteva Specialties Sarl Intercontinental Polymers Wellman
A-583-835	731-TA-906	Hot-Rolled Steel Products/Taiwan	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp DuPont Teijin Films
A-583-837	731-TA-934	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/Taiwan.	Mitsubishi Polyester Film LLC SKC America Inc Toray Plastics (America)
A-588-005	731-TA-48	High Power Microwave Amplifiers/Japan	Aydin MCL
A-588-015	AA1921-66	Television Receivers/Japan	AGIV (USA) Casio Computer CBM America Citizen Watch Funai Electric Hitachi Industrial Union Department JC Penny Matsushita Mitsubishi Electric Montgomery Ward NEC Orion Electric PT Imports Philips Electronics Philips Magnavox Sanyo Sharp Toshiba Toshiba America Consumer Products Victor Company of Japan Zenith Electronics
A-588-028	AA1921-111	Roller Chain/Japan	Acme Chain Division, North American Rockwell American Chain Association Atlas Chain & Precision Products Diamond Chain Link-Belt Chain Division, FMC Morse Chain Division, Borg Warner Rex Chainbelt
A-588-029	AA1921-85	Fish Netting of Man-Made Fiber/Japan	Jovanovich Supply LFSI
A-588-038	AA1921-98	Bicycle Speedometers/Japan	Trans-Pacific Trading Avocet Cat Eye Diversified Products NS International Sanyo Electric Stewart-Warner
A-588-041	AA1921-115	Synthetic Methionine/Japan	Monsanto
A-588-045	AA1921-124	Steel Wire Rope/Japan	AMSTED Industries
A-588-046	AA1921-129	Polychloroprene Rubber/Japan	E I du Pont de Nemours
A-588-054	AA1921-143	Tapered Roller Bearings 4 Inches and Under/Japan	American Honda Motor Federal Mogul Ford Motor General Motors

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Honda Hoover-NSK Bearing Isuzu Itocho ITOCHU International Kanematsu-Goshu USA Kawasaki Heavy Duty Industries Komatsu America Koyo Seiko Kubota Tractor Mitsubishi Motorambar Nachi America Nachi Western Nachi-Fujikoshi Nippon Seiko Nissan Motor Nissan Motor USA NSK NTN Subaru of America Sumitomo Suzuki Motor Timken Toyota Motor Sales Yamaha Motors
A-588-055	AA1921-154	Acrylic Sheet/Japan	Polycast Technology
A-588-056	AA1921-162	Melamine/Japan	Melamine Chemical
A-588-068	AA1921-188	Prestressed Concrete Steel Wire Strand/Japan	American Spring Wire
			Armco Steel
			Bethlehem Steel
			CF&I Steel
			Florida Wire & Cable
A-588-405	731-TA-207	Cellular Mobile Telephones/Japan	EF Johnson
			Motorola
A-588-602	731-TA-309	Carbon Steel Butt-Weld Pipe Fittings/Japan	Ladish
			Mills Iron Works
			Steel Forgings
			Tube Forgings of America
			Weldbend
A-588-604	731-TA-343	Tapered Roller Bearings Over 4 Inches/Japan	L&S Bearing
			Timken
			Torrington
A-588-605	731-TA-347	Malleable Cast Iron Pipe Fittings/Japan	Grinnell
			Stanley G Flagg
			Stockham Valves & Fittings
			U-Brand
			Ward Manufacturing
A-588-609	731-TA-368	Color Picture Tubes/Japan	Industrial Union Department, AFL-CIO
			International Association of Machinists & Aerospace Workers
			International Brotherhood of Electrical Workers
			International Union of Electronic, Electrical, Technical, Salaried and Machine Workers
			Philips Electronic Components Group
			United Steelworkers of America
			Zenith Electronics
A-588-702	731-TA-376	Stainless Steel Butt-Weld Pipe Fittings/Japan	Flo-Mac Inc
			Flowline
			Shaw Alloy Piping Products
			Taylor Forge Stainless
A-588-703	731-TA-377	Internal Combustion Industrial Forklift Trucks/Japan	Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama Facilities
			Allied Industrial Workers of America
			Hyster
			Independent Lift Truck Builders Union
			International Association of Machinists & Aerospace Workers
			United Shop & Service Employees
A-588-704	731-TA-379	Brass Sheet and Strip/Japan	Allied Industrial Workers of America
			American Brass
			Bridgeport Brass
			Chase Brass & Copper

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Hussey Copper International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company North Coast Brass & Copper Olin Pegg Metals Revere Copper Products United Steelworkers of America Uniroyal Chemical
A-588-706	731-TA-384	Nitrile Rubber/Japan	E I du Pont de Nemours
A-588-707	731-TA-386	Granular Polytetrafluoroethylene/Japan	ICI Americas
A-588-802	731-TA-389	3.5" Microdisks/Japan	Verbatim
A-588-804	731-TA-394-A	Ball Bearings/Japan	Emerson Power Transmission Kubar Bearings McGill Manufacturing Co MPB Rexnord Inc Rollway Bearings Torrington
A-588-804	731-TA-394-B	Cylindrical Roller Bearings/Japan	Emerson Power Transmission MPB Rollway Bearings Torrington
A-588-804	731-TA-394-C	Spherical Plain Bearings/Japan	Emerson Power Transmission Rollway Bearings Torrington
A-588-806	731-TA-408	Electrolytic Manganese Dioxide/Japan	Chemetals Kerr-McGee Rayovac
A-588-807	731-TA-414	Industrial Belts/Japan	The Gates Rubber Company The Goodyear Tire and Rubber Company
A-588-809	731-TA-426	Small Business Telephone Systems/Japan	American Telephone & Telegraph Comdial Eagle Telephonic
A-588-810	731-TA-429	Mechanical Transfer Presses/Japan	Allied Products United Autoworkers of America United Steelworkers of America
A-588-811	731-TA-432	Drafting Machines/Japan	Vemco
A-588-812	731-TA-440	Industrial Nitrocellulose/Japan	Hercules
A-588-815	731-TA-461	Gray Portland Cement and Clinker/Japan	Calaveras Cement Hanson Permanente Cement Independent Workers of North America (Locals 49, 52, 89, 192 and 471) International Union of Operating Engineers (Local 12) National Cement Co Inc National Cement Company of California Southdown
A-588-817	731-TA-469	Electroluminescent Flat-Panel Displays/Japan	The Cherry Corporation Electro Plasma Magnascreen OIS Optical Imaging Systems Photonics Technology Planar Systems Plasmaco
A-588-823	731-TA-571	Professional Electric Cutting Tools/Japan	Black & Decker
A-588-826	731-TA-617	Corrosion-Resistant Carbon Steel Flat Products/Japan.	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Lukens Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-588-831	731-TA-660	Grain-Oriented Silicon Electrical Steel/Japan	Weirton Steel Allegheny Ludlum Armco Steel United Steelworkers of America
A-588-833	731-TA-681	Stainless Steel Bar/Japan	AL Tech Specialty Steel Carpenter Technology Crucible Specialty Metals Electralloy Republic Engineered Steels Slater Steels Talley Metals Technology United Steelworkers of America
A-588-835	731-TA-714	Oil Country Tubular Goods/Japan	IPSCO Koppel Steel Lone Star Steel Co Maverick Tube Newport Steel North Star Steel US Steel
A-588-836	731-TA-727	Polyvinyl Alcohol/Japan	Air Products and Chemicals
A-588-837	731-TA-737	Large Newspaper Printing Presses/Japan	Rockwell Graphics Systems
A-588-838	731-TA-739	Clad Steel Plate/Japan	Lukens Steel
A-588-839	731-TA-740	Sodium Azide/Japan	American Azide
A-588-840	731-TA-748	Gas Turbo-Compressor Systems/Japan	Demag Delaval Dresser-Rand United Steelworkers of America
A-588-841	731-TA-750	Vector Supercomputers/Japan	Cray Research
A-588-843	731-TA-771	Stainless Steel Wire Rod/Japan	AL Tech Specialty Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
A-588-845	731-TA-800	Stainless Steel Sheet and Strip/Japan	Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp J&L Specialty Steel North American Stainless United Steelworkers of America Zanesville Armco Independent Organization
A-588-846	731-TA-807	Hot-Rolled Carbon Steel Flat Products/Japan	Acme Steel Bethlehem Steel California Steel Industries Gallatin Steel Geneva Steel Gulf States Steel Independent Steelworkers IPSCO Ispat/Inland LTV Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel
A-588-847	731-TA-820	Cut-to-Length Carbon Steel Plate/Japan	Weirton Steel Wheeling-Pittsburgh Steel Corp Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel Tuscaloosa Steel US Steel United Steelworkers of America
A-588-850	731-TA-847	Large-Diameter Carbon Steel Seamless Pipe/Japan	North Star Steel Timken US Steel United Steelworkers of America
A-588-851	731-TA-847	Small-Diameter Carbon Steel Seamless Pipe/Japan	USS/Kobe Koppel Steel North Star Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-588-852	731-TA-853	Structural Steel Beams/Japan	Sharon Tube Timken US Steel United Steelworkers of America USS/Kobe Vision Metals' Gulf States Tube Northwestern Steel and Wire Nucor Nucor-Yamato Steel TXI-Chaparral Steel United Steelworkers of America Independent Steelworkers United Steelworkers of America Weirton Steel Slater Steels United Steelworkers of America American Cast Iron Pipe Berg Steel Pipe Bethlehem Steel Napa Pipe/Oregon Steel Mills Saw Pipes USA Stupp US Steel Celenex Ltd E I du Pont de Nemours & Co Lapp Insulator Co LLC Newell Porcelain Co Inc Victor Insulators Inc Eramet Marietta Inc Armco Steel
A-588-854	731-TA-860	Tin-Mill Products/Japan	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries LTV Steel Lukens Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel Allegheny Ludlum Armco Steel J&L Specialty Steel Lukens Steel North American Stainless United Steelworkers of America Koppel Steel
A-588-856	731-TA-888	Stainless Steel Angle/Japan	North Star Steel Sharon Tube Timken US Steel United Steelworkers of America USS/Kobe Vision Metals' Gulf States Tube Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel
A-588-857	731-TA-919	Welded Large Diameter Line Pipe/Japan	
A-588-861	731-TA-1016	Polyvinyl Alcohol/Japan	
A-588-862	731-TA-1023	Certain Ceramic Station Post Insulators/Japan	
A-588-866	731-TA-1090	Superalloy Degassed Chromium/Japan	
A-602-803	731-TA-612	Corrosion-Resistant Carbon Steel Flat Products/ Australia.	
A-791-805	731-TA-792	Stainless Steel Plate in Coils/South Africa	
A-791-808	731-TA-850	Small-Diameter Carbon Steel Seamless Pipe/South Africa.	
A-791-809	731-TA-905	Hot-Rolled Steel Products/South Africa	

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-791-815	731-TA-987	Ferrovandium/South Africa	United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp Bear Metallurgical Co Shieldalloy Metallurgical Corp
A-821-801	731-TA-340E ..	Solid Urea/Russia	Agrico Chemical American Cyanamid CF Industries First Mississippi Mississippi Chemical Terra International WR Grace
A-821-802	731-TA-539-C	Uranium/Russia	Ferret Exploration First Holding Geomex Minerals IMC Fertilizer Malapai Resources Oil, Chemical and Atomic Workers Pathfinder Mines Power Resources Rio Algom Mining Solution Mining Total Minerals Umetco Minerals Uranium Resources
A-821-804	731-TA-568	Ferrosilicon/Russia	AIMCOR Alabama Silicon American Alloys Globe Metallurgical Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech United Autoworkers of America (Local 523) United Steelworkers of America (Locals 2528, 3081, 5171 and 12646)
A-821-805	731-TA-697	Pure Magnesium/Russia	Dow Chemical International Union of Operating Engineers (Local 564) Magnesium Corporation of America United Steelworkers of America (Local 8319)
A-821-807	731-TA-702	Ferrovandium and Nitrided Vanadium/Russia	Shieldalloy Metallurgical
A-821-809	731-TA-808	Hot-Rolled Carbon Steel Flat Products/Russia	Acme Steel Bethlehem Steel California Steel Industries Gallatin Steel Geneva Steel Gulf States Steel Independent Steelworkers IPSCO Ispat/Inland LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Weirton Steel Wheeling-Pittsburgh Steel Corp
A-821-811	731-TA-856	Ammonium Nitrate/Russia	Agrium Air Products and Chemicals El Dorado Chemical LaRoche Mississippi Chemical Nitram Wil-Gro Fertilizer
A-821-817	731-TA-991	Silicon Metal/Russia	Globe Metallurgical Inc SIMCALA Inc
A-821-819	731-TA-1072 ...	Pure and Alloy Magnesium/Russia	Garfield Alloys Inc Glass, Molders, Pottery, Plastics & Allied Workers International Local 374 Halaco Engineering

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-822-801	731-TA-340B ..	Solid Urea/Belarus	MagReTech Inc United Steelworkers of America Local 8319 US Magnesium LLC Agrico Chemical American Cyanamid CF Industries First Mississippi Mississippi Chemical Terra International WR Grace
A-822-804	731-TA-873	Steel Concrete Reinforcing Bar/Belarus	AB Steel Mill Inc AmeriSteel Auburn Steel Birmingham Steel Border Steel Cascade Steel Rolling Mills Inc CMC Steel Group Co-Steel Inc Marion Steel North Star Steel Co Nucor Steel Rebar Trade Action Coalition Riverview Steel Sheffield Steel TAMCO
A-823-801	731-TA-340H ..	Solid Urea/Ukraine	TXI-Chaparral Steel Co Agrico Chemical American Cyanamid CF Industries First Mississippi Mississippi Chemical Terra International WR Grace
A-823-802	731-TA-539-E	Uranium/Ukraine	Ferret Exploration First Holding Geomex Minerals IMC Fertilizer Malapai Resources Oil, Chemical and Atomic Workers Pathfinder Mines Power Resources Rio Algom Mining Solution Mining Total Minerals Umetco Minerals Uranium Resources
A-823-804	731-TA-569	Ferrosilicon/Ukraine	AIMCOR Alabama Silicon American Alloys Globe Metallurgical Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech United Autoworkers of America (Local 523) United Steelworkers of America (Locals 2528, 3081, 5171 and 12646)
A-823-805	731-TA-673	Silicomanganese/Ukraine	Elkem Metals Oil, Chemical and Atomic Workers (Local 3-639)
A-823-809	731-TA-882	Steel Concrete Reinforcing Bar/Ukraine	AB Steel Mill Inc AmeriSteel Auburn Steel Birmingham Steel Border Steel Cascade Steel Rolling Mills Inc CMC Steel Group Co-Steel Inc Marion Steel North Star Steel Co Nucor Steel Rebar Trade Action Coalition Riverview Steel Sheffield Steel TAMCO TXI-Chaparral Steel Co

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-823-810	731-TA-894	Ammonium Nitrate/Ukraine	Agrium Air Products and Chemicals Committee for Fair Ammonium Nitrate Trade El Dorado Chemical LaRoche Industries Mississippi Chemical Nitram Prodica
A-823-811	731-TA-908	Hot-Rolled Steel Products/Ukraine	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
A-823-812	731-TA-962	Carbon and Certain Alloy Steel Wire Rod/Ukraine ...	AmeriSteel Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills
A-831-801	731-TA-340A ..	Solid Urea/Armenia	Agrico Chemical American Cyanamid CF Industries First Mississippi Mississippi Chemical Terra International WR Grace
A-834-806	731-TA-902	Hot-Rolled Steel Products/Kazakhstan	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
A-834-807	731-TA-930	Silicomanganese/Kazakhstan	Eramet Marietta Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639
A-841-804	731-TA-879	Steel Concrete Reinforcing Bar/Moldova	AB Steel Mill Inc AmeriSteel Auburn Steel Birmingham Steel Border Steel Cascade Steel Rolling Mills Inc CMC Steel Group Co-Steel Inc Marion Steel North Star Steel Co Nucor Steel Rebar Trade Action Coalition Riverview Steel Sheffield Steel TAMCO TXI-Chaparral Steel Co

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-841-805	731-TA-959	Carbon and Certain Alloy Steel Wire Rod/Moldova	AmeriSteel Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills
A-842-801	731-TA-340F ...	Solid Urea/Tajikistan	Agrico Chemical American Cyanamid CF Industries First Mississippi Mississippi Chemical Terra International WR Grace
A-843-801	731-TA-340G ..	Solid Urea/Turkmenistan	Agrico Chemical American Cyanamid CF Industries First Mississippi Mississippi Chemical Terra International WR Grace
A-843-802	731-TA-539	Uranium/Kazakhstan	Ferret Exploration First Holding Geomex Minerals IMC Fertilizer Malapai Resources Oil, Chemical and Atomic Workers Pathfinder Mines Power Resources Rio Algom Mining Solution Mining Total Minerals Umetco Minerals Uranium Resources
A-843-804	731-TA-566	Ferrosilicon/Kazakhstan	AIMCOR Alabama Silicon American Alloys Globe Metallurgical Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech United Autoworkers of America (Local 523) United Steelworkers of America (Locals 2528, 3081, 5171 and 12646)
A-844-801	731-TA-340I	Solid Urea/Uzbekistan	Agrico Chemical American Cyanamid CF Industries First Mississippi Mississippi Chemical Terra International WR Grace
A-844-802	731-TA-539-F	Uranium/Uzbekistan	Ferret Exploration First Holding Geomex Minerals IMC Fertilizer Malapai Resources Oil, Chemical and Atomic Workers Pathfinder Mines Power Resources Rio Algom Mining Solution Mining Total Minerals Umetco Minerals Uranium Resources
A-851-802	731-TA-846	Small-Diameter Carbon Steel Seamless Pipe/Czech Republic.	Koppel Steel North Star Steel Sharon Tube Timken US Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-122-404	701-TA-224	Live Swine/Canada	United Steelworkers of America USS/Kobe Vision Metals' Gulf States Tube National Pork Producers Council Wilson Foods
C-122-805	701-TA-297	Steel Rails/Canada	Bethlehem Steel CF&I Steel
C-122-815	701-TA-309-A	Alloy Magnesium/Canada	Magnesium Corporation of America
C-122-815	701-TA-309-B	Pure Magnesium/Canada	Magnesium Corporation of America
C-122-839	701-TA-414	Softwood Lumber/Canada	71 Lumber Co Almond Bros Lbr Co Anthony Timberlands Balfour Lbr Co Ball Lumber Banks Lumber Company Barge Forest Products Co Beadles Lumber Co Bearden Lumber Bennett Lumber Big Valley Band Mill Bighorn Lumber Co Inc Blue Mountain Lumber Buddy Bean Lumber Burgin Lumber Co Ltd Burt Lumber Company C&D Lumber Co Ceda-Pine Veneer Cersosimo Lumber Co Inc Charles Ingram Lumber Co Inc Charleston Heart Pine Chesterfield Lumber Chips Chocorua Valley Lumber Co Claude Howard Lumber Clearwater Forest Industries CLW Inc CM Tucker Lumber Corp Coalition for Fair Lumber Imports Executive Committee Cody Lumber Co Collins Pine Co Collums Lumber Columbus Lumber Co Contoocook River Lumber Conway Guiteau Lumber Cornwright Lumber Co Crown Pacific Daniels Lumber Inc Dean Lumber Co Inc Deltic Timber Corporation Devils Tower Forest Products DiPrizio Pine Sales Dorchester Lumber Co DR Johnson Lumber East Brainerd Lumber Co East Coast Lumber Company Eas-Tex Lumber ECK Wood Products Ellingson Lumber Co Elliott Sawmilling Empire Lumber Co Evergreen Forest Products Excalibur Shelving Systems Inc Exley Lumber Co FH Stoltze Land & Lumber Co FL Turlington Lbr Co Inc Fleming Lumber Flippo Lumber Floragen Forest Products Frank Lumber Co Franklin Timber Co Fred Tebb & Sons Fremont Sawmill

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Frontier Resources Garrison Brothers Lumber Co and Subsidiaries Georgia Lumber Gilman Building Products Godfrey Lumber Granite State Forest Prod Inc Great Western Lumber Co Greenville Molding Inc Griffin Lumber Company Guess Brothers Lumber Gulf Lumber Gulf States Paper Guy Bennett Lumber Hampton Resources Hancock Lumber Hankins Inc Hankins Lumber Co Harrigan Lumber Harwood Products Haskell Lumber Inc Hatfield Lumber Hedstrom Lumber Herrick Millwork Inc HG Toler & Son Lumber Co Inc HG Wood Industries LLC Hogan & Storey Wood Prod Hogan Lumber Co Hood Industries HS Hoffer & Sons Lumber Co Inc Hubbard Forest Ind Inc HW Culp Lumber Co Idaho Veneer Co Industrial Wood Products Intermountain Res LLC International Paper J Franklin Jones Lumber Co Inc Jack Batte & Sons Inc Jasper Lumber Company JD Martin Lumber Co JE Jones Lumber Co Jerry G Williams & Sons JH Knighton Lumber Co Johnson Lumber Company Jordan Lumber & Supply Joseph Timber Co JP Haynes Lbr Co Inc JV Wells Inc JW Jones Lumber Keadle Lumber Enterprises Keller Lumber King Lumber Co Konkolville Lumber Langdale Forest Products Laurel Lumber Company Leavitt Lumber Co Leesville Lumber Co Limington Lumber Co Longview Fibre Co Lovell Lumber Co Inc M Kendall Lumber Co Manke Lumber Co Marriner Lumber Co Mason Lumber MB Heath & Sons Lumber Co MC Dixon Lumber Co Inc Mebane Lumber Co Inc Metcalf Lumber Co Inc Millry Mill Co Inc Moose Creek Lumber Co Moose River Lumber Morgan Lumber Co Inc Mount Yonah Lumber Co Nagel Lumber

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			New Kearsarge Corp New South Nicolet Hardwoods Nieman Sawmills SD Nieman Sawmills WY North Florida Northern Lights Timber & Lumber Northern Neck Lumber Co Ochoco Lumber Co Olon Belcher Lumber Co Owens and Hurst Lumber Packaging Corp of America Page & Hill Forest Products Paper, Allied-Industrial, Chemical and Energy Workers International Union Parker Lumber Pate Lumber Co Inc PBS Lumber Pedigo Lumber Co Piedmont Hardwood Lumber Co Pine River Lumber Co Pinecrest Lumber Co Pleasant River Lumber Co Pleasant Western Lumber Inc Plum Creek Timber Pollard Lumber Portac Potlatch Potomac Supply Precision Lumber Inc Pruitt Lumber Inc R Leon Williams Lumber Co RA Yancey Lumber Rajala Timber Co Ralph Hamel Forest Products Randy D Miller Lumber Rappahannock Lumber Co Regulus Stud Mills Inc Riley Creek Lumber Roanoke Lumber Co Robbins Lumber Robertson Lumber Roseburg Forest Products Co Rough & Ready RSG Forest Products Rushmore Forest Products RY Timber Inc Sam Mabry Lumber Co Scotch Lumber SDS Lumber Co Seacoast Mills Inc Seago Lumber Seattle-Snohomish Seneca Sawmill Shaver Wood Products Shearer Lumber Products Shuqualak Lumber SI Storey Lumber Sierra Forest Products Sierra Pacific Industries Sigfridson Wood Products Silver City Lumber Inc Somers Lbr & Mfg Inc South & Jones South Coast Southern Forest Industries Inc Southern Lumber St Laurent Forest Products Starfire Lumber Co Steely Lumber Co Inc Stimson Lumber Summit Timber Co Sundance Lumber

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Superior Lumber Swanson Superior Forest Products Inc Swift Lumber Tamarack Mill Taylor Lumber & Treating Inc Temple-Inland Forest Products Thompson River Lumber Three Rivers Timber Thrift Brothers Lumber Co Inc Timco Inc Tolleson Lumber Toney Lumber TR Miller Mill Co Tradewinds of Virginia Ltd Travis Lumber Co Tree Source Industries Inc Tri-State Lumber TTT Studs United Brotherhood of Carpenters and Joiners Viking Lumber Co VP Kiser Lumber Co Walton Lumber Co Inc Warm Springs Forest Products Westvaco Corp Wilkins, Kaiser & Olsen Inc WM Shepherd Lumber Co WR Robinson Lumber Co Inc Wrenn Brothers Inc Wyoming Sawmills Yakama Forest Products Younce & Ralph Lumber Co Inc Zip-O-Log Mills Inc
C-122-841	701-TA-418	Carbon and Certain Alloy Steel Wire Rod/Canada ..	AmeriSteel Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills
C-122-848	701-TA-430B ..	Hard Red Spring Wheat/Canada	North Dakota Wheat Commission
C-201-505	701-TA-265	Porcelain-on-Steel Cooking Ware/Mexico	General Housewares
C-201-810	701-TA-325	Cut-to-Length Carbon Steel Plate/Mexico	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
C-307-804	303-TA-21	Gray Portland Cement and Clinker/Venezuela	Florida Crushed Stone Southdown Tarmac America
C-307-808	303-TA-23	Ferrosilicon/Venezuela	AIMCOR Alabama Silicon American Alloys Globe Metallurgical Oil, Chemical and Atomic Workers (Local 389) Silicon Metaltech United Autoworkers of America (Local 523) United Steelworkers of America (Locals 2528, 3081, 5171 and 12646)
C-333-401	701-TA-E	Cotton Shop Towels/Peru	Durafab Kleen-Tex Industries Lewis Eckert Robb

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-351-037	104-TAA-21	Cotton Yarn/Brazil	Milliken Pavis & Harcourt American Yarn Spinners Association Harriet & Henderson Yarns LaFar Industries
C-351-504	701-TA-249	Heavy Iron Construction Castings/Brazil	Alhambra Foundry Allegheny Foundry Bingham & Taylor Campbell Foundry Charlotte Pipe & Foundry Deeter Foundry East Jordan Foundry Le Baron Foundry Municipal Castings Neenah Foundry Opelika Foundry Pinkerton Foundry Tyler Pipe US Foundry & Manufacturing Vulcan Foundry
C-351-604	701-TA-269	Brass Sheet and Strip/Brazil	Allied Industrial Workers of America American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America
C-351-818	701-TA-320	Cut-to-Length Carbon Steel Plate/Brazil	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
C-351-829	701-TA-384	Hot-Rolled Carbon Steel Flat Products/Brazil	Acme Steel Bethlehem Steel California Steel Industries Gallatin Steel Geneva Steel Gulf States Steel Independent Steelworkers IPSCO Ispat/Inland LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Weirton Steel Wheeling-Pittsburgh Steel Corp
C-351-833	701-TA-417	Carbon and Certain Alloy Steel Wire Rod/Brazil	AmeriSteel Birmingham Steel Cascade Steel Rolling Mills Connecticut Steel Corp Co-Steel Raritan GS Industries Keystone Consolidated Industries North Star Steel Texas

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-357-004	701-TA-A	Carbon Steel Wire Rod/Argentina	Nucor Steel—Nebraska (a division of Nucor Corp) Republic Technologies International Rocky Mountain Steel Mills Atlantic Steel Continental Steel Georgetown Steel North Star Steel Raritan River Steel
C-357-813	701-TA-402	Honey/Argentina	AH Meyer & Sons Adee Honey Farms Althoff Apiaries American Beekeeping Federation American Honey Producers Association Anderson Apiaries Arroyo Apiaries Artesian Honey Producers B Weaver Apiaries Bailey Enterprises Barkman Honey Basler Honey Apiary Beals Honey Bears Paw Apiaries Beaverhead Honey Bee Biz Bee Haven Honey Belliston Brothers Apiaries Big Sky Honey Bill Rhodes Honey Richard E Blake Curt Bronnenbery Brown's Honey Farms Brumley's Bees Buhmann Apiaries Carys Honey Farms Chaparral Honey Charles Apiaries Mitchell Charles Collins Honey Conor Apiaries Coy's Honey Farm Dave Nelson Apiaries Delta Bee Eisele's Pollination & Honey Ellingsoa's Elliott Curtis & Sons Charles L Emmons, Sr Gause Honey Gene Brandi Apiaries Griffith Honey Haff Apiaries Hamilton Bee Farms Hamilton Honey Happie Bee Harvest Honey Harvey's Honey Hiatt Honey Hoffman Honey Hollman Apiaries Honey House Honeybee Apiaries Gary M Honl Rand William Honl and Sydney Jo Honl James R & Joann Smith Trust Jaynes Bee Products Johnston Honey Farms Larry Johnston Ke-An Honey Kent Honeybees Lake-Indianhead Honey Farms Lamb's Honey Farm Las Flores Apiaries Mackrill Honey Farms & Sales Raymond Marquette

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Mason & Sons Honey McCoy's Sunny South Apiaries Merrimack Valley Apiaries & Evergreen Honey Met 2 Honey Farm Missouri River Honey Mitchell Brothers Honey Monda Honey Farm Montana Dakota Honey Northern Bloom Honey Noye's Apiaries Oakes Honey Oakley Honey Farms Old Mill Apiaries Opp Honey Oro Dulce Peterson's "Naturally Sweet" Honey Potoczak Bee Farms Price Apiaries Pure Sweet Honey Farms Robertson Pollination Service Robson Honey William Robson Rosedale Apiaries Ryan Apiaries Schmidt Honey Farms Simpson Apiaries Sioux Honey Association Smoot Honey Solby Honey Stahlman Apiaries Steve E Parks Apiaries Stroope Bee & Honey T&D Honey Bee Talbot's Honey Terry Apiaries Thompson Apiaries Triple A Farm Tropical Blossom Honey Tubbs Apiaries Venable Wholesale Walter L Wilson Buzz 76 Apiaries Wiebersiek Honey Farms Wilmer Farms Brent J Woodworth Wooten's Golden Queens Yaddof Apiaries
C-357-815	701-TA-404	Hot-Rolled Steel Products/Argentina	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
C-401-401	701-TA-231	Cold-Rolled Carbon Steel Flat Products/Sweden	Bethlehem Steel Chaparral US Steel
C-401-804	701-TA-327	Cut-to-Length Carbon Steel Plate/Sweden	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-403-802	701-TA-302	Fresh and Chilled Atlantic Salmon/Norway	Thompson Steel US Steel United Steelworkers of America Heritage Salmon The Coalition for Fair Atlantic Salmon Trade
C-408-046	104-TAA-7	Sugar/EU	AJ Yates Alexander & Baldwin American Farm Bureau Federation American Sugar Cane League American Sugarbeet Growers Association Amstar Sugar Florida Sugar Cane League Florida Sugar Marketing and Terminal Association H&R Brokerage Hawaiian Agricultural Research Center Leach Farms Michigan Farm Bureau Michigan Sugar Rio Grande Valley Sugar Growers Association Sugar Cane Growers Cooperative of Florida Talisman Sugar US Beet Sugar Association United States Beet Sugar Association United States Cane Sugar Refiners' Association
C-412-815	701-TA-328	Cut-to-Length Carbon Steel Plate/United Kingdom ..	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America United States Enrichment Corp USEC Inc
C-412-821	701-TA-412	Low Enriched Uranium/United Kingdom	
C-421-601	701-TA-278	Fresh Cut Flowers/Netherlands	Burdette Coward California Floral Council Floral Trade Council Florida Flower Association Gold Coast Uanko Nursery Hollandia Wholesale Florist Manatee Fruit Monterey Flower Farms Topstar Nursery United States Enrichment Corp USEC Inc
C-421-809	701-TA-411	Low Enriched Uranium/Netherlands	
C-423-806	701-TA-319	Cut-to-Length Carbon Steel Plate/Belgium	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
C-423-809	701-TA-376	Stainless Steel Plate in Coils/Belgium	Allegheny Ludlum Armco Steel Lukens Steel North American Stainless United Steelworkers of America
C-427-603	701-TA-270	Brass Sheet and Strip/France	Allied Industrial Workers of America American Brass Bridgeport Brass Chase Brass & Copper Hussey Copper

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-427-805	701-TA-315	Hot-Rolled Lead and Bismuth Carbon Steel Products/France.	International Association of Machinists & Aerospace Workers Mechanics Educational Society of America (Local 56) The Miller Company Olin Revere Copper Products United Steelworkers of America Bethlehem Steel
C-427-810	701-TA-348	Corrosion-Resistant Carbon Steel Flat Products/France.	Inland Steel Industries USS/Kobe Steel Armco Steel
C-427-815	701-TA-380	Stainless Steel Sheet and Strip/France	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries LTV Steel Lukens Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp North American Stainless United Steelworkers of America Zanesville Armco Independent Organization
C-427-817	701-TA-387	Cut-to-Length Carbon Steel Plate/France	Bethlehem Steel Geneva Steel IPSCO Steel National Steel US Steel United Steelworkers of America
C-427-819	701-TA-409	Low Enriched Uranium/France	United States Enrichment Corp USEC Inc
C-428-817	701-TA-340	Cold-Rolled Carbon Steel Flat Products/Germany ...	Armco Steel Bethlehem Steel California Steel Industries Gulf States Steel Inland Steel Industries LTV Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel Armco Steel
C-428-817	701-TA-349	Corrosion-Resistant Carbon Steel Flat Products/Germany.	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries LTV Steel Lukens Steel National Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-428-817	701-TA-322	Cut-to-Length Carbon Steel Plate/Germany	Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
C-428-829	701-TA-410	Low Enriched Uranium/Germany	United States Enrichment Corp USEC Inc
C-437-805	701-TA-426	Sulfanilic Acid/Hungary	Nation Ford Chemical
C-469-004	701-TA-178	Stainless Steel Wire Rod/Spain	AL Tech Specialty Steel Armco Steel Carpenter Technology Colt Industries Cyclops Guterl Special Steel Joslyn Stainless Steels Republic Steel
C-469-804	701-TA-326	Cut-to-Length Carbon Steel Plate/Spain	Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries Lukens Steel National Steel Nextech Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America
C-475-812	701-TA-355	Grain-Oriented Silicon Electrical Steel/Italy	Allegheny Ludlum Armco Steel Butler Armco Independent Union United Steelworkers of America Zanesville Armco Independent Union
C-475-815	701-TA-362	Seamless Pipe/Italy	Koppel Steel Quanex Timken
C-475-817	701-TA-364	Oil Country Tubular Goods/Italy	United States Steel IPSCO Koppel Steel Lone Star Steel Maverick Tube Newport Steel North Star Steel US Steel
C-475-819	701-TA-365	Pasta/Italy	USS/Kobe A Zerega's Sons American Italian Pasta Borden D Merlino & Sons Dakota Growers Pasta Foulds Gilster-Mary Lee Gooch Foods Hershey Foods LaRinascente Macaroni Co

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-475-821	701-TA-373	Stainless Steel Wire Rod/Italy	Pasta USA Philadelphia Macaroni ST Specialty Foods AL Tech Specialty Steel Carpenter Technology Republic Engineered Steels Talley Metals Technology United Steelworkers of America
C-475-823	701-TA-377	Stainless Steel Plate in Coils/Italy	Allegheny Ludlum Armco Steel J&L Specialty Steel Lukens Steel North American Stainless United Steelworkers of America
C-475-825	701-TA-381	Stainless Steel Sheet and Strip/Italy	Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp J&L Specialty Steel North American Stainless United Steelworkers of America
C-475-827	701-TA-390	Cut-to-Length Carbon Steel Plate/Italy	Zanesville Armco Independent Organization Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel National Steel US Steel United Steelworkers of America
C-475-830	701-TA-413	Stainless Steel Bar/Italy	Carpenter Technology Crucible Specialty Metals Electralloy Empire Specialty Steel Republic Technologies International Slater Steels United Steelworkers of America
C-489-502	701-TA-253	Welded Carbon Steel Pipe and Tube/Turkey	Allied Tube & Conduit American Tube Bernard Epps Bock Industries Bull Moose Tube Central Steel Tube Century Tube Copperweld Tubing Cyclops Hughes Steel & Tube Kaiser Steel Laclede Steel Maruichi American Maverick Tube Merchant Metals Phoenix Steel Pittsburgh Tube Quanex Sharon Tube Southwestern Pipe UNR-Leavitt Welded Tube Western Tube & Conduit Wheatland Tube
C-489-806	701-TA-366	Pasta/Turkey	A Zerega's Sons American Italian Pasta Borden D Merlino & Sons Dakota Growers Pasta Foulds Gilster-Mary Lee Gooch Foods Hershey Foods LaRinascente Macaroni Co Pasta USA Philadelphia Macaroni

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-507-501	N/A	Raw In-Shell Pistachios/Iran	ST Specialty Foods Blackwell Land Co Cal Pure Pistachios Inc California Pistachio Commission California Pistachio Orchards Keenan Farms Inc Kern Pistachio Hulling & Drying Co-Op Los Rancheros de Poco Pedro Pistachio Producers of California TM Duche Nut Co Inc
C-507-601	N/A	Roasted In-Shell Pistachios/Iran	Cal Pure Pistachios Inc California Pistachio Commission Keenan Farms Inc Kern Pistachio Hulling & Drying Co-Op Pistachio Producers of California TM Duche Nut Co Inc
C-508-605	701-TA-286	Industrial Phosphoric Acid/Israel	Albright & Wilson FMC Hydrite Chemical Monsanto Stauffer Chemical
C-533-063	303-TA-13	Iron Metal Castings/India	Campbell Foundry Le Baron Foundry Municipal Castings Neenah Foundry Pinkerton Foundry US Foundry & Manufacturing Vulcan Foundry
C-533-807	701-TA-318	Sulfanilic Acid/India	R-M Industries
C-533-818	701-TA-388	Cut-to-Length Carbon Steel Plate/India	Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel National Steel Tuscaloosa Steel US Steel United Steelworkers of America
C-533-821	701-TA-405	Hot-Rolled Steel Products/India	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
C-533-825	701-TA-415	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/India.	DuPont Teijin Films Mitsubishi Polyester Film LLC SKC America Inc
C-533-829	701-TA-432	Prestressed Concrete Steel Wire Strand/India	Toray Plastics (America) American Spring Wire Corp Insteel Wire Products Co Sivaco Georgia LLC Strand Tech Martin Inc Sumiden Wire Products Corp
C-533-839	701-TA-437	Carbazole Violet Pigment 23/India	Allegheny Color Corp Barker Fine Color Inc Clariant Corp Nation Ford Chemical Co Sun Chemical Co
C-533-844	701-TA-442	Certain Lined Paper School Supplies/India	Fay Paper Products Inc MeadWestvaco Consumer & Office Products Norcom Inc Pacon Corp Roaring Spring Blank Book Co Top Flight Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C-535-001	701-TA-202	Cotton Shop Towels/Pakistan	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW)
C-549-818	701-TA-408	Hot-Rolled Steel Products/Thailand	Milliken Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
C-560-806	701-TA-389	Cut-to-Length Carbon Steel Plate/Indonesia	Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel National Steel Tuscaloosa Steel US Steel United Steelworkers of America
C-560-813	701-TA-406	Hot-Rolled Steel Products/Indonesia	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
C-560-819	701-TA-443	Certain Lined Paper School Supplies/Indonesia	Fay Paper Products Inc MeadWestvaco Consumer & Office Products Norcom Inc Pacon Corp Roaring Spring Blank Book Co Top Flight Inc United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW)
C-580-602	701-TA-267	Top-of-the-Stove Stainless Steel Cooking Ware/Korea.	Farberware Regal Ware Revere Copper & Brass WearEver/Proctor Silex
C-580-818	701-TA-342	Cold-Rolled Carbon Steel Flat Products/Korea	Armco Steel Bethlehem Steel California Steel Industries Gulf States Steel Inland Steel Industries LTV Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel
C-580-818	701-TA-350	Corrosion-Resistant Carbon Steel Flat Products/Korea.	Armco Steel

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Bethlehem Steel California Steel Industries Geneva Steel Gulf States Steel Inland Steel Industries LTV Steel Lukens Steel National Steel Nextech Rouge Steel Co Sharon Steel Theis Precision Steel Thompson Steel US Steel United Steelworkers of America WCI Steel Weirton Steel
C-580-835	701-TA-382	Stainless Steel Sheet and Strip/Korea	Allegheny Ludlum Armco Steel Bethlehem Steel Butler Armco Independent Union Carpenter Technology Corp J&L Specialty Steel North American Stainless United Steelworkers of America Zanesville Armco Independent Organization
C-580-837	701-TA-391	Cut-to-Length Carbon Steel Plate/Korea	Bethlehem Steel Geneva Steel Gulf States Steel IPSCO Steel National Steel Tuscaloosa Steel US Steel United Steelworkers of America Northwestern Steel and Wire
C-580-842	701-TA-401	Structural Steel Beams/Korea	Nucor Nucor-Yamato Steel TXI-Chaparral Steel United Steelworkers of America
C-580-851	701-TA-431	DRAMs and DRAM Modules/Korea	Dominion Semiconductor LLC/Micron Technology Inc Infineon Technologies Richmond LP Micron Technology Inc
C-583-604	701-TA-268	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan.	Farberware
C-791-806	701-TA-379	Stainless Steel Plate in Coils/South Africa	Regal Ware Revere Copper & Brass WearEver/Proctor Silex Allegheny Ludlum Armco Steel J&L Specialty Steel Lukens Steel North American Stainless United Steelworkers of America
C-791-810	701-TA-407	Hot-Rolled Steel Products/South Africa	Bethlehem Steel Gallatin Steel Independent Steelworkers IPSCO LTV Steel National Steel Nucor Rouge Steel Co Steel Dynamics US Steel United Steelworkers of America WCI Steel Inc Weirton Steel Wheeling-Pittsburgh Steel Corp
A-331-802	731-TA-1065 ...	Certain Frozen Warmwater Shrimp and Prawns/Ecuador.	Abadie, Al J
A-351-838	731-TA-1063 ...	Certain Frozen Warmwater Shrimp and Prawns/Brazil.	Abadie, Anthony Abner, Charles

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A-533-840	731-TA-1066 ...	Certain Frozen Warmwater Shrimp and Prawns/India	Abraham, Steven Abshire, Gabriel J Ackerman, Dale J Acosta, Darryl L
A-549-822	731-TA-1067 ...	Certain Frozen Warmwater Shrimp and Prawns/Thailand.	Acosta, Jerry J Sr Acosta, Leonard C
A-552-802	731-TA-1068 ...	Certain Frozen Warmwater Shrimp and Prawns/Vietnam.	Acosta, Wilson Pula Sr Adam, Denise T
A-570-893	731-TA-1064 ...	Certain Frozen Warmwater Shrimp and Prawns/China.	Adam, Michael A Adam, Richard B Jr Adam, Sherry P Adam, William E Adams, Alcide J Jr Adams, Dudley Adams, Elizabeth L Adams, Ervin Adams, Ervin Adams, George E Adams, Hursy J Adams, James Arthur Adams, Kelly Adams, Lawrence J Jr Adams, Randy Adams, Ritchie Adams, Steven A Adams, Ted J Adams, Tim Adams, Whitney P Jr Agoff, Ralph J Aguilar, Rikardo Aguillard, Roddy G Alario, Don Ray Alario, Nat Alario, Pete J Alario, Timmy Albert, Craig J Albert, Junior J Alexander, Everett O Alexander, Robert F Jr Alexie, Benny J Alexie, Corkey A Alexie, Dolphy Alexie, Felix Jr Alexie, Gwendolyn Alexie, John J Alexie, John V Alexie, Larry J Sr Alexie, Larry Jr Alexie, Vincent L Jr Alexis, Barry S Alexis, Craig W Alexis, Micheal Alexis, Monique Alfonso, Anthony E Jr Alfonso, Jesse Alfonso, Nicholas Alfonso, Paul Anthony Alfonso, Randy Alfonso, Terry S Jr Alfonso, Vernon Jr Alfonso, Yvette Alimia, Angelo A Jr Allemand, Dean J Allen, Annie Allen, Carolyn Sue Allen, Jackie Allen, Robin Allen, Wayne Allen, Wilbur L Allen, Willie J III

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Allen, Willie Sr Alphonso, John Ancalade, Leo J Ancar, Claudene Ancar, Jerry T Ancar, Joe C Ancar, Merlin Sr Ancar, William Sr Ancelet, Gerald Ray Anderson, Andrew David Anderson, Ernest W Anderson, Jerry Anderson, John Anderson, Lynwood Anderson, Melinda Rene Anderson, Michael Brian Anderson, Ronald L Sr Anderson, Ronald Louis Jr Andonie, Miguel Andrews, Anthony R Andry, Janice M Andry, Rondey S Angelle, Louis Anglada, Eugene Sr Ansardi, Lester Anselmi, Darren Aparicio, Alfred Aparicio, David Aparicio, Ernest Arabie, Georgia P Arabie, Joseph Arcement, Craig J Arcement, Lester C Arcemont, Donald Sr Arceneaux, Matthew J Arceneaux, Michael K Areas, Christopher J Armbruster, John III Armbruster, Paula D Armstrong, Jude Jr Arnesen, George Arnold, Lonnie L Jr Arnona, Joseph T Arnondin, Robert Arthur, Brenda J Assavedo, Floyd Atwood, Gregory Kenneth Au, Chow D Au, Robert Aucoin, Dewey F Aucoin, Earl Aucoin, Laine A Aucoin, Perry J Austin, Dennis Austin, Dennis J Authement, Brice Authement, Craig L Authement, Dion J Authement, Gordon Authement, Lance M Authement, Larry Authement, Larry Sr Authement, Roger J Authement, Sterling P Autin, Bobby Autin, Bruce J Autin, Kenneth D Autin, Marvin J Autin, Paul F Jr Autin, Roy Avenel, Albert J Jr Ba Wells, Tran Thi Babb, Conny

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			Babin, Brad Babin, Joey L Babin, Klint Babin, Molly Babin, Norman J Babineaux, Kirby Babineaux, Vicki Bach, Ke Van Bach, Reo Long Backman, Benny Badeaux, Todd Baham, Dewayne Bailey, Albert Bailey, Antoine III Bailey, David B Sr Bailey, Don Baker, Clarence Baker, Donald Earl Baker, James Baker, Kenneth Baker, Ronald J Balderas, Antonio Baldwin, Richard Prentiss Ballard, Albert Ballas, Barbara A Ballas, Charles J Baltz, John F Ban, John Bang, Bruce K Barbaree, Joe W Barbe, Mark A and Cindy Barber, Louie W Jr Barber, Louie W Sr Barbier, Percy T Barbour, Raymond A Bargainear, James E Barisich, George A Barisich, Joseph J Barnette, Earl Barnhill, Nathan Barrios, Clarence Barrios, Corbert J Barrios, Corbert M Barrios, David Barrios, John Barrios, Shane James Barrois, Angela Gail Barrois, Dana A Barrois, Tracy James Barrois, Wendell Jude Jr Barthe, Keith Sr Barthelemy, Allen M Barthelemy, John A Barthelemy, Rene T Sr Barthelemy, Walter A Jr Bartholomew, Mitchell Bartholomew, Neil W Bartholomew, Thomas E Bartholomew, Wanda C Basse, Donald J Sr Bates, Mark Bates, Ted Jr Bates, Vernon Jr Battle, Louis Baudoin, Drake J Baudoin, Murphy A Baudouin, Stephen Bauer, Gary Baye, Glen P Bean, Charles A Beazley, William E Becnel, Glenn J Becnel, Kent

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			Beecher, Carol F Beechler, Ronald Bell, James E Bell, Ronald A Bellanger, Arnold Bellanger, Clifton Bellanger, Scott J Belsome, Derrell M Belsome, Karl M Bennett, Cecil A Jr Bennett, Gary Lynn Bennett, Irin Jr Bennett, James W Jr Bennett, Louis Benoit, Francis J Benoit, Nicholas L Benoit, Paula T Benoit, Tenna J Jr Benton, Walter T Berger, Ray W Bergeron, Alfred Scott Bergeron, Jeff Bergeron, Nolan A Bergeron, Ulysses J Bernard, Lamont L Berner, Mark J Berthelot, Gerard J Sr Berthelot, James A Berthelot, Myron J Bertrand, Jerl C Beverung, Keith J Bianchini, Raymond W Bickham, Leo E Bienvenu, Charles Biggs, Jerry W Sr Bigler, Delbert Billington, Richard Billiot, Alfredia Billiot, Arthur Billiot, Aubrey Billiot, Barell J Billiot, Betty Billiot, Bobby J Billiot, Brian K Billiot, Cassidy Billiot, Charles Sr Billiot, Chris J Sr Billiot, E J E Billiot, Earl W Sr Billiot, Ecton L Billiot, Emary Billiot, Forest Jr Billiot, Gerald Billiot, Harold J Billiot, Jacco A Billiot, Jake A Billiot, James Jr Billiot, Joseph S Jr Billiot, Laurence V Billiot, Leonard F Jr Billiot, Lisa Billiot, Mary L Billiot, Paul J Sr Billiot, Shirley L Billiot, Steve M Billiot, Thomas Adam Billiot, Thomas Sr Billiot, Wenceslaus Jr Billiot, Alexander J Biron, Yale Black, William C Blackston, Larry E Blackwell, Wade H III

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			Blackwell, Wade H Jr Blanchard, Albert Blanchard, Andrew J Blanchard, Billy J Blanchard, Cyrus Blanchard, Daniel A Blanchard, Dean Blanchard, Douglas Jr Blanchard, Dwayne Blanchard, Elgin Blanchard, Gilbert Blanchard, Jade Blanchard, James Blanchard, John F Jr Blanchard, Katie Blanchard, Kelly Blanchard, Matt Joseph Blanchard, Michael Blanchard, Quentin Timothy Blanchard, Roger Sr Blanchard, Walton H Jr Bland, Quyen T Blouin, Roy A Blume, Jack Jr Bodden, Arturo Bodden, Jasper Bollinger, Donald E Bolotte, Darren W Bolton, Larry F Bondi, Paul J Bonvillain, Jimmy J Bonvillian, Donna M Boone, Clifton Felix Boone, Donald F II Boone, Donald F III (Ricky) Boone, Gregory T Boquet, Noriss P Jr Boquet, Wilfred Jr Bordelon, Glenn Sr Bordelon, James P Bordelon, Shelby P Borden, Benny Borne, Crystal Borne, Dina L Borne, Edward Joseph Jr Borne, Edward Sr Bosarge, Hubert Lawrence Bosarge, Robert Bosarge, Sandra Bosarge, Steve Boudlauch, Durel A Jr Boudoin, Larry Terrell Boudoin, Nathan Boudreaux, Brent J Boudreaux, Elvin J III Boudreaux, James C Jr Boudreaux, James N Boudreaux, Jessie Boudreaux, Leroy A Boudreaux, Mark Boudreaux, Paul Sr Boudreaux, Richard D Boudreaux, Ronald Sr Boudreaux, Sally Boudreaux, Veronica Boudwin, Dwayne Boudwin, Jewel James Sr Boudwin, Wayne Bouise, Norman Boulet, Irwin J Jr Boullion, Debra Bourg, Allen T Bourg, Benny

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			Bourg, Chad J Bourg, Channon Bourg, Chris Bourg, Douglas Bourg, Glenn A Bourg, Jearmie Sr Bourg, Kent A Bourg, Mark Bourg, Nolan P Bourg, Ricky J Bourgeois, Albert P Bourgeois, Brian J Jr Bourgeois, Daniel Bourgeois, Dwayne Bourgeois, Jake Bourgeois, Johnny M Bourgeois, Johnny M Jr Bourgeois, Leon A Bourgeois, Louis A Bourgeois, Merrie E Bourgeois, Randy P Bourgeois, Reed Bourgeois, Webley Bourn, Chris Bourque, Murphy Paul Bourque, Ray Bousegard, Duvic Jr Boutte, Manuel J Jr Bouvier, Colbert A II Bouzigard, Dale J Bouzigard, Edgar J III Bouzigard, Eeris Bowers, Harold Bowers, Tommy Boyd, David E Sr Boyd, Elbert Boykin, Darren L Boykin, Thomas Carol Bradley, James Brady, Brian Brandhurst, Kay Brandhurst, Ray E Sr Brandhurst, Raymond J Braneff, David G Brannan, William P Branom, Donald James Jr Braud, James M Brazan, Frank J Breaud, Irvin F Jr Breaux, Barbara Breaux, Brian J Breaux, Charlie M Breaux, Clifford Breaux, Colin E Breaux, Daniel Jr Breaux, Larry J Breaux, Robert J Jr Breaux, Shelby Briscoe, Robert F Jr Britsch, L D Jr Broussard, Dwayne E Broussard, Eric Broussard, Keith Broussard, Larry Broussard, Mark A Broussard, Roger David Broussard, Roger R Broussard, Steve P Brown, Cindy B Brown, Colleen Brown, Donald G Brown, John W Brown, Paul R

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Brown, Ricky Brown, Toby H Bruce, Adam J Bruce, Adam J Jr Bruce, Bob R Bruce, Daniel M Sr Bruce, Eli T Sr Bruce, Emelda L Bruce, Gary J Sr Bruce, James P Bruce, Lester J Jr Bruce, Margie L Bruce, Mary P Bruce, Nathan Bruce, Robert Bruce, Russell Brudnock, Peter Sr Brunet, Elton J Brunet, Joseph A Brunet, Joseph A Brunet, Levy J Jr Brunet, Raymond Sr Bryan, David N Bryant, Ina Fay V Bryant, Jack D Sr Bryant, James Larry Buford, Ernest Bui, Ben Bui, Dich Bui, Dung Thi Bui, Huong T Bui, Ngan Bui, Nhuan Bui, Nuoi Van Bui, Tai Bui, Tieu Bui, Tommy Bui, Xuan and De Nguyen Bui, Xuanmai Bull, Delbert E Bundy, Belvina (Kenneth) Bundy, Kenneth Sr Bundy, Nicky Bundy, Ronald J Bundy, Ronnie J Buquet, John Jr Buras, Clayton M Buras, Leander Buras, Robert M Jr Buras, Waylon J Burlett, Elliott C Burlett, John C Jr Burnell, Charles B Burnell, Charles R Burnham, Deanna Lea Burns, Stuart E Burroughs, Lindsey Hilton Jr Burton, Ronnie Busby, Hardy E Busby, Tex H Busch, RC Bush, Robert A Bussey, Tyler Butcher, Dorothy Butcher, Rocky J Butler, Albert A Butler, Aline M Bychurch, Johnny Bychurch, Johnny Jr Cabanilla, Alex Caboz, Jose Santos Cacioppo, Anthony Jr Caddell, David

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			Cadiere, Mae Quick Cadiere, Ronald J Cahill, Jack Caillouet, Stanford Jr Caison, Jerry Lane Jr Calcagno, Stephen Paul Sr Calderone, John S Callahan, Gene P Sr Callahan, Michael J Callahan, Russell Callais, Ann Callais, Franklin D Callais, Gary D Callais, Michael Callais, Michael Callais, Sandy Callais, Terrence Camardelle, Anna M Camardelle, Chris J Camardelle, David Camardelle, Edward J III Camardelle, Edward J Jr Camardelle, Harris A Camardelle, Knowles Camardelle, Noel T Camardelle, Tilman J Caminita, John A III Campo, Donald Paul Campo, Kevin Campo, Nicholas J Campo, Roy Campo, Roy Sr Camus, Ernest M Jr Canova, Carl Cantrelle, Alvin Cantrelle, Eugene J Cantrelle, Otis A Sr Cantrelle, Otis Jr (Buddy) Cantrelle, Philip A Cantrelle, Tate Joseph Canty, Robert Jamies Cao, Anna Cao, Billy Cao, Billy Viet Cao, Binh Quang Cao, Chau Cao, Dan Dien Cao, Dung Van Cao, Gio Van Cao, Heip A Cao, Linh Huyen Cao, Nghia Thi Cao, Nhieu V Cao, Si-Van Cao, Thanh Kim Cao, Tuong Van Carinhas, Jack G Jr Carl, Joseph Allen Carlos, Gregory Carlos, Irvin Carmadelle, David J Carmadelle, Larry G Carmadelle, Rudy J Carrere, Anthony T Jr Carrier, Larry J Caruso, Michael Casanova, David W Sr Cassagne, Alphonse G III Cassagne, Alphonse G IV Cassidy, Mark Casso, Joseph Castelin, Gilbert Castelin, Sharon

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			Castellanos, Raul L Castelluccio, John A Jr Castille, Joshua Caulfield, Adolph Jr Caulfield, Hope Caulfield, James M Jr Caulfield, Jean Cepriano, Salvador Cerdas, Julius W Jr Cerise, Marla Chabert, John Chaisson, Dean J Chaisson, Henry Chaisson, Vincent A Chaix, Thomas B III Champagne, Brian Champagne, Harold P Champagne, Kenton Champagne, Leon J Champagne, Leroy A Champagne, Lori Champagne, Timmy D Champagne, Willard Champlin, Kim J Chance, Jason R Chancey, Jeff Chapa, Arturo Chaplin Robert G Sr Chaplin, Saxby Stowe Charles, Christopher Charpentier, Allen J Charpentier, Alvin J Charpentier, Daniel J Charpentier, Lawrence Charpentier, Linton Charpentier, Melanie Charpentier, Murphy Jr Charpentier, Robert J Chartier, Michelle Chau, Minh Huu Chauvin, Anthony Chauvin, Anthony P Jr Chauvin, Carey M Chauvin, David James Chauvin, James E Chauvin, Kimberly Kay Cheeks, Alton Bruce Cheers, Elwood Chenier, Ricky Cheramie, Alan Cheramie, Alan J Jr Cheramie, Alton J Cheramie, Berwick Jr Cheramie, Berwick Sr Cheramie, Daniel James Sr Cheramie, Danny Cheramie, David J Cheramie, David P Cheramie, Dickey J Cheramie, Donald Cheramie, Enola Cheramie, Flint Cheramie, Harold L Cheramie, Harry J Sr Cheramie, Harry Jr Cheramie, Harvey Jr Cheramie, Harvey Sr Cheramie, Henry J Sr Cheramie, James A Cheramie, James P Cheramie, Jody P Cheramie, Joey J Cheramie, Johnny

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			Cheramie, Joseph A Cheramie, Lee Allen Cheramie, Linton J Cheramie, Mark A Cheramie, Murphy J Cheramie, Nathan A Sr Cheramie, Neddy P Cheramie, Nicky J Cheramie, Ojess M Cheramie, Paris P Cheramie, Robbie Cheramie, Rodney E Jr Cheramie, Ronald Cheramie, Roy Cheramie, Roy A Cheramie, Sally K Cheramie, Terry J Cheramie, Terry Jr Cheramie, Timmy Cheramie, Tina Cheramie, Todd M Cheramie, Tommy Cheramie, Wayne A Cheramie, Wayne A Jr Cheramie, Wayne F Sr Cheramie, Wayne J Cheramie, Webb Jr Chevalier, Mitch Chew, Thomas J Chhun, Samantha Chiasson, Jody J Chiasson, Manton P Jr Chiasson, Michael P Childress, Gordon Chisholm, Arthur Chisholm, Henry Jr Christen, David Jr Christen, Vernon Christmas, John T Jr Chung, Long V Ciaccio, Vance Cibilic, Bozidar Cieutat, John Cisneros, Albino Ciuffi, Michael L Clark, James M Clark, Jennings Clark, Mark A Clark, Ricky L Cobb, Michael A Cochran, Jimmy Coleman, Ernest Coleman, Freddie Jr Colletti, Rodney A Collier, Ervin J Collier, Wade Collins, Bernard J Collins, Bruce J Jr Collins, Donald Collins, Earline Collins, Eddie F Jr Collins, Jack Collins, Jack Collins, Julius Collins, Lawson Bruce Sr Collins, Lindy S Jr Collins, Logan A Jr Collins, Robert Collins, Timmy P Collins, Vendon Jr Collins, Wilbert Jr Collins, Woodrow Colson, Chris and Michelle

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			Comardelle, Michael J Comeaux, Allen J Compeaux, Curtis J Compeaux, Gary P Compeaux, Harris Cone, Jody Contreras, Mario Cook, Edwin A Jr Cook, Edwin A Sr Cook, Joshua Cook, Larry R Sr Cook, Scott Cook, Theodore D Cooksey, Ernest Neal Cooper, Acy J III Cooper, Acy J Jr Cooper, Acy Sr Cooper, Christopher W Cooper, Jon C Cooper, Marla F Cooper, Vincent J Copeman, John R Corley, Ronald E Cornett, Eddie Cornwall, Roger Cortez, Brenda M Cortez, Cathy Cortez, Curtis Cortez, Daniel P Cortez, Edgar Cortez, Keith J Cortez, Leslie J Cosse, Robert K Coston, Clayton Cotsovolos, John Gordon Coulon, Allen J Jr Coulon, Allen J Sr Coulon, Amy M Coulon, Cleveland F Coulon, Darrin M Coulon, Don Coulon, Earline N Coulon, Ellis Jr Coursey, John W Courville, Ronnie P Cover, Darryl L Cowdrey, Michael Dudley Cowdrey, Michael Nelson Crain, Michael T Crawford, Bryan D Crawford, Steven J Creamer, Quention Credeur, Todd A Sr Credeur, Tony J Creppel, Carlton Creppel, Catherine Creppel, Craig Anthony Creppel, Freddy Creppel, Isadore Jr Creppel, Julinne G III Creppel, Kenneth Creppel, Kenneth Creppel, Nathan J Jr Creppell, Michel P Cristina, Charles J Crochet, Sterling James Crochet, Tony J Crosby, Benjy J Crosby, Darlene Crosby, Leonard W Jr Crosby, Ted J Crosby, Thomas Crum, Lonnie

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			Crum, Tommy Lloyd Cruz, Jesus Cubbage, Melinda T Cuccia, Anthony J Cuccia, Anthony J Jr Cuccia, Kevin Cumbie, Bryan E Cure, Mike Curole, Keith J Curole, Kevin P Curole, Margaret B Curole, Willie P Jr Cutrer, Jason C Cvitanovich, T Daigle, Alfred Daigle, Cleve and Nona Daigle, David John Daigle, EJ Daigle, Glenn Daigle, Jamie J Daigle, Jason Daigle, Kirk Daigle, Leonard P Daigle, Lloyd Daigle, Louis J Daigle, Melanie Daigle, Michael J Daigle, Michael Wayne and JoAnn Daisy, Jeff Dale, Cleveland L Dang, Ba Dang, Dap Dang, David Dang, Duong Dang, Khang Dang, Khang and Tam Phan Dang, Loan Thi Dang, Minh Dang, Minh Van Dang, Son Dang, Tao Kevin Dang, Thang Duc Dang, Thien Van Dang, Thuong Dang, Thuy Dang, Van D Daniels, David Daniels, Henry Daniels, Leslie Danos, Albert Sr Danos, James A Danos, Jared Danos, Oliver J Danos, Ricky P Danos, Rodney Danos, Timothy A d'Antignac, Debi d'Antignac, Jack Dantin, Archie A Dantin, Mark S Sr Dantin, Stephen Jr Dao, Paul Dao, Vang Dao-Nguyen, Chrysti Darda, Albert L Jr Darda, Gertrude Darda, Herbert Darda, J C Darda, Jeremy Darda, Tammy Darda, Trudy Dardar, Alvin Dardar, Basile J

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			Dardar, Basile Sr Dardar, Cindy Dardar, David Dardar, Donald S Dardar, Edison J Sr Dardar, Gayle Picou Dardar, Gilbert B Dardar, Gilbert Sr Dardar, Isadore J Jr Dardar, Jacqueline Dardar, Jonathan M Dardar, Lanny Dardar, Larry J Dardar, Many Dardar, Neal A Dardar, Norbert Dardar, Patti V Dardar, Percy B Sr Dardar, Rose Dardar, Rusty J Dardar, Samuel Dardar, Summersgill Dardar, Terry P Dardar, Toney M Jr Dardar, Toney Sr Dargis, Stephen M Dassau, Louis David, Philip J Jr Davis, Cliff Davis, Daniel A Davis, Danny A Davis, James Davis, John W Davis, Joseph D Davis, Michael Steven Davis, Ronald B Davis, William T Jr Davis, William Theron Dawson, JT de la Cruz, Avery T Dean, Ilene L Dean, John N Dean, Stephen DeBarge, Brian K DeBarge, Sherry DeBarge, Thomas W Decoursey, John Dedon, Walter Deere, Daryl Deere, David E Deere, Dennis H Defelice, Robin Defelice, Tracie L DeHart, Ashton J Sr Dehart, Bernard J Dehart, Blair Dehart, Clevis Dehart, Clevis Jr DeHart, Curtis P Sr Dehart, Eura Sr Dehart, Ferrell John Dehart, Leonard M DeHart, Troy DeJean, Chris N Jr DeJean, Chris N Sr Dekemel, Bonnie D Dekemel, Wm J Jr Delande, Paul Delande, Ten Chie Delatte, Michael J Sr Delaune, Kip M Delaune, Thomas J Delaune, Todd J

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			Delcambre, Carroll A Delgado, Jesse Delino, Carlton Delino, Lorene Deloach, Stephen W Jr DeMoll, Herman J Jr DeMoll, Herman J Sr DeMoll, James C Jr DeMoll, Ralph DeMoll, Robert C DeMoll, Terry R DeMolle, Freddy DeMolle, Otis Dennis, Fred Denty, Steve Deroche, Barbara H Derouen, Caghe Deshotel, Rodney DeSilvey, David Despaux, Byron J Despaux, Byron J Jr Despaux, Glen A Despaux, Ken Despaux, Kerry Despaux, Suzanna Detillier, David E DeVaney, Bobby C Jr Dickey, Wesley Frank Diep, Vu Dinger, Anita Dinger, Corbert Sr Dinger, Eric Dinger, Mark H Dinh, Chau Thanh Dinh, Khai Duc Dinh, Lien Dinh, Toan Dinh, Vincent Dion, Ernest Dion, Paul A Dion, Thomas Autry Disalvo, Paul A Dismuke, Robert E Sr Ditcharo, Dominick III Dixon, David Do, Cuong V Do, Dan C Do, Dung V Do, Hai Van Do, Hieu Do, Hung V Do, Hung V Do, Johnny Do, Kiet Van Do, Ky Hong Do, Ky Quoc Do, Lam Do, Liet Van Do, Luong Van Do, Minh Van Do, Nghiep Van Do, Ta Do, Ta Phon Do, Than Viet Do, Thanh V Do, Theo Van Do, Thien Van Do, Tinh A Do, Tri Do, Vi V Doan, Anh Thi Doan, Joseph Doan, Mai

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			Doan, Minh Doan, Ngoc Doan, Tran Van Domangue, Darryl Domangue, Emile Domangue, Mary Domangue, Michael Domangue, Paul Domangue, Ranzell Sr Domangue, Stephen Domangue, Westley Domingo, Carolyn Dominique, Amy R Dominique, Gerald R Donini, Ernest N Donnelly, David C Donohue, Holly M Dooley, Denise F Dopson, Craig B Dore, Presley J Dore, Preston J Jr Dorr, Janthan C Jr Doucet, Paul J Sr Downey, Colleen Doxey, Robert Lee Sr Doxey, Ruben A Doxey, William L Doyle, John T Drawdy, John Joseph Drury, Bruce W Jr Drury, Bruce W Sr Drury, Bryant J Drury, Eric S Drury, Helen M Drury, Jeff III Drury, Kevin Drury, Kevin S Sr Drury, Steve R Drury, Steven J Dubberly, James F Dubberly, James Michael Dubberly, James Michael Jr Dubberly, John J Dubois, Euris A Dubois, John D Jr Dubois, Lonnie J Duck, Kermit Paul Dudenhefer, Anthony Dudenhefer, Connie S Dudenhefer, Eugene A Dudenhefer, Milton J Jr Duet, Brad J Duet, Darrel A Duet, Guy J Duet, Jace J Duet, Jay Duet, John P Duet, Larson Duet, Ramie Duet, Raymond J Duet, Tammy B Duet, Tyrone Dufrene, Archie Dufrene, Charles Dufrene, Curt F Dufrene, Elson A Dufrene, Eric F Dufrene, Eric F Jr Dufrene, Eric John Dufrene, Golden J Dufrene, Jeremy M Dufrene, Juliette B Dufrene, Leroy J

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			Dufrene, Milton J Dufrene, Ronald A Jr Dufrene, Ronald A Sr Dufrene, Scottie M Dufrene, Toby Dugar, Edward A II Dugas, Donald John Dugas, Henri J IV Duhe, Greta Duhe, Robert Duhon, Charles Duhon, Douglas P Duncan, Faye E Duncan, Gary Duncan, Loyde C Dunn, Bob Duong, Billy Duong, Chamroeun Duong, EM Duong, Ho Tan Phi Duong, Kong Duong, Mau Duplantis, Blair P Duplantis, David Duplantis, Frankie J Duplantis, Maria Duplantis, Teddy W Duplantis, Wedgir J Jr Duplessis, Anthony James Sr Duplessis, Bonnie S Duplessis, Clarence R Dupre, Brandon P Dupre, Cecile Dupre, David A Dupre, Davis J Jr Dupre, Easton J Dupre, Jimmie Sr Dupre, Linward P Dupre, Mary L Dupre, Michael J Dupre, Michael J Jr Dupre, Randall P Dupre, Richard A Dupre, Rudy P Dupre, Ryan A Dupre, Tony J Dupre, Troy A Dupree, Bryan Dupree, Derrick Dupree, Malcolm J Sr Dupuis, Clayton J Durand, Walter Y Dusang, Melvin A Duval, Denval H Sr Duval, Wayne Dyer, Nadine D Dyer, Tony Dykes, Bert L Dyson, Adley L Jr Dyson, Adley L Sr Dyson, Amy Dyson, Casandra Dyson, Clarence III Dyson, Jimmy Jr Dyson, Jimmy L Sr Dyson, Kathleen Dyson, Maricela Dyson, Phillip II Dyson, Phillip Sr Dyson, William Eckerd, Bill Edens, Angela Blake Edens, Donnie

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			Edens, Jeremy Donald Edens, Nancy M Edens, Steven L Edens, Timothy Dale Edgar, Daniel Edgar, Joey Edgerson, Roosevelt Edwards, Tommy W III Ellerbee, Jody Duane Ellison, David Jr Encalade, Alfred Jr Encalade, Anthony T Encalade, Cary Encalade, Joshua C Encalade, Stanley A Enclade, Joseph L Enclade, Michael Sr and Jeannie Pitre Enclade, Rodney J Englade, Alfred Ennis, A L Jr Erickson, Grant G Erlinger, Carroll Erlinger, Gary R Eschete, Keith A Esfeller, Benny A Eskine, Kenneth Sponge, Ernest J Estaves, David Sr Estaves, Ricky Joseph Estay, Allen J Estay, Wayne Esteves, Anthony E Jr Estrada, Orestes Evans, Emile J Jr Evans, Kevin J Evans, Lester Evans, Lester J Jr Evans, Tracey J Sr Everson, George C Eymard, Brian P Sr Eymard, Jervis J and Carolyn B Fabiano, Morris C Fabra, Mark Fabre, Alton Jr Fabre, Ernest J Fabre, Kelly V Fabre, Peggy B Fabre, Sheron Fabre, Terry A Fabre, Wayne M Falcon, Mitchell J Falgout, Barney Falgout, Jerry P Falgout, Leroy J Falgout, Timothy J Fanguy, Barry G Fanning, Paul Jr Farris, Thomas J Fasone, Christopher J Fasone, William J Faulk, Lester J Favaloro, Thomas J Favre, Michael Jr Fazende, Jeffery Fazende, Thomas Fazende, Thomas G Fazzio, Anthony Fazzio, Douglas P Fazzio, Maxine J Fazzio, Steve Felarise, EJ Felarise, Wayne A Sr Fernandez, John

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			Fernandez, Laudelino Ferrara, Audrey B Ficarino, Dominick Jr Fields, Bryan Fillinich, Anthony Fillinich, Anthony Sr Fillinich, Jack Fincher, Penny Fincher, William Fisch, Burton E Fisher, Kelly Fisher, Kirk Fisher, Kirk A Fitch, Adam Fitch, Clarence J Jr Fitch, Hanson Fitzgerald, Burnell Fitzgerald, Kirk Fitzgerald, Kirk D Fitzgerald, Ricky J Jr Fleming, John M Fleming, Meigs F Fleming, Mike Flick, Dana Flores, Helena D Flores, Thomas Flowers, Steve W Flowers, Vincent F Folse, David M Folse, Heath Folse, Mary L Folse, Ronald B Fonseca, Francis Sr Fontaine, William S Fontenot, Peggy D Ford, Judy Ford, Warren Wayne Foreman, Ralph Jr Foret, Alva J Foret, Billy J Foret, Brent J Foret, Glenn Foret, Houston Foret, Jackie P Foret, Kurt J Sr Foret, Lovelace A Sr Foret, Loveless A Jr Foret, Mark M Foret, Patricia C Forrest, David P Forsyth, Hunter Forsythe, John Fortune, Michael A France, George J Francis, Albert Franklin, James K Frankovich, Anthony Franks, Michael Frauenberger, Richard Wayne Frazier, David J Frazier, David M Frazier, James Frazier, Michael Frederick, Davis Frederick, Johnnie and Jeannie Fredrick, Michael Freeman, Arthur D Freeman, Darrel P Sr Freeman, Kenneth F Freeman, Larry Scott Frelich, Charles P Frelich, Floyd J Frelich, Kent

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			Frerics, Doug Frerks, Albert R Jr Frickey, Darell Frickey, Darren Frickey, Dirk I Frickey, Eric J Frickey, Harry J Jr Frickey, Jimmy Frickey, Rickey J Frickey, Westley J Friloux, Brad Frisella, Jeanette M Frisella, Jerome A Jr Frost, Michael R Fruge, Wade P Gadson, James Gaines, Dwayne Gala, Christine Galjour, Jess J Galjour, Reed Gallardo, John W Gallardo, Johnny M Galliano, Anthony Galliano, Horace J Galliano, Joseph Sr Galliano, Logan J Galliano, Lynne L Galliano, Moise Jr Galloway, AT Jr Galloway, Jimmy D Galloway, Judy L Galloway, Mark D Galt, Giles F Gambarella, Luvencie J Ganoi, Kristine Garcia, Ana Maria Garcia, Anthony Garcia, Edward Garcia, Kenneth Garner, Larry S Gary, Dalton J Gary, Ernest J Gary, Leonce Jr Garza, Andrew Garza, Jose H Gaskill, Elbert Clinton and Sandra Gaspar, Timothy Gaspard, Aaron and Hazel C Gaspard, Dudley A Jr Gaspard, Leonard J Gaspard, Michael A Gaspard, Michael Sr Gaspard, Murry Gaspard, Murry A Jr Gaspard, Murry Sr Gaspard, Murvin Gaspard, Ronald Sr Gaspard, Ronald Wayne Jr Gaubert, Elizabeth Gaubert, Gregory M Gaubert, Melvin Gaudet, Allen J IV Gaudet, Ricky Jr Gauthier, Hewitt J Sr Gautreaux, William A Gay, Norman F Gay, Robert G Gazzier, Daryl G Gazzier, Emanuel A Gazzier, Wilfred E Gegenheimer, William F Geiling, James Geisman, Tony

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			Gentry, Robert Gentry, Samuel W Jr George, James J Jr Gerica, Clara Gerica, Peter Giambrone, Corey P Gibson, Eddie E Gibson, Joseph Gibson, Ronald F Gilden, Eddie Jr Gilden, Eddie Sr Gilden, Inez W Gilden, Wayne Gillikin, James D Girard, Chad Paul Giroir, Mark S Gisclair, Anthony J Gisclair, Anthony Joseph Sr Gisclair, August Gisclair, Dallas J Sr Gisclair, Doyle A Gisclair, Kip J Gisclair, Ramona D Gisclair, Wade Gisclair, Walter Glover, Charles D Glynn, Larry Goetz, George Goings, Robert Eugene Golden, George T Golden, William L Gollot, Brian Gollot, Edgar R Gonzales, Arnold Jr Gonzales, Mrs Cyril E Jr Gonzales, Rene R Gonzales, Rudolph S Jr Gonzales, Rudolph S Sr Gonzales, Sylvia A Gonzales, Tim J Gonzalez, Jorge Jr Gonzalez, Julio Gordon, Donald E Gordon, Patrick Alvin Gore, Henry H Gore, Isabel Gore, Pam Gore, Thomas L Gore, Timothy Ansel Gottschalk, Gregory Gourgues, Harold C Jr Goutierrez, Tony C Govea, Joaquin Graham, Darrell Graham, Steven H Granger, Albert J Sr Granich, James Granier, Stephen J Grass, Michael Graves, Robert N Sr Gray, Jeannette Gray, Monroe Gray, Shirley E Gray, Wayne A Sr Graybill, Ruston Green, Craig X Green, James W Green, James W Jr Green, Shaun Greenlaw, W C Jr Gregoire, Ernest L Gregoire, Rita M Gregory, Curtis B

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			Gregory, Mercedes E Grice, Raymond L Jr Griffin, Alden J Sr Griffin, Craig Griffin, David D Griffin, Elvis Joseph Jr Griffin, Faye Griffin, Faye Ann Griffin, Jimmie J Griffin, Nolt J Griffin, Rickey Griffin, Sharon Griffin, Timothy Griffin, Troy D Groff, Alfred A Groff, John A Groover, Hank Gros, Brent J Sr Gros, Craig J Gros, Danny A Gros, Gary Sr Gros, Junius A Jr Gros, Keven Gros, Michael A Gross, Homer Grossie, Janet M Grossie, Shane A Grossie, Tate Grow, Jimmie C Guenther, John J Guenther, Raphael Guerra, Bruce Guerra, Chad L Guerra, Fabian C Guerra, Guy A Guerra, Jerry V Sr Guerra, Kurt P Sr Guerra, Ricky J Sr Guerra, Robert Guerra, Ryan Guerra, Troy A Guerra, William Jr Guidroz, Warren J Guidry, Alvin A Guidry, Andy J Guidry, Arthur Guidry, Bud Guidry, Calvin P Guidry, Carl J Guidry, Charles J Guidry, Chris J Guidry, Clarence P Guidry, Clark Guidry, Clint Guidry, Clinton P Jr Guidry, Clyde A Guidry, David Guidry, Dobie Guidry, Douglas J Sr Guidry, Elgy III Guidry, Elgy Jr Guidry, Elwin A Jr Guidry, Gerald A Guidry, Gordon Jr Guidry, Guillaume A Guidry, Harold Guidry, Jason Guidry, Jessie J Guidry, Jessie Joseph Guidry, Jonathan B Guidry, Joseph T Jr Guidry, Keith M Guidry, Kenneth J

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			Guidry, Kerry A Guidry, Marco Guidry, Maurin T and Tamika Guidry, Michael J Guidry, Nolan J Sr Guidry, Randy Peter Sr Guidry, Rhonda S Guidry, Robert C Guidry, Robert Joseph Guidry, Robert Wayne Guidry, Roger Guidry, Ronald Guidry, Roy Anthony Guidry, Roy J Guidry, Tammy Guidry, Ted Guidry, Thomas P Guidry, Timothy Guidry, Troy Guidry, Troy Guidry, Ulysses Guidry, Vicki Guidry, Wayne J Guidry, Wyatt Guidry, Yvonne Guidry-Calva, Holly A Guilbeaux, Donald J Guilbeaux, Lou Guillie, Shirley Guillory, Horace H Guillot, Benjamin J Jr Guillot, Rickey A Gullede, Lee Gutierrez, Anita Guy, Jody Guy, Kimothy Paul Guy, Wilson Ha, Cherie Lan Ha, Co Dong Ha, Lai Thuy Thi Ha, Lyanna Hadwall, John R Hafford, Johnny Hagan, Jules Hagan, Marianna Haiglea, Robbin Richard Hales, William E Halili, Rhonda L Hall, Byron S Hall, Darrel T Sr Hall, Lorrie A Hammer, Michael P Hammock, Julius Michael Hancock, Jimmy L Handlin, William Sr Hang, Cam T Hansen, Chris Hansen, Eric P Hanson, Edmond A Harbison, Louis Hardee, William P Hardison, Louis Hardy John C Hardy, Sharon Harmon, Michelle Harrington, George J Harrington, Jay Harris, Bobby D Harris, Buster Harris, Jimmy Wayne Sr Harris, Johnny Ray Harris, Kenneth A Harris, Ronnie

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			Harris, Susan D Harris, William Harrison, Daniel L Hartmann, Leon M Jr Hartmann, Walter Jr Hattaway, Errol Henry Haycock, Kenneth Haydel, Gregory Hayes, Clinton Hayes, Katherine F Hayes, Lod Jr Hean, Hong Heathcock, Walter Jr Hebert, Albert Joseph Hebert, Bernie Hebert, Betty Jo Hebert, Chris Hebert, Craig J Hebert, David Hebert, David Jr Hebert, Earl J Hebert, Eric J Hebert, Jack M Hebert, Johnny Paul Hebert, Jonathan Hebert, Jules J Hebert, Kim M Hebert, Lloyd S III Hebert, Michael J Hebert, Myron A Hebert, Norman Hebert, Patrick Hebert, Patrick A Hebert, Pennington Jr Hebert, Philip Hebert, Robert A Hebert, Terry W Hedrick, Gerald J Jr Helmer, Claudia A Helmer, Gerry J Helmer, Herman C Jr Helmer, Kenneth Helmer, Larry J Sr Helmer, Michael A Sr Helmer, Rusty L Helmer, Windy Hemmenway, Jack Henderson, Brad Henderson, Curtis Henderson, David A Jr Henderson, David A Sr Henderson, Johnny Henderson, Olen Henderson, P Loam Henry, Joanne Henry, Rodney Herbert, Patrick and Terry Hereford, Rodney O Jr Hereford, Rodney O Sr Hernandez, Corey Herndon, Mark Hertel, Charles W Hertz, Edward C Sr Hess, Allen L Sr Hess, Henry D Jr Hess, Jessica R Hess, Wayne B Hewett, Emma Hewett, James Hickman, John Hickman, Marvin Hicks, Billy M Hicks, James W

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			Hicks, Larry W Hicks, Walter R Hien, Nguyen Higgins, Joseph J III Hill, Darren S Hill, Joseph R Hill, Sharon Hill, Willie E Jr Hills, Herman W Hingle, Barbara E Hingle, Rick A Hingle, Roland T Jr Hingle, Roland T Sr Hingle, Ronald J Hinojosa, R Hinojosa, Randy Hinojosa, Ricky A Hipps, Nicole Marie Ho, Dung Tan Ho, Hung Ho, Jennifer Ho, Jimmy Ho, Lam Ho, Nam Ho, Nga T Ho, O Ho, Sang N Ho, Thanh Quoc Ho, Thien Dang Ho, Tien Van Ho, Tri Tran Hoang, Dung T Hoang, Hoa T and Tam Hoang Hoang, Huy Van Hoang, Jennifer Vu Hoang, John Hoang, Julie Hoang, Kimberly Hoang, Linda Hoang, Loan Hoang, San Ngoc Hoang, Tro Van Hoang, Trung Kim Hoang, Trung Tuan Hoang, Vincent Huynh Hodges, Ralph W Hoffpavilz, Harry K Holland, Vidal Holler, Boyce Dwight Jr Hollier, Dennis J Holloway, Carl D Hong, Tai Van Hood, Malcolm Hopton, Douglas Horaist, Shawn P Hostetler, Warren L II Hotard, Claude Hotard, Emile J Jr Howard, Jeff Howerin, Billy Sr Howerin, Wendell Sr Hubbard, Keith Hubbard, Perry III Huber, Berry T Huber, Charles A Huck, Irma Elaine Huck, Steven R Huckabee, Harold Hue, Patrick A Hughes, Brad J Hults, Thomas Hutcherson, Daniel J Hutchinson, Douglas

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			Hutchinson, George D Hutchinson, William H Hutto, Cynthia E Hutto, Henry G Jr Huynh, Chien Thi Huynh, Dong Xuan Huynh, Dung Huynh, Dung V Huynh, Hai Huynh, Hai Huynh, Hai Van Huynh, Hoang D Huynh, Hoang Van Huynh, Hung Huynh, James N Huynh, Johnny Hiep Huynh, Johnnie Huynh, Kim Huynh, Lay Huynh, Long Huynh, Mack Van Huynh, Mau Van Huynh, Minh Huynh, Minh Van Huynh, Nam Van Huynh, Thai Huynh, Tham Thi Huynh, Thanh Huynh, The V Huynh, Tri Huynh, Truc Huynh, Tu Huynh, Tu Huynh, Tung Van Huynh, Van X Huynh, Viet Van Huynh, Vuong Van Hymel, Joseph Jr Hymel, Michael D Hymel, Nolan J Sr Ingham, Herbert W Inglis, Richard M Ingraham, Joseph S Ingraham, Joyce Ipock, Billy Ipock, William B Ireland, Arthur Allen Iver, George Jr Jackson, Alfred M Jackson, Carl John Jackson, David Jackson, Eugene O Jackson, Glenn C Jr Jackson, Glenn C Sr Jackson, James Jerome Jackson, John D Jackson, John Elton Sr Jackson, Levi Jackson, Nancy L Jackson, Robert W Jackson, Shannon Jackson, Shaun C Jackson, Steven A Jacob, Ronald R Jacob, Warren J Jr Jacobs, L Anthony Jacobs, Lawrence F Jarreau, Billy and Marilyn Jarvis, James D Jaye, Emma Jeanfreau, Vincent R Jefferies, William Jemison, Timothy Michael Sr

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			Jennings, Jacob Joffrion, Harold J Jr Johnson, Albert F Johnson, Ashley Lamar Johnson, Bernard Jr Johnson, Brent W Johnson, Bruce Warem Johnson, Carl S Johnson, Carolyn Johnson, Clyde Sr Johnson, David G Johnson, David Paul Johnson, Gary Allen Sr Johnson, George D Johnson, Michael A Johnson, Randy J Johnson, Regenia Johnson, Robert Johnson, Ronald Ray Sr Johnson, Steve Johnson, Thomas Allen Jr Johnston, Ronald Joly, Nicholas J Jr Jones, Charles Jones, Clinton Jones, Daisy Mae Jones, Jeffery E Jones, Jerome N Sr Jones, John W Jones, Larry Jones, Len Jones, Michael G Sr Jones, Paul E Jones, Perry T Sr Jones, Ralph William Jones, Richard G Sr Jones, Stephen K Jones, Wayne Joost, Donald F Jordan, Dean Jordan, Hubert William III (Bert) Jordan, Hurbert W Jr Judalet, Ramon G Judy, William Roger Julian, Ida Julian, John I Sr Juneau, Anthony Sr Juneau, Bruce Juneau, Robert A Jr and Laura K Jurjevich, Leander J Kain, Jules B Sr Kain, Martin A Kalliainen, Dale Kalliainen, Richard Kang, Chamroeun Kang, Sambo Kap, Brenda Keen, Robert Steven Keenan, Robert M Kellum, Kenneth Sr Kellum, Larry Gray Sr Kellum, Roxanne Kelly, Roger B Kelly, Thomas E Kendrick, Chuck J Kennair, Michael S Kennedy, Dothan Kenney, David Jr Kenney, Robert W Kent, Michael A Keo, Bunly Kerchner, Steve Kern, Thurmond

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			Khin, Sochenda Khui, Lep and Nga Ho Kidd, Frank Kiesel, Edward C and Lorraine T Kiff, Hank J Kiff, Melvin Kiffe, Horace Kim, Puch Kimbrough, Carson Kim-Tun, Soeun King, Andy A King, Donald Jr King, James B King, Thornell King, Wesley Kit, An Kizer, Anthony J Kleimann, Robert Knapp, Alton P Jr Knapp, Alton P Sr Knapp, Ellis L Jr Knapp, Melvin L Knapp, Theresa Knecht, Frederick Jr Knezek, Lee Knight, George Knight, Keith B Knight, Robert E Koch, Howard J Kong, Seng Konitz, Bobby Koo, Herman Koonce, Curtis S Koonce, Howard N Kopszywa, Mark L Kopszywa, Stanley J Kotulja, Stejepan Kraemer, Bridget Kraemer, Wilbert J Kraemer, Wilbert Jr Kramer, David Krantz, Arthur Jr Krantz, Lori Kraver, C W Kreger, Ronald A Sr Kreger, Roy J Sr Kreger, Ryan A Krennerich, Raymond A Kroke, Stephen E Kruth, Frank D Kuchler, Alphonse L III Kuhn, Bruce A Sr Kuhn, Gerard R Jr Kuhn, Gerard R Sr Kuhns, Deborah LaBauve, Kerry LaBauve, Sabrina LaBauve, Terry LaBiche, Todd A LaBove, Carroll LaBove, Frederick P Lachica, Jacqueline Lachico, Douglas Lacobon, Tommy W Jr Lacobon, Tony C LaCoste, Broddie LaCoste, Carl LaCoste, Dennis E LaCoste, Grayland J LaCoste, Malcolm Jr LaCoste, Melvin LaCoste, Melvin W Jr LaCoste, Ravin J Jr

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			LaCoste, Ravin Sr Ladner, Clarence J III Ladson, Earlene G LaFont, Douglas A Sr LaFont, Edna S LaFont, Jackin LaFont, Noces J Jr LaFont, Weyland J Sr LaFrance, Joseph T Lagarde, Frank N Lagarde, Gary Paul Lagasse, Michael F Lai, Hen K Lai, Then Lam, Cang Van Lam, Cui Lam, Dong Van Lam, Hiep Tan Lam, Lan Van Lam, Lee Phenh Lam, Phan Lam, Qui Lam, Sochen Lam, Tai Lam, Tinh Huu Lambas, Jessie J Sr Lanclos, Paul Landry, David A Landry, Dennis J Landry, Edward N Jr Landry, George Landry, George M Landry, James F Landry, Jude C Landry, Robert E Landry, Ronald J Landry, Samuel J Jr Landry, Tracy Lane, Daniel E Lapeyrouse, Lance M Lapeyrouse, Rosalie Lapeyrouse, Tillman Joseph LaRive, James L Jr LaRoche, Daniel S Lasseigne, Betty Lasseigne, Blake Lasseigne, Floyd Lasseigne, Frank Lasseigne, Harris Jr Lasseigne, Ivy Jr Lasseigne, Jefferson Lasseigne, Jefferson P Jr Lasseigne, Johnny J Lasseigne, Marlene Lasseigne, Nolan J Lasseigne, Trent Lat, Chhiet Latapie, Charlotte A Latapie, Crystal Latapie, Jerry Latapie, Joey G Latapie, Joseph Latapie, Joseph F Sr Latapie, Travis Latiolais, Craig J Latiolais, Joel Lau, Ho Thanh Laughlin, James G Laughlin, James Mitchell Laurent, Yvonne M Lavergne, Roger Lawdros, Terrance Jr Layrisson, Michael A III

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			Le, Amanda Le, An Van Le, Ben Le, Binh T Le, Cheo Van Le, Chinh Thanh Le, Chinh Thanh and Yen Vo Le, Cu Thi Le, Dai M Le, Dale Le, David Rung Le, Du M Le, Duc V Le, Duoc M Le, Hien V Le, Houston T Le, Hung Le, Jimmy Le, Jimmy and Hoang Le, Khoa Le, Kim Le, Ky Van Le, Lang Van Le, Lily Le, Lisa Tuyet Thi Le, Loi Le, Minh Van Le, Muoi Van Le, My Le, My V Le, Nam and Xhan-Minh Le Le, Nam Van Le, Nhieu T Le, Nhut Hoang Le, Nu Thi Le, Phuc Van Le, Que V Le, Quy Le, Robert Le, Sam Van Le, Sau V Le, Son Le, Son Le, Son H Le, Son Quoc Le, Son Van Le, Su Le, Tam V Le, Thanh Huong Le, Tong Minh Le, Tony Le, Tracy Lan Chi Le, Tuan Nhu Le, Viet Hoang Le, Vui Leaf, Andrew Scott Leary, Roland LeBeauf, Thomas LeBlanc, Donnie LeBlanc, Edwin J LeBlanc, Enoch P LeBlanc, Gareth R III LeBlanc, Gareth R Jr LeBlanc, Gerald E LeBlanc, Hubert C LeBlanc, Jerald LeBlanc, Jesse Jr LeBlanc, Keenon Anthony LeBlanc, Lanvin J LeBlanc, Luke A LeBlanc, Marty J LeBlanc, Marty J Jr LeBlanc, Mickel J

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			LeBlanc, Robert Patrick LeBlanc, Scotty M LeBlanc, Shelton LeBlanc, Terry J LeBoeuf, Brent J LeBoeuf, Emery J LeBoeuf, Joseph R LeBoeuf, Tammy Y LeBouef, Dale LeBouef, Edward J LeBouef, Ellis J Jr LeBouef, Gillis LeBouef, Jimmie LeBouef, Leslie LeBouef, Lindy J LeBouef, Micheal J LeBouef, Raymond LeBouef, Tommy J LeBouef, Wiley Sr LeBourgeois, Stephen A LeCompte, Alena LeCompte, Aubrey J LeCompte, Etha LeCompte, Jesse C Jr LeCompte, Jesse Jr LeCompte, Jesse Sr LeCompte, Lyle LeCompte, Patricia F LeCompte, Todd LeCompte, Troy A Sr Ledet, Brad Ledet, Bryan Ledet, Carlton Ledet, Charles J Ledet, Jack A Ledet, Kenneth A Ledet, Mark Ledet, Maxine B Ledet, Mervin Ledet, Phillip John Ledoux, Dennis Ledwig, Joe J Lee, Carl Lee, James K Lee, Marilyn Lee, Otis M Jr Lee, Raymond C Lee, Robert E Lee, Steven J Leek, Mark A LeGaux, Roy J Jr Legendre, Kerry Legendre, Paul Leger, Andre LeGros, Alex M LeJeune, Philip Jr LeJeune, Philip Sr LeJeune, Ramona V LeJeunee, Debbie LeJuine, Eddie R LeLand, Allston Bochet Leland, Rutledge B III Leland, Rutledge B Jr LeLeaux, David Leleux, Kevin J Lemoine, Jeffery Jr Leonard, Dan Leonard, Dexter J Jr Leonard, Micheal A Lepine, Leroy L Lesso, Rudy Jr Lester, Shawn Levron, Dale T

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			Levy, Patrick T Lewis, Kenneth Lewis, Mark Steven Libersat, Anthony R Libersat, Kim Licatino, Daniel Jr Lichenstein, Donald L Lilley, Douglas P Lim, Chhay Lim, Koung Lim, Tav Seng Linden, Eric L Liner, Claude J Jr Liner, Harold Liner, Jerry Liner, Kevin Liner, Michael B Sr Liner, Morris T Jr Liner, Morris T Sr Liner, Tandy M Linh, Pham Linwood, Dolby Lirette, Alex J Sr Lirette, Bobby and Sheri Lirette, Chester Patrick Lirette, Daniel J Lirette, Dean J Lirette, Delvin J Jr Lirette, Delvin Jr Lirette, Desaire J Lirette, Eugis P Sr Lirette, Guy A Lirette, Jeannie Lirette, Kern A Lirette, Ron C Lirette, Russell (Chico) Jr Lirette, Shaun Patrick Lirette, Terry J Sr Little, William A Little, William Boyd Liv, Niem S Livaudais, Ernest J Liverman, Harry R LoBue, Michael Anthony Sr Locascio, Dustin Lockhart, William T Lodrigue, Jimmy A Lodrigue, Kerry Lombardo, Joseph P Lombas, James A Jr Lombas, Kim D Londrie, Harley Long, Cao Thanh Long, Dinh Long, Robert Longo, Ronald S Jr Longwater, Ryan Heath Loomer, Rhonda Lopez, Celestino Lopez, Evelio Lopez, Harry N Lopez, Ron Lopez, Scott Lopez, Stephen R Jr Lord, Michael E Sr Loupe, George Jr Loupe, Ted Lovell, Billy Lovell, Bobby Jason Lovell, Bradford John Lovell, Charles J Jr Lovell, Clayton Lovell, Douglas P

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			Lovell, Jacob G Lovell, Lois Lovell, Slade M Luke, Bernadette C Luke, David Luke, Dustan Luke, Henry Luke, Jeremy Paul Luke, Keith J Luke, Patrick A Luke, Patrick J Luke, Paul Leroy Luke, Rudolph J Luke, Samantha Luke, Sidney Jr Luke, Terry Patrick Jr Luke, Terry Patrick Sr Luke, Timothy Luke, Wiltz J Lund, Ora G Luneau, Ferrell J Luong, Kevin Luong, Thu X Luscy, Lydia Luscy, Richard Lutz, William A Luu, Binh Luu, Vinh Luu, Vinh V Ly, Bui Ly, Hen Ly, Hoc Ly, Kelly D Ly, Nu Ly, Sa Ly, Ven Lyall, Rosalie Lycett, James A Lyons, Berton J Lyons, Berton J Sr Lyons, Jack Lyons, Jerome M Mackey, Marvin Sr Mackie, Kevin L Maggio, Wayne A Magwood, Edwin Wayne Mai, Danny V Mai, Lang V Mai, Tai Mai, Trach Xuan Maise, Rubin J Maise, Todd Majoue, Ernest J Majoue, Nathan L Malcombe, David Mallett, Irvin Ray Mallett, Jimmie Mallett, Lawrence J Mallett, Mervin B Mallett, Rainbow Mallett, Stephney Malley, Ned F Jr Mamolo, Charles H Sr Mamolo, Romeo C Jr Mamolo, Terry A Mancera, Jesus Manuel, Joseph R Manuel, Shon Mao, Chandarasy Mao, Kim Marcel, Michelle Marchese, Joe Jr Mareno, Ansley

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			Mareno, Brent J Mareno, Kenneth L Marie, Allen J Marie, Marty Marmande, Al Marmande, Alidore Marmande, Denise Marquize, Heather Marquizz, Kip Marris, Roy C Jr Martin, Darren Martin, Dean J Martin, Dennis Martin, Jody W Martin, John F III Martin, Michael A Martin, Nora S Martin, Rod J Martin, Roland J Jr Martin, Russel J Sr Martin, Sharon J Martin, Tanna G Martin, Wendy Martinez, Carl R Martinez, Henry Martinez, Henry Joseph Martinez, Lupe Martinez, Michael Martinez, Rene J Mason, James F Jr Mason, Johnnie W Mason, Luther Mason, Mary Lois Mason, Percy D Jr Mason, Walter Matherne, Anthony Matherne, Blakland Sr Matherne, Bradley J Matherne, Claude I Jr Matherne, Clifford P Matherne, Curlis J Matherne, Forest J Matherne, George J Matherne, Glenn A Matherne, Grace L Matherne, James C Matherne, James J Jr Matherne, James J Sr Matherne, Joey A Matherne, Keith Matherne, Larry Jr Matherne, Louis M Sr Matherne, Louis Michael Matherne, Nelson Matherne, Thomas G Matherne, Thomas G Jr Matherne, Thomas Jr Matherne, Thomas M Sr Matherne, Wesley J Mathews, Patrick Mathurne, Barry Matte, Martin J Sr Mauldin, Johnny Mauldin, Mary Mauldin, Shannon Mavar, Mark D Mayeux, Lonies A Jr Mayeux, Roselyn P Mayfield, Gary Mayfield, Henry A Jr Mayfield, James J III Mayon, Allen J Mayon, Wayne Sr

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			McAnespy, Henry McAnespy, Louis McCall, Marcus H McCall, R Terry Sr McCarthy, Carliss McCarthy, Michael McCauley, Byron Keith McCauley, Katrina McClantoc, Robert R and Debra McClellan, Eugene Gardner McCormick, Len McCuiston, Denny Carlton McDonald, Allan McElroy, Harry J McFarlain, Merlin J Jr McGuinn, Dennis McIntosh, James Richard McIntyre, Michael D McIver, John H Jr McKendree, Roy McKenzie, George B McKinzie, Bobby E McKoin, Robert McKoin, Robert F Jr McLendon, Jonathon S McNab, Robert Jr McQuaig, Don W McQuaig, Oliver J Medine, David P Mehaffey, John P Melancon, Brent K Melancon, Neva Melancon, Rickey Melancon, Roland Jr Melancon, Roland T Jr Melancon, Sean P Melancon, Terral J Melancon, Timmy J Melanson, Ozimea J III Melerine, Angela Melerine, Brandon T Melerine, Claude A Melerine, Claude A Jr Melerine, Dean J Melerine, Eric W Jr Melerine, John D Sr Melerine, Linda C Melerine, Raymond Joseph Melford, Daniel W Sr Mello, Nelvin Men, Sophin Menendez, Wade E Meneses, Dennis Meneses, James H Meneses, Jimmy Meneses, Louis Menge, Lionel A Menge, Vincent J Mercy, Dempsey Merrick, Harold A Merrick, Kevin Sr Merritt, Darren Sr Messer, Chase Meyers, Otis J Miarm, Soeum Michel, Steven D Middleton, Dan Sr Migues, Henry Migues, Kevin L Sr Milam, Ricky Miles, Ricky David Miley, Donna J Militello, Joseph

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			Miller, David W Miller, Fletcher N Miller, James A Miller, Larry B Miller, Mabry Allen Jr Miller, Michael E Miller, Michele K Miller, Randy A Miller, Rhonda E Miller, Wayne Millet, Leon B Millington, Donnie Millington, Ronnie Millis, Moses Millis, Raeford Millis, Timmie Lee Mine, Derrick Miner, Peter G Minh, Kha Minh, Phuc-Truong Mitchell, Ricky Allen Mitchell, Todd Mitchum, Francis Craig Mixon, G C Mobley, Bryan A Mobley, Jimmy Sr Mobley, Robertson Mock, Frank Sr Mock, Frankie E Jr Mock, Jesse R II Mock, Terry Lyn Molero, Louis F III Molero, Louis Frank Molinere, Al L Molinere, Floyd Molinere, Roland Jr Molinere, Stacey Moll, Angela Moll, Jerry J Jr Moll, Jonathan P Moll, Julius J Moll, Randall Jr Mollere, Randall Mones, Philip J Jr Mones, Tino Moody, Guy D Moore, Carl Stephen Moore, Curtis L Moore, Kenneth Moore, Richard Moore, Willis Morales, Anthony Morales, Clinton A Morales, Daniel Jr Morales, Daniel Sr Morales, David Morales, Elwood J Jr Morales, Eugene J Jr Morales, Eugene J Sr Morales, Kimberly Morales, Leonard L Morales, Phil J Jr Morales, Raul Moran, Scott Moreau, Allen Joseph Moreau, Berlin J Sr Moreau, Daniel R Moreau, Hubert J Moreau, Mary Moreau, Rickey J Sr Morehead, Arthur B Jr Moreno, Ansley Morgan, Harold R

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			Morici, John Morris, Herbert Eugene Morris, Jesse A Morris, Jesse A Sr Morris, Preston Morrison, Stephen D Jr Morton, Robert A Morvant, Keith M Morvant, Patsy Lishman Moschettieri, Chalam Moseley, Kevin R Motley, Michele Mouille, William L Mouton, Ashton J Moveront, Timothy Mund, Mark Murphy, Denis R Muth, Gary J Sr Myers, Joseph E Jr Na, Tran Van Naccio, Andrew Nacio, Lance M Nacio, Noel Nacio, Philocles J Sr Naquin, Alton J Naquin, Andrew J Sr Naquin, Antoine Jr Naquin, Autry James Naquin, Bobby J and Sheila Naquin, Bobby Jr Naquin, Christine Naquin, Dean J Naquin, Donna P Naquin, Earl Naquin, Earl L Naquin, Freddie Naquin, Gerald Naquin, Henry Naquin, Irvin J Naquin, Jerry Joseph Jr Naquin, Kenneth J Jr Naquin, Kenneth J Sr Naquin, Linda L Naquin, Lionel A Jr Naquin, Mark D Jr Naquin, Marty J Sr Naquin, Milton H IV Naquin, Oliver A Naquin, Robert Naquin, Roy A Naquin, Vernon Navarre, Curtis J Navero, Floyd G Jr Neal, Craig A Neal, Roy J Jr Neely, Bobby H Nehlig, Raymond E Sr Neil, Dean Neil, Jacob Neil, Julius Neil, Robert J Jr Neil, Tommy Sr Nelson, Billy J Sr Nelson, Deborah Nelson, Elisha W Nelson, Ernest R Nelson, Faye Nelson, Fred H Sr Nelson, Gordon Kent Sr Nelson, Gordon W III Nelson, Gordon W Jr Nelson, John Andrew Nelson, William Owen Jr

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			Nelton, Aaron J Jr Nelton, Steven J Nettleton, Cody Newell, Ronald B Newsome, Thomas E Newton, Paul J Nghiem, Billy Ngo, Chuong Van Ngo, Duc Ngo, Hung V Ngo, Liem Thanh Ngo, Maxie Ngo, The T Ngo, Truong Dinh Ngo, Van Lo Ngo, Vu Hoang Ngoc, Lam Lam Ngu, Thoi Nguyen, Amy Nguyen, An Hoang Nguyen, Andy Dung Nguyen, Andy T Nguyen, Anh and Thanh D Tiet Nguyen, Ba Nguyen, Ba Van Nguyen, Bac Van Nguyen, Bao Q Nguyen, Bay Van Nguyen, Be Nguyen, Be Nguyen, Be Nguyen, Be Em Nguyen, Bich Thao Nguyen, Bien V Nguyen, Binh Nguyen, Binh Cong Nguyen, Binh V Nguyen, Binh Van Nguyen, Binh Van Nguyen, Binh Van Nguyen, Bui Van Nguyen, Ca Em Nguyen, Can Nguyen, Can Van Nguyen, Canh V Nguyen, Charlie Nguyen, Chien Nguyen, Chien Van Nguyen, Chin Nguyen, Chinh Van Nguyen, Christian Nguyen, Chuc Nguyen, Chung Nguyen, Chung Van Nguyen, Chuong Hoang Nguyen, Chuong V Nguyen, Chuyen Nguyen, Coolly Dinh Nguyen, Cuong Nguyen, Dai Nguyen, Dan T Nguyen, Dan Van Nguyen, Dan Van Nguyen, Dang Nguyen, Danny Nguyen, David Nguyen, Day Van Nguyen, De Van Nguyen, Den Nguyen, Diem Nguyen, Dien Nguyen, Diep Nguyen, Dinh

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			Nguyen, Dinh V Nguyen, Dong T Nguyen, Dong Thi Nguyen, Dong X Nguyen, Duc Nguyen, Duc Van Nguyen, Dung Nguyen, Dung Anh and Xuan Duong Nguyen, Dung Ngoc Nguyen, Dung Van Nguyen, Dung Van Nguyen, Duoc Nguyen, Duong V Nguyen, Duong Van Nguyen, Duong Xuan Nguyen, Francis N Nguyen, Frank Nguyen, Gary Nguyen, Giang T Nguyen, Giang Truong Nguyen, Giau Van Nguyen, Ha T Nguyen, Ha Van Nguyen, Hai Van Nguyen, Hai Van Nguyen, Han Van Nguyen, Han Van Nguyen, Hang Nguyen, Hanh T Nguyen, Hao Van Nguyen, Harry H Nguyen, Henri Hiep Nguyen, Henry-Trang Nguyen, Hien Nguyen, Hien V Nguyen, Hiep Nguyen, Ho Nguyen, Ho V Nguyen, Hoa Nguyen, Hoa Nguyen, Hoa N Nguyen, Hoa Van Nguyen, Hoang Nguyen, Hoang Nguyen, Hoang T Nguyen, Hoi Nguyen, Hon Xuong Nguyen, Huan Nguyen, Hung Nguyen, Hung Nguyen, Hung Nguyen, Hung M Nguyen, Hung Manh Nguyen, Hung Van Nguyen, Hung-Joseph Nguyen, Huu Nghia Nguyen, Hy Don N Nguyen, Jackie Tin Nguyen, James Nguyen, James N Nguyen, Jefferson Nguyen, Jennifer Nguyen, Jimmy Nguyen, Jimmy Nguyen, Joachim Nguyen, Joe Nguyen, John R Nguyen, John Van Nguyen, Johnny Nguyen, Joseph Minh Nguyen, Kenny Hung Mong Nguyen, Kevin Nguyen, Khai

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			Nguyen, Khanh Nguyen, Khanh and Viet Dinh Nguyen, Khanh Q Nguyen, Khiem Nguyen, Kien Phan Nguyen, Kim Nguyen, Kim Mai Nguyen, Kim Thoa Nguyen, Kinh V Nguyen, Lai Nguyen, Lai Nguyen, Lai Tan Nguyen, Lam Nguyen, Lam Van Nguyen, Lam Van Nguyen, Lam Van Nguyen, Lan Nguyen, Lang Nguyen, Lang Nguyen, Lanh Nguyen, Lap Van Nguyen, Lap Van Nguyen, Le Nguyen, Lien and Hang Luong Nguyen, Lien Thi Nguyen, Linda Oan Nguyen, Linh Thi Nguyen, Linh Van Nguyen, Lintt Danny Nguyen, Lluu Nguyen, Loc Nguyen, Loi Nguyen, Loi Nguyen, Long Phi Nguyen, Long T Nguyen, Long Viet Nguyen, Luom T Nguyen, Mai Van Nguyen, Man Nguyen, Mao-Van Nguyen, Mary Nguyen, Mary Nguyen, Melissa Nguyen, Minh Nguyen, Minh Nguyen, Minh Nguyen, Minh Nguyen, Minh Nguyen, Minh Ngoc Nguyen, Minh Van Nguyen, Moot Nguyen, Mui Van Nguyen, Mung T Nguyen, Muoi Nguyen, My Le Thi Nguyen, My Tan Nguyen, My V Nguyen, Nam Van Nguyen, Nam Van Nguyen, Nam Van Nguyen, Nam Van Nguyen, Nancy Nguyen, Nancy Nguyen, Nghi Nguyen, Nghi Q Nguyen, Nghia Nguyen, Nghiep Nguyen, Ngoc Tim Nguyen, Ngoc Van Nguyen, Nguyet Nguyen, Nhi Nguyen, Nho Van Nguyen, Nina

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			Nguyen, Nuong Nguyen, Peter Nguyen, Peter Thang Nguyen, Peter V Nguyen, Phe Nguyen, Phong Nguyen, Phong Ngoc Nguyen, Phong T Nguyen, Phong Xuan Nguyen, Phu Huu Nguyen, Phuc Nguyen, Phuoc H Nguyen, Phuoc Van Nguyen, Phuong Nguyen, Phuong Nguyen, Quang Nguyen, Quang Nguyen, Quang Dang Nguyen, Quang Dinh Nguyen, Quang Van Nguyen, Quoc Van Nguyen, Quyen Minh Nguyen, Quyen T Nguyen, Quyen-Van Nguyen, Ran T Nguyen, Randon Nguyen, Richard Nguyen, Richard Nghia Nguyen, Rick Van Nguyen, Ricky Tinh Nguyen, Roe Van Nguyen, Rose Nguyen, Sam Nguyen, Sandy Ha Nguyen, Sang Van Nguyen, Sau V Nguyen, Si Ngoc Nguyen, Son Nguyen, Son Thanh Nguyen, Son Van Nguyen, Song V Nguyen, Steve Nguyen, Steve Q Nguyen, Steven Giap Nguyen, Sung Nguyen, Tai Nguyen, Tai The Nguyen, Tai Thi Nguyen, Tam Nguyen, Tam Minh Nguyen, Tam Thanh Nguyen, Tam V Nguyen, Tam Van Nguyen, Tan Nguyen, Ten Tan Nguyen, Thach Nguyen, Thang Nguyen, Thanh Nguyen, Thanh Nguyen, Thanh Nguyen, Thanh Phuc Nguyen, Thanh V Nguyen, Thanh Van Nguyen, Thanh Van Nguyen, Thanh Van Nguyen, Thanh Van Nguyen, Thao Nguyen, Thi Bich Hang Nguyen, Thiet Nguyen, Thiet Nguyen, Tho Duke Nguyen, Thoa D Nguyen, Thoa Thi

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			Nguyen, Thomas Nguyen, Thu Nguyen, Thu and Rose Nguyen, Thu Duc Nguyen, Thu Van Nguyen, Thuan Nguyen, Thuan Nguyen, Thuong Nguyen, Thuong Van Nguyen, Thuy Nguyen, Thuyen Nguyen, Thuyen Nguyen, Tinh Nguyen, Tinh Van Nguyen, Toan Nguyen, Toan Van Nguyen, Tommy Nguyen, Tony Nguyen, Tony Nguyen, Tony Nguyen, Tony D Nguyen, Tony Hong Nguyen, Tony Si Nguyen, Tra Nguyen, Tra Nguyen, Tracy T Nguyen, Tri D Nguyen, Trich Van Nguyen, Trung Van Nguyen, Tu Van Nguyen, Tuan Nguyen, Tuan A Nguyen, Tuan H Nguyen, Tuan Ngoc Nguyen, Tuan Q Nguyen, Tuan Van Nguyen, Tung Nguyen, Tuyen Duc Nguyen, Tuyen Van Nguyen, Ty and Ngoc Ngo Nguyen, Van H Nguyen, Van Loi Nguyen, Vang Van Nguyen, Viet Nguyen, Viet Nguyen, Viet V Nguyen, Viet Van Nguyen, Vinh Van Nguyen, Vinh Van Nguyen, Vinh Van Nguyen, VT Nguyen, Vu Minh Nguyen, Vu T Nguyen, Vu Xuan Nguyen, Vui Nguyen, Vuong V Nguyen, Xuong Kim Nhan, Tran Quoc Nhon, Seri Nichols, Steve Anna Nicholson, Gary Nixon, Leonard Noble, Earl Noland, Terrel W Normand, Timothy Norris, Candace P Norris, John A Norris, Kenneth L Norris, Kevin J Nowell, James E Noy, Phen Nunez, Conrad Nunez, Jody

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			Nunez, Joseph Paul Nunez, Randy Nunez, Wade Joseph Nyuyen, Toan Oberling, Darryl O'Blance, Adam O'Brien, Gary S O'Brien, Mark O'Brien, Michele Ogden, John M Oglesby, Henry Oglesby, Phyllis O'Gwynn, Michael P Sr Ohmer, Eva G Ohmer, George J Olander, Hazel Olander, Rodney Olander, Roland J Olander, Russell J Olander, Thomas Olano, Kevin Olano, Owen J Olano, Shelby F Olds, Malcolm D Jr Olinde, Wilfred J Jr Oliver, Charles O'Neil, Carey Oracoy, Brad R Orage, Eugene Orlando, Het Oteri, Robert F Oubre, Faron P Oubre, Thomas W Ourks, SokHoms K Owens, Larry E Owens, Sheppard Owens, Timothy Pacaccio, Thomas Jr Padgett, Kenneth J Palmer, Gay Ann P Palmer, John W Palmer, Mack Palmisano, Daniel P Palmisano, Dwayne Jr Palmisano, Kim Palmisano, Larry J Palmisano, Leroy J Palmisano, Robin G Pam, Phuong Bui Parfait, Antoine C Jr Parfait, Jerry Jr Parfait, John C Parfait, Joshua K Parfait, Mary F Parfait, Mary S Parfait, Olden G Jr Parfait, Robert C Jr Parfait, Robert C Sr Parfait, Rodney Parfait, Shane A Parfait, Shelton J Parfait, Timmy J Parker, Clyde A Parker, Franklin L Parker, Paul A Parker, Percy Todd Parks, Daniel Duane Parks, Ellery Doyle Jr Parrett, Joseph D Jr Parria, Danny Parria, Gavin C Sr Parria, Gillis F Jr Parria, Gillis F Sr

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			Parria, Jerry D Parria, Kip G Parria, Lionel J Sr Parria, Louis III Parria, Louis J Sr Parria, Louis Jr Parria, Michael Parria, Ronald Parria, Ross Parris, Troy M Parrish, Charles Parrish, Walter L Passmore, Penny Pate, Shane Paterbaugh, Richard Patingo, Roger D Paul, Robert Emmett Payne, John Francis Payne, Stuart Peatross, David A Pelas, James Curtis Pelas, Jeffery Pellegrin, Corey P Pellegrin, Curlynn Pellegrin, James A Jr Pellegrin, Jordey Pellegrin, Karl Pellegrin, Karl J Pellegrin, Randy Pellegrin, Randy Sr Pellegrin, Rodney J Sr Pellegrin, Samuel Pellegrin, Troy Sr Peltier, Clyde Peltier, Rodney J Pena, Bartolo Jr Pena, Israel Pendarvis, Gracie Pennison, Elaine Pennison, Milton G Pequeno, Julius Percle, David P Perez, Allen M Perez, David J Perez, David P Perez, Derek Perez, Edward Jr Perez, Henry Jr Perez, Joe B Perez, Tilden A Jr Perez, Warren A Jr Perez, Warren A Sr Perez, Wesley Perrin, Dale Perrin, David M Perrin, Edward G Sr Perrin, Errol Joseph Jr Perrin, Jerry J Perrin, Kenneth V Perrin, Kevin Perrin, Kline J Sr Perrin, Kurt M Perrin, Michael Perrin, Michael A Perrin, Murphy P Perrin, Nelson C Jr Perrin, Pershing J Jr Perrin, Robert Perrin, Tim J Perrin, Tony Persohn, William T Peshoff, Kirk Lynn Pete, Alfred F Jr

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			Pete, Alfred F Sr Pfleeger, William A Pham, An V Pham, Anh My Pham, Bob Pham, Cho Pham, Cindy Pham, David Pham, Dung Pham, Dung Phuoc Pham, Dung Phuoc Pham, Duong Van Pham, Gai Pham, Hai Pham, Hai Hong Pham, Hien Pham, Hien C Pham, Hiep Pham, Hieu Pham, Huan Van Pham, Hung Pham, Hung V Pham, Hung V Pham, Huynh Pham, John Pham, Johnny Pham, Joseph S Pham, Kannin Pham, Nga T Pham, Nhung T Pham, Osmond Pham, Paul P Pham, Phong-Thanh Pham, Phung Pham, Quoc V Pham, Steve Ban Pham, Steve V Pham, Thai Van Pham, Thai Van Pham, Thanh Pham, Thanh Pham, Thanh V Pham, Thinh Pham, Thinh V Pham, Tommy V Pham, Tran and Thu Quang Pham, Ut Van Phan, Anh Thi Phan, Banh Van Phan, Cong Van Phan, Dan T Phan, Hoang Phan, Hung Thanh Phan, Johnny Phan, Lam Phan, Luyen Van Phan, Nam V Phan, Thong Phan, Tien V Phan, Toan Phan, Tu Van Phat, Lam Mau Phelps, John D Phillips, Bruce A Phillips, Danny D Phillips, Gary Phillips, Harry Louis Phillips, James C Jr Phillips, Kristrina W Phipps, AW Phonthaasa, Khaolop Phorn, Phen Pickett, Kathy

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			Picou, Calvin Jr Picou, Gary M Picou, Jennifer Picou, Jerome J Picou, Jordan J Picou, Randy John Picou, Ricky Sr Picou, Terry Pierce, Aaron Pierce, Dean Pierce, Elwood Pierce, Imogene Pierce, Stanley Pierce, Taffie Boone Pierre, Ivy Pierre, Joseph Pierre, Joseph C Jr Pierre, Paul J Pierre, Ronald J Pierron, Jake Pierron, Patsy H Pierron, Roger D Pinell, Ernie A Pinell, Harry J Jr Pinell, Jody J Pinell, Randall James Pinnell, Richard J Pinnell, Robert Pitre, Benton J Pitre, Carol Pitre, Claude A Sr Pitre, Elrod Pitre, Emily B Pitre, Glenn P Pitre, Herbert Pitre, Jeannie Pitre, Leo P Pitre, Robert Jr Pitre, Robin Pitre, Ryan P Pitre, Ted J Pittman, Roger Pizani, Bonnie Pizani, Craig Pizani, Jane Pizani, Terrill J Pizani, Terry M Pizani, Terry M Jr Plaisance, Arthur E Plaisance, Burgess Plaisance, Darren Plaisance, Dean J Sr Plaisance, Dorothy B Plaisance, Dwayne Plaisance, Earl J Jr Plaisance, Errance H Plaisance, Evans P Plaisance, Eves A III Plaisance, Gideons Plaisance, Gillis S Plaisance, Henry A Jr Plaisance, Jacob Plaisance, Jimmie J Plaisance, Joyce Plaisance, Keith Plaisance, Ken G Plaisance, Lawrence J Plaisance, Lucien Jr Plaisance, Peter A Sr Plaisance, Peter Jr Plaisance, Richard J Plaisance, Russel P Plaisance, Russell P Sr

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			Plaisance, Thomas Plaisance, Thomas J Plaisance, Wayne P Plaisance, Whitney III Plork, Phan Poche, Glenn J Jr Poche, Glenn J Sr Pockrus, Gerald Poencot, Russell Jr Poillion, Charles A Polito, Gerald Polkey, Gary J Polkey, Richard R Jr Polkey, Ronald Polkey, Shawn Michael Pollet, Lionel J Sr Pomgoria, Mario Ponce, Ben Ponce, Lewis B Poon, Raymond Pope, Robert Popham, Winford A Poppell, David M Porche, Ricky J Portier, Bobby Portier, Chad Portier, Corinne L Portier, Penelope J Portier, Robbie Portier, Russel A Sr Portier, Russell Potter, Hubert Edward Jr Potter, Robert D Potter, Robert J Pounds, Terry Wayne Powers, Clyde T Prejean, Dennis J Price, Carl Price, Curtis Price, Edwin J Price, Franklin J Price, George J Sr Price, Norris J Sr Price, Steve J Jr Price, Timmy T Price, Wade J Price, Warren J Prihoda, Steve Primeaux, Scott Pritchard, Dixie J Pritchard, James Ross Jr Prosperie, Claude J Jr Prosperie, Myron Prout, Rollen Prout, Sharonski K Prum, Thou Pugh, Charles D Jr Pugh, Charles Sr Pugh, Cody Pugh, Deanna Pugh, Donald Pugh, Nickolas Punch, Alvin Jr Punch, Donald J Punch, Todd M Punch, Travis J Purata, Maria Purse, Emil Purvis, George Quach, Duc Quach, James D Quach, Joe Quach, Si Tan

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			Quinn, Dora M Racca, Charles Racine, Sylvan P Jr Radulic, Igor Ragas, Albert G Ragas, Gene Ragas, John D Ragas, Jonathan Ragas, Richard A Ragas, Ronda S Ralph, Lester B Ramirez, Alfred J Jr Randazzo, John A Jr Randazzo, Rick A Rando, Stanley D Ranko, Ellis Gerald Rapp, Dwayne Rapp, Leroy and Sedonia Rawlings, John H Sr Rawlings, Ralph E Rawls, Norman E Ray, Leo Ray, William C Jr Raynor, Steven Earl Readenour, Kelty O Reagan, Roy Reason, Patrick W Reaux, Paul S Sr Reaves, Craig A Reaves, Laten Rebert, Paul J Sr Rebert, Steve M Jr Rebstock, Charles Recter, Lance Jr Rector, Warren L Redden, Yvonne Regnier, Leoncea B Remondet, Garland Jr Renard, Lanny Reno, Edward Reno, George C Reno, George H Reno, George T Reno, Harry Revell, Ben David Reyes, Carlton Reyes, Dwight D Sr Reynon, Marcello Jr Rhodes, Randolph N Rhoto, Christopher L Ribardi, Frank A Rich, Wanda Heafner Richard, Bruce J Richard, David L Richard, Edgar J Richard, James Ray Richard, Melissa Richard, Randall K Richardson, James T Richert, Daniel E Richo, Earl Sr Richoux, Dudley Donald Jr Richoux, Irvin J Jr Richoux, Judy Richoux, Larry Richoux, Mary A Riego, Raymond A Riffle, Josiah B Rigaud, Randall Ryan Riggs, Jeffrey B Riley, Jackie Sr Riley, Raymond Rinkus, Anthony J III

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			Rios, Amado Ripp, Norris M Robbins, Tony Robert, Dan S Roberts, Michael A Robertson, Kevin Robeson, Richard S Jr Robichaux, Craig J Robin, Alvin G Robin, Cary Joseph Robin, Charles R III Robin, Danny J Robin, Donald Robin, Floyd A Robin, Kenneth J Sr Robin, Ricky R Robinson, Johnson P III Robinson, Walter Roccaforte, Clay Rodi, Dominick R Rodi, Rhonda Rodrigue, Brent J Rodrigue, Carrol Sr Rodrigue, Glenn Rodrigue, Lerlene Rodrigue, Reggie Sr Rodrigue, Sonya Rodrigue, Wayne Rodriguez, Barry Rodriguez, Charles V Sr Rodriguez, Gregory Rodriguez, Jesus Rodriguez, Joseph C Jr Roeum, Orn Rogers, Barry David Rogers, Chad Rogers, Chad M Rogers, Kevin J Rogers, Nathan J Rojas, Carlton J Sr Rojas, Curtis Sr Rojas, Dennis J Jr Rojas, Dennis J Sr Rojas, Gordon V Rojas, Kerry D Rojas, Kerry D Jr Rojas, Randy J Sr Rojas, Raymond J Jr Roland, Brad Roland, Mathias C Roland, Vincent Rollins, Theresa Rollo, Wayne A Rome, Victor J IV Romero, D H Romero, Kardel J Romero, Norman Romero, Philip J Ronquille, Glenn Ronquille, Norman C Ronquillo, Earl Ronquillo, Richard J Ronquillo, Timothy Roseburrough, Charles R Jr Ross, Dorothy Ross, Edward Danny Jr Ross, Leo L Ross, Robert A Roth, Joseph F Jr Roth, Joseph M Jr Rotolo, Carolyn Rotolo, Feliz Rouse, Jimmy

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			Roussel, Michael D Jr Roy, Henry Lee Jr Rudolph, Chad A Ruiz, Donald W Ruiz, James L Ruiz, Paul E Ruiz, Paul R Russell, Bentley R Russell, Casey Russell, Daniel Russell, James III Russell, Julie Ann Russell, Michael J Russell, Nicholas M Russell, Paul Rustick, Kenneth Ruttley, Adrian K Ruttley, Ernest T Jr Ruttley, JT Ryan, James C Sr Rybiski, Rhebb R Ryder, Luther V Sadler, Stewart Sagnes, Everett Saha, Amanda K Saling, Don M Saltalamacchia, Preston J Saltalamacchia, Sue A Salvato, Lawrence Jr Samanie, Carol J Samanie, Frank J Samsome, Don Sanamo, Troy P Sanchez, Augustine Sanchez, Jeffery A Sanchez, Juan Sanchez, Robert A Sanders, William Shannon Sandras, R J Sandras, R J Jr Sandrock, Roy R III Santini, Lindberg W Jr Santiny, James Santiny, Patrick Sapia, Carroll J Jr Sapia, Eddie J Jr Sapia, Willard Saturday, Michael Rance Sauce, Carlton Joseph Sauce, Joseph C Jr Saucier, Houston J Sauls, Russell Savage, Malcolm H Savant, Raymond Savoie, Allen Savoie, Brent T Savoie, James Savoie, Merlin F Jr Savoie, Reginald M II Sawyer, Gerald Sawyer, Rodney Scarabin, Clifford Scarabin, Michael J Schaffer, Kelly Schaubhut, Curry A Schellinger, Lester B Jr Schexnaydre, Michael Schirmer, Robert Jr Schjott, Joseph J Sr Schlindwein, Henry Schmit, Paul A Jr Schmit, Paul A Sr Schmit, Victor J Jr

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			Schouest, Ellis J III Schouest, Ellis Jr Schouest, Juston Schouest, Mark Schouest, Noel Schrimpf, Robert H Jr Schultz, Troy A Schwartz, Sidney Scott, Aaron J Scott, Audie B Scott, James E III Scott, Milford P Scott, Paul Seabrook, Terry G Seal, Charles T Seal, Joseph G Seaman, Garry Seaman, Greg Seaman, Ollie L Jr Seaman, Ollie L Sr Seang, Meng Sehon, Robert Craig Sekul, Morris G Sekul, S George Sellers, Isaac Charles Seng, Sophan Serigne, Adam R Serigne, Elizabeth Serigne, James J III Serigne, Kimmie J Serigne, Lisa M Serigne, Neil Serigne, O'Neil N Serigne, Richard J Sr Serigne, Rickey N Serigne, Ronald Raymond Serigne, Ronald Roch Serigne, Ross Serigny, Gail Serigny, Wayne A Serpas, Lenny Jr Sessions, William O III Sessions, William O Jr Sevel, Michael D Sevin, Carl Anthony Sevin, Earline Sevin, Janell A Sevin, Joey Sevin, Nac J Sevin, O'Neil and Symantha Sevin, Phillip T Sevin, Shane Sevin, Shane Anthony Sevin, Stanley J Sevin, Willis Seymour, Janet A Shackelford, David M Shaffer, Curtis E Shaffer, Glynnon D Shay, Daniel A Shilling, Jason Shilling, L E Shugars, Robert L Shutt, Randy Sifuentes, Esteban Sifuentes, Fernando Silver, Curtis A Jr Simon, Curnis Simon, John Simon, Leo Simpson, Mark Sims, Donald L Sims, Mike

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			Singley, Charlie Sr Singley, Glenn Singley, Robert Joseph Sirgo, Jace Sisung, Walter Sisung, Walter Jr Skinner, Gary M Sr Skinner, Richard Skipper, Malcolm W Skrmetta, Martin J Smelker, Brian H Smith, Brian Smith, Carl R Jr Smith, Clark W Smith, Danny Smith, Danny M Jr Smith, Donna Smith, Elmer T Jr Smith, Glenda F Smith, James E Smith, Margie T Smith, Mark A Smith, Nancy F Smith, Raymond C Sr Smith, Tim Smith, Walter M Jr Smith, William T Smithwick, Ted Wayne Smoak, Bill Smoak, William W III Snell, Erick Snodgrass, Sam Soeung, Phat Soileau, John C Sr Sok, Kheng Sok, Montha Sok, Nhip Solet, Darren Solet, Donald M Solet, Joseph R Solet, Raymond J Solorzano, Marilyn Son, Kim Son, Sam Nang Son, Samay Son, Thuong Cong Soprano, Daniel Sork, William Sou, Mang Soudelier, Louis Jr Soudelier, Shannon Sour, Yem Kim Southerland, Robert Speir, Barbara Kay Spell, Jeffrey B Spell, Mark A Spellmeyer, Joel F Sr Spencer, Casey Spiers, Donald A Sprinkle, Avery M Sprinkle, Emery Shelton Jr Sprinkle, Joseph Warren Squarsich, Kenneth J Sreiy, Siphon St Amant, Dana A St Ann, Mr and Mrs Jerome K St Pierre, Darren St Pierre, Scott A Staves, Patrick Stechmann, Chad Stechmann, Karl J Stechmann, Todd Steele, Arnold D Jr

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			Steele, Henry H III Steen, Carl L Steen, James D Steen, Kathy G Stein, Norris J Jr Stelly, Adlar Stelly, Carl A Stelly, Chad P Stelly, Delores Stelly, Sandrus J Sr Stelly, Sandrus Jr Stelly, Toby J Stelly, Veronica G Stelly, Warren Stephenson, Louis Stevens, Alvin Stevens, Curtis D Stevens, Donald Stevens, Glenda Stewart, Chester Jr Stewart, Derald Stewart, Derek Stewart, Fred Stewart, Jason F Stewart, Ronald G Stewart, William C Stiffler, Thanh Stipelcovich, Lawrence L Stipelcovich, Todd J Stockfett, Brenda Stokes, Todd Stone-Rinkus, Pamela Strader, Steven R Strickland, Kenneth Strickland, Rita G Stuart, James Vernon Stutes, Rex E Sulak, Billy W Sun, Hong Sreng Surmik, Donald D Swindell, Keith M Sylve, Dennis A Sylve, James L Sylve, Nathan Sylve, Scott Sylvesr, Paul A Ta, Ba Van Ta, Chris Tabb, Calvin Taliancich, Andrew Taliancich, Ivan Taliancich, Joseph M Taliancich, Srecka Tan, Ho Dung Tan, Hung Tan, Lan T Tan, Ngo The Tang, Thanh Tanner, Robert Charles Taravella, Raymond Tassin, Alton J Tassin, Keith P Tate, Archie P Tate, Terrell Tauzier, Kevin M Taylor, Doyle L Taylor, Herman R Taylor, Herman R Jr Taylor, J P Jr Taylor, John C Taylor, Leander J Sr Taylor, Leo Jr Taylor, Lewis

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			Taylor, Nathan L Taylor, Robert L Taylor, Robert M Teap, Phal Tek, Heng Templat, Paul Terluin, John L III Terrebonne, Adrein Scott Terrebonne, Alphonse J Terrebonne, Alton S Jr Terrebonne, Alton S Sr Terrebonne, Carol Terrebonne, Carroll Terrebonne, Chad Terrebonne, Chad Sr Terrebonne, Daniel J Terrebonne, Donavon J Terrebonne, Gary J Sr Terrebonne, Jimmy Jr Terrebonne, Jimmy Sr Terrebonne, Kline A Terrebonne, Lanny Terrebonne, Larry F Jr Terrebonne, Scott Terrebonne, Steven Terrebonne, Steven Terrebonne, Toby J Terrel, Chad J Sr Terrell, C Todd Terrio, Brandon James Terrio, Harvey J Jr Terry, Eloise P Tevich, Kuzma D Thac, Dang Van Thach, Phuong Thai, Huynh Tan Thai, Paul Thai, Thomas Thanh, Thien Tharpe, Jack Theriot, Anthony Theriot, Carroll A Jr Theriot, Clay J Jr Theriot, Craig A Theriot, Dean P Theriot, Donnie Theriot, Jeffery C Theriot, Larry J Theriot, Lynn Theriot, Mark A Theriot, Roland P Jr Theriot, Wanda J Thibodeaux, Jared Thibodeaux, Bart James Thibodeaux, Brian A Thibodeaux, Brian M Thibodeaux, Calvin A Jr Thibodeaux, Fay F Thibodeaux, Glenn P Thibodeaux, Jeffrey Thibodeaux, Jonathan Thibodeaux, Josephine Thibodeaux, Keith Thibodeaux, Tony J Thibodeaux, Warren J Thidobaux, James V Sr Thiet, Tran Thomas, Alvin Thomas, Brent Thomas, Dally S Thomas, Janie G Thomas, John Richard Thomas, Kenneth Ward

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			Thomas, Monica P Thomas, Ralph L Jr Thomas, Ralph Lee Jr Thomas, Randall Thomas, Robert W Thomas, Willard N Jr Thomassie, Gerard Thomassie, Nathan A Thomassie, Philip A Thomassie, Ronald J Thomassie, Tracy Joseph Thompson, Bobbie Thompson, David W Thompson, Edwin A Thompson, George Thompson, James D Jr Thompson, James Jr Thompson, John E Thompson, John R Thompson, Randall Thompson, Sammy Thompson, Shawn Thong, R Thonn, John J Jr Thonn, Victor J Thorpe, Robert Lee Jr Thurman, Charles E Tiet, Thanh Duc Tilghman, Gene E Tillett, Billy Carl Tillman, Lewis A Jr Tillman, Timothy P and Yvonne M Tillotson, Pat Tinney, Mark A Tisdale, Georgia W Tiser, Oscar Tiser, Thomas C Jr Tiser, Thomas C Sr To, Cang Van To, Du Van Todd, Fred Noel Todd, Patricia J Todd, Rebecca G Todd, Robert C and Patricia J Todd, Vonnie Frank Jr Tompkins, Gerald Paul II Toney, George Jr Tong, Hai V Tony, Linh C Toomer, Christina Abbott Toomer, Christy Toomer, Frank G Jr Toomer, Jeffrey E Toomer, Kenneth Toomer, Lamar K Toomer, Larry Curtis and Tina Toomer, William Kemp Torrible, David P Torrible, Jason Touchard, Anthony H Touchard, John B Jr Touchard, Paul V Jr Touchet, Eldridge III Touchet, Eldridge Jr Toups, Anthony G Toups, Bryan Toups, Jeff Toups, Jimmie J Toups, Kim Toups, Manuel Toups, Ted Toups, Tommy Toureau, James

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			Tower, H Melvin Townsend, Harmon Lynn Townsend, Marion Brooks Tra, Hop T Trabeau, James D Trahan, Allen A Jr Trahan, Alvin Jr Trahan, Druby Trahan, Dudley Trahan, Elie J Trahan, Eric J Trahan, James Trahan, Karen C Trahan, Lynn P Sr Trahan, Ricky Trahan, Ronald J Trahan, Tracey L Trahan, Wayne Paul Tran, Allen Hai Tran, Andana Tran, Anh Tran, Anh Tran, Anh N Tran, Bay V Tran, Bay Van Tran, Binh Tran, Binh Van Tran, Ca Van Tran, Cam Van Tran, Chau V Tran, Chau Van Tran, Chau Van Tran, Chi T Tran, Christina Phuong Tran, Chu V Tran, Cuong Tran, Cuong Tran, Danny Duc Tran, Den Tran, Dien Tran, Dinh M Tran, Dinh Q Tran, Doan Tran, Dung Van Tran, Duoc Tran, Duoc Tran, Duong Tran, Eric Tran, Francis Tran, Francis Tran, Giang Tran, Giao Tran, Ha Mike Tran, Hai Tran, Hien H Tran, Hiep Phuoc Tran, Hieu Tran, Hoa Tran, Hoa Tran, Hue T Tran, Huey Tran, Hung Tran, Hung Tran, Hung Tran, Hung P Tran, Hung Van Tran, Hung Van Tran, Hung Viet Tran, James N Tran, John Tran, Johnny Dinh Tran, Joseph Tran, Joseph T

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			Tran, Khan Van Tran, Khanh Tran, Kim Tran, Kim Chi Thi Tran, Lan Tina Tran, Le and Phat Le Tran, Leo Van Tran, Loan Tran, Long Tran, Long Van Tran, Luu Van Tran, Ly Tran, Ly Van Tran, Mai Thi Tran, Mary Tran, Miel Van Tran, Mien Tran, Mike Tran, Mike Dai Tran, Minh Huu Tran, Muoi Tran, My T Tran, Nam Van Tran, Nang Van Tran, Nghia and T Le Banh Tran, Ngoc Tran, Nhanh Van Tran, Nhieu T Tran, Nhieu Van Tran, Nho Tran, Peter Tran, Phu Van Tran, Phuc D Tran, Phuc V Tran, Phung Tran, Quan Van Tran, Quang Quang Tran, Quang T Tran, Quang Van Tran, Qui V Tran, Quy Van Tran, Ran Van Tran, Sarah T Tran, Sau Tran, Scotty Tran, Son Tran, Son Van Tran, Steven Tuan Tran, Tam Tran, Te Van Tran, Than Tran, Thang Van Tran, Thanh Tran, Thanh Tran, Thanh Van Tran, Theresa Tran, Thi Tran, Thich Van Tran, Thien Tran, Thien Van Tran, Thiet Tran, Tommy Tran, Tony Tran, Tri Tran, Trinh Tran, Trung Tran, Trung Van Tran, Tu Tran, Tuan Tran, Tuan Tran, Tuan Minh Tran, Tuong Van Tran, Tuyet Thi

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			Tran, Van T Tran, Victor Tran, Vinh Tran, Vinh Q Tran, Vinh Q Tran, Vui Kim Trang, Tan Trapp, Tommy Treadaway, Michael Tregle, Curtis Trehovan, William Paul Treuil, Gary J Trevino, Manuel Treybig, E H "Buddy" Jr Triche, Donald G Trieu, Hiep and Jackie Trieu, Hung Hoa Trieu, Jasmine and Ly Trieu, Lorie and Tam Trieu, Tam Trinh, Christopher B Trinh, Philip P Trosclair, Clark K Trosclair, Clark P Trosclair, Eugene P Trosclair, James J Trosclair, Jerome Trosclair, Joseph Trosclair, Lori Trosclair, Louis V Trosclair, Patricia Trosclair, Randy Trosclair, Ricky Trosclair, Wallace Sr Truong, Andre Truong, Andre V Truong, Be Van Truong, Benjamin Truong, Dac Truong, Huan Truong, Kim Truong, Nhut Van Truong, Steve Truong, Tham T Truong, Thanh Minh Truong, Them Van Truong, Thom Truong, Timmy Trutt, George W Sr Trutt, Wanda Turlich, Mervin A Turner, Calvin L Tyre, John Upton, Terry R Valentino, J G Jr Valentino, James Vallot, Christopher A Vallot, Nancy H Valure, Hugh P Van Alsbury, Charles Van Gordstoven, Jean J Van Nguyen, Irving Van, Than Van, Vui Vanacor, Kathy D Vanacor, Malcolm J Sr Vanacor, Bobbie VanMeter, Matthew T VanMeter, William Earl Varney, Randy L Vath, Raymond S Veasel, William E III Vegas, Brien J

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			Vegas, Percy J Vegas, Terry J Vegas, Terry J Jr Vegas, Terry Jr Vela, Peter Verdin, Aaron Verdin, Av Verdin, Bradley J Verdin, Brent A Verdin, Charles A Verdin, Charles E Verdin, Coy P Verdin, Curtis A Jr Verdin, Delphine Verdin, Diana A Verdin, Ebro W Verdin, Eric P Verdin, Ernest Joseph Sr Verdin, Jeff C Verdin, Jeffrey A Verdin, Jessie J Verdin, John P Verdin, Joseph Verdin, Joseph A Jr Verdin, Joseph Cleveland Verdin, Joseph D Jr Verdin, Joseph S Verdin, Joseph W Jr Verdin, Justilien G Verdin, Matthew W Sr Verdin, Michel A Verdin, Paul E Verdin, Perry Anthony Verdin, Rodney Verdin, Rodney P Verdin, Rodney P Verdin, Skylar Verdin, Timmy J Verdin, Toby Verdin, Tommy P Verdin, Tony J Verdin, Troy Verdin, Vincent Verdin, Viness Jr Verdin, Wallace P Verdin, Webb A Sr Verdin, Wesley D Sr Verdine, Jimmy R Vermeulen, Joseph Thomas Verret, Darren L Verret, Donald J Verret, Ernest J Sr Verret, James A Verret, Jean E Verret, Jimmy J Sr Verret, Johnny R Verret, Joseph L Verret, Paul L Verret, Preston Verret, Quincy Verret, Ronald Paul Sr Versaggi, Joseph A Versaggi, Salvatore J Vicknair, Brent J Sr Vicknair, Duane P Vicknair, Henry Dale Vicknair, Ricky A Vidrine, Bill and Kathi Vidrine, Corey Vidrine, Richard Vila, William F Villers, Joseph A Vincent, Gage Tyler

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			Vincent, Gene Vincent, Gene B Vincent, Robert N Vise, Charles E III Vizier, Barry A Vizier, Christopher Vizier, Clovis J III Vizier, Douglas M Vizier, Tommie Jr Vo, Anh M Vo, Chin Van Vo, Dam Vo, Dan M Vo, Dany Vo, Day V Vo, Duong V Vo, Dustin Vo, Hai Van Vo, Hanh Xuan Vo, Hien Van Vo, Hoang The Vo, Hong Vo, Hung Thanh Vo, Huy K Vo, Johnny Vo, Kent Vo, Lien Van Vo, Man Vo, Mark Van Vo, Minh Hung Vo, Minh Ngoc Vo, Minh Ray Vo, Mong V Vo, My Dung Thi Vo, My Lynn Vo, Nga Vo, Nhon Tai Vo, Nhu Thanh Vo, Quang Minh Vo, Sang M Vo, Sanh M Vo, Song V Vo, Tan Thanh Vo, Tan Thanh Vo, Thanh Van Vo, Thao Vo, Thuan Van Vo, Tien Van Vo, Tom Vo, Tong Ba Vo, Trao Van Vo, Truong Vo, Van Van Vo, Vi Viet Vodopija, Benjamin S Vogt, James L Voisin, Eddie James Voisin, Joyce Voison, Jamie Von Harten, Harold L Vona, Michael A Vongrith, Richard Vossler, Kirk Vu, Hung Vu, John H Vu, Khanh Vu, Khoi Van Vu, Quan Quoc Vu, Ruyen Viet Vu, Sac Vu, Sean Vu, Tam Vu, Thiem Ngoc

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			Vu, Thuy Vu, Tom Vu, Tu Viet Vu, Tuyen Jack Vu, Tuyen Viet Wade, Calvin J Jr Wade, Gerard Waguespack, David M Sr Waguespack, Randy P II Wainwright, Vernon Walker, Jerry Walker, Rogers H Wallace, Dennis Wallace, Edward Wallace, John A Wallace, John K Wallace, Trevis L Waller, Jack Jr Waller, John M Waller, Mike Wallis, Craig A Wallis, Keith Walters, Samuel G Walton, Marion M Wannage, Edward Joseph Wannage, Fred Jr Wannage, Frederick W Sr Ward, Clarence Jr Ward, Olan B Ward, Walter M Washington, Clifford Washington, John Emile III Washington, Kevin Washington, Louis N Wattigney, Cecil K Jr Wattigney, Michael Watts, Brandon A Watts, Warren Webb, Bobby Webb, Bobby N Webb, Josie M Webre, Donald Webre, Dudley A Webster, Harold Weeks, Don Franklin Weems, Laddie E Weinstein, Barry C Weiskopf, Rodney Weiskopf, Rodney Sr Weiskopf, Todd Welch, Amos J Wells, Douglas E Wells, Stephen Ray Wendling, Steven W Wescovich, Charles W Wescovich, Wesley Darryl Whatley, William J White, Allen Sr White, Charles White, Charles Fulton White, David L White, Gary Farrell White, James Hugh White, Perry J White, Raymond White, Robert Sr Wicher, John Wiggins, Chad M Sr Wiggins, Ernest Wiggins, Harry L Wiggins, Kenneth A Wiggins, Matthew Wilbur, Gerald Anthony

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			Wilcox, Robert Wiles, Alfred Adam Wiles, Glen Gilbert Wiles, Sonny Joel Sr Wilkerson, Gene Dillard and Judith Wilkinson, William Riley Williams, Allen Jr Williams, Andrew Williams, B Dean Williams, Clyde L Williams, Dale A Williams, Emmett J Williams, Herman J Jr Williams, J T Williams, John A Williams, Johnny Paul Williams, Joseph H Williams, Kirk Williams, Leopold A Williams, Mark A Williams, Mary Ann C Williams, Melissa A Williams, Nina Williams, Oliver Kent Williams, Parish Williams, Roberto Williams, Ronnie Williams, Scott A Williams, Steven Williams, Thomas D Williamson, Richard L Sr Willyard, Derek C Willyard, Donald R Wilson, Alward Wilson, Hosea Wilson, Joe R Wilson, Jonathan Wilson, Katherine Wiltz, Allen Wing, Melvin Wiseman, Allen Wiseman, Clarence J Jr Wiseman, Jean P Wiseman, Joseph A Wiseman, Michael T Jr Wiseman, Michael T Sr Wolfe, Charles Woods, John T III Wright, Curtis Wright, Leonard Wright, Randy D Yeamans, Douglas Yeamans, Neil Yeamans, Ronnie Yoeuth, Peon Yopp, Harold Yopp, Jonathon Yopp, Milton Thomas Young, James Young, Taing Young, Willie Yow, Patricia D Yow, Richard C Zanca, Anthony V Sr Zar, Ashley A Zar, Carl J Zar, John III Zar, Steve Zar, Steven Zar, Troy A Zerinue, John S Jr Zirlott, Curtis Zirlott, Jason D

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			Zirlott, Jeremy Zirlott, Kimberly Zirlott, Milton Zirlott, Perry Zirlott, Rosa H Zito, Brian C Zuvich, Michael A Jr Ad Hoc Shrimp Trade Action Committee Bryan Fishermens' Co-Op Inc Louisiana Shrimp Association South Carolina Shrimpers Association Vietnamese-American Commerical Fisherman's Union 3-G Enterprize dba Griffin's Seafood A & G Trawlers Inc A & T Shrimping A Ford Able Seafood A J Horizon Inc A&M Inc A&R Shrimp Co A&T Shrimping AAH Inc AC Christopher Sea Food Inc Ace of Trade LLC Adriana Corp AJ Boats Inc AJ Horizon Inc AJ's Seafood Alario Inc Alcide J Adams Jr Aldebaran Inc Aldebran Inc Alexander and Dola Alfred Englade Inc Alfred Trawlers Inc Allen Hai Tran dba Kien Giang Al's Shrimp Co Al's Shrimp Co LLC Al's Shrimp Co LLC Al's Whosale & Retail Alton Cheeks Amada Inc Amber Waves Amelia Isle American Beauty American Beauty Inc American Eagle Enterprise Inc American Girl American Seafood Americana Shrimp Amvina II Amvina II Amy D Inc Amy's Seafood Mart An Kit Andy Boy Andy's SFD Angel Annie Inc Angel Leigh Angel Seafood Inc Angela Marie Inc Angela Marie Inc Angelina Inc Anna Grace LLC Anna Grace LLC Annie Thornton Inc Annie Thornton Inc Anthony Boy I Anthony Boy I Anthony Fillinich Sr Apalachee Girl Inc Aparicio Trawlers Inc dba Marcosa Apple Jack Inc

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			Aquila Seafood Inc Aquillard Seafood Argo Marine Arnold's Seafood Arroya Cruz Inc Art & Red Inc Arthur Chisholm A-Seafood Express Ashley Deeb Inc Ashley W 648675 Asian Gulf Corp Atlantic Atocha Troy A LeCompte Sr Atwood Enterprises B & B Boats Inc B & B Seafood B&J Seafood BaBe Inc Baby Ruth Bailey, David B Sr—Bailey's Seafood Bailey's Seafood of Cameron Inc Bait Inc Bait Inc Baker Shrimp Bama Love Inc Bama Sea Products Inc Bao Hung Inc Bao Hung Inc Bar Shrimp Barbara Brooks Inc Barbara Brooks Inc Barisich Inc Barisich Inc Barnacle-Bill Inc Barney's Bait & Seafood Barrios Seafood Bay Boy Bay Islander Inc Bay Sweeper Nets Baye's Seafood 335654 Bayou Bounty Seafood LLC Bayou Caddy Fisheries Inc Bayou Carlin Fisheries Bayou Carlin Fisheries Inc Bayou Shrimp Processors Inc BBC Trawlers Inc BBS Inc Beachcomber Inc Beachcomber Inc Bea's Corp Beecher's Seafood Believer Inc Bennett's Seafood Benny Alexie Bergeron's Seafood Bertileana Corp Best Sea-Pack of Texas Inc Beth Lomonte Inc Beth Lomonte Inc Betty B Betty H Inc Bety Inc BF Millis & Sons Seafood Big Daddy Seafood Inc Big Grapes Inc Big Kev Big Oak Seafood Big Oak Seafood Big Oaks Seafood Big Shrimp Inc Billy J Foret—BJF Inc Billy Sue Inc Billy Sue Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Biloxi Freezing & Processing Binh Duong BJB LLC Blain & Melissa Inc Blanca Cruz Inc Blanchard & Cheramie Inc Blanchard Seafood Blazing Sun Inc Blazing Sun Inc Blue Water Seafood Bluewater Shrimp Co Bluffton Oyster Co Boat Josey Wales Boat Josey Wales LLC Boat Monica Kiff Boat Warrior Bob-Rey Fisheries Inc Bodden Trawlers Inc Bolillo Prieto Inc Bon Secour Boats Inc Bon Secour Fisheries Inc Bon Secur Boats Inc Bonnie Lass Inc Boone Seafood Bosarge Boats Bosarge Boats Bosarge Boats Inc Bottom Verification LLC Bowers Shrimp Bowers Shrimp Farm Bowers Valley Shrimp Inc Brad Friloux Brad Nicole Seafood Bradley John Inc Bradley's Seafood Mkt Brara Cruz Inc Brenda Darlene Inc Brett Anthony Bridgeside Marina Bridgeside Seafood Bridget's Seafood Service Inc Bridget's Seafood Service Inc BRS Seafood BRS Seafood Bruce W Johnson Inc Bubba Daniels Inc Bubba Tower Shrimp Co Buccaneer Shrimp Co Buchmer Inc Buck & Peed Inc Buddy Boy Inc Buddy's Seafood Bumble Bee Seafoods LLC Bumble Bee Seafoods LLC Bundy Seafood Bundy's Seafood Bunny's Shrimp Burgbe Gump Seafood Burnell Trawlers Inc Burnell Trawlers Inc/Mamacita/Swamp Irish Buster Brown Inc By You Seafood C & R Trawlers Inc CA Magwood Enterprises Inc Cajun Queen of LA LLC Calcasien Point Bait N More Inc Cam Ranh Bay Camardelle's Seafood Candy Inc Cao Family Inc Cap Robear Cap'n Bozo Inc Capn Jasper's Seafood Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Capt Aaron Capt Adam Capt Anthony Inc Capt Bean (Richard A Ragas) Capt Beb Inc Capt Bill Jr Inc Capt Brother Inc Capt Bubba Capt Buck Capt Carl Capt Carlos Trawlers Inc Capt Chance Inc Capt Christopher Inc Capt Chuckie Capt Craig Capt Craig Inc Capt Crockett Inc Capt Darren Hill Inc Capt Dennis Inc Capt Dickie Inc Capt Dickie V Inc Capt Doug Capt Eddie Inc Capt Edward Inc Capt Eli's Capt Elroy Inc Capt Ernest LLC Capt Ernest LLC Capt GDA Inc Capt George Capt H & P Corp Capt Havey Seafood Capt Henry Seafood Dock Capt Huy Capt JDL Inc Capt Jimmy Inc Capt Joe Capt Johnny II Capt Jonathan Capt Jonathan Inc Capt Joshua Inc Capt Jude 520556 13026 Capt Ken Capt Kevin Inc Capt Ko Inc Capt Koun Lim Capt Larry Seafood Market Capt Larry's Inc Capt LC Corp Capt LD Seafood Inc Capt Linton Inc Capt Mack Inc Capt Marcus Inc Capt Morris Capt Opie Capt P Inc Capt Pappie Inc Capt Pat Capt Paw Paw Capt Pete Inc Capt Peter Long Inc Capt Pool Bear II's Seafood Capt Quang Capt Quina Inc Capt Richard Capt Ross Inc Capt Roy Capt Russell Jr Inc Capt Ryan Inc Capt Ryan's Capt Sam Capt Sang Capt Scar Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Capt Scott Capt Scott 5 Capt Scott Seafood Capt Sparkers Shrimp Capt St Peter Capt T&T Corp Capt Thien Capt Tommy Inc Capt Two Inc Capt Van's Seafood Capt Walley Inc Capt Zoe Inc Captain Allen's Bait & Tackle Captain Arnulfo Inc Captain Blair Seafood Captain Dexter Inc Captain D's Captain Homer Inc Captain Jeff Captain JH III Inc Captain Joshua Captain Larry'O Captain Miss Cammy Nhung Captain Regis Captain Rick Captain T/Thiet Nguyen Captain Tony Captain Truong Phi Corp Captain Vinh Cap't-Brandon Captian Thomas Trawler Inc Carlino Seafood Carly Sue Inc Carmelita Inc Carolina Lady Inc Carolina Sea Foods Inc Caroline and Calandra Inc Carson & Co Carson & Co Inc Cary Encalade Trawling Castellano's Corp Cathy Cheramie Inc CBS Seafood & Catering LLC CBS Seafood & Catering LLC Cecilia Enterprise Inc CF Gollot & Son Sfd Inc CF Gollott and Son Seafood Inc Chackbay Lady Chad & Chaz LLC Challenger Shrimp Co Inc Chalmette Marine Supply Co Inc Chalmette Net & Trawl Chapa Shrimp Trawlers Chaplin Seafood Charlee Girl Charles Guidry Inc Charles Sellers Charles White Charlotte Maier Inc Charlotte Maier Inc Chef Seafood Ent LLC Cheramies Landing Cherry Pt Seafood Cheryl Lynn Inc Chez Francois Seafood Chilling Pride Inc Chin Nguyen Co Chin Nguyen Co Chinatown Seafood Co Inc Chines Cajun Net Shop Chris Hansen Seafood Christian G Inc Christina Leigh Shrimp Co

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Christina Leigh Shrimp Company Inc Christina Leigh Shrimp Company Inc Cieutat Trawlers Cinco de Mayo Inc Cindy Lynn Inc Cindy Mae Inc City Market Inc CJ Seafood CJs Seafood Clifford Washington Clinton Hayes—C&S Enterprises of Brandon Inc Cochran's Boat Yard Colorado River Seafood Colson Marine Comm Fishing Commercial Fishing Service CFS Seafoods Cong Son Cong-An Inc Country Girl Inc Country Inc Courtney & Ory Inc Cowdrey Fish Cptn David Crab-Man Bait Shop Craig A Wallis, Keith Wallis dba W&W Dock & 10 boats Cristina Seafood CRJ Inc Cruillas Inc Crusader Inc Crustacean Frustration Crystal Gayle Inc Crystal Light Inc Crystal Light Inc Curtis Henderson Custom Pack Inc Custom Pack Inc Cyril's Ice House & Supplies D & A Seafood D & C Seafood Inc D & J Shrimping LLC D & M Seafood & Rental LLC D Ditcharo Jr Seafoods D G & R C Inc D S L & R Inc D&T Marine Inc Daddys Boys DaHa Inc/Cat'Sass DAHAPA Inc Dale's Seafood Inc Dang Nguyen Daniel E Lane Danny Boy Inc Danny Max David & Danny Inc David C Donnelly David Daniels David Ellison Jr David Gollott Sfd Inc David W Casanova's Seafood David White David's Shrimping Co Davis Seafood Davis Seafood Davis Seafood Inc Dawn Marie Deana Cheramie Inc Deanna Lea Dean's Seafood Deau Nook Debbe Anne Inc Deep Sea Foods Inc/Jubilee Foods Inc Delcambre Seafood

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Dell Marine Inc Dennis Menesses Seafood Dennis' Seafood Inc Dennis Shrimp Co Inc Desperado DFS Inc Diamond Reef Seafood Diem Inc Dinh Nguyen Dixie General Store LLC Dixie Twister Dominick's Seafood Inc Don Paco Inc Donald F Boone II Dong Nguen Donini Seafoods Inc Donna Marie Donovan Tien I & II Dopson Seafood Dorada Cruz Inc Double Do Inc Double Do Inc Doug and Neil Inc Douglas Landing Doxey's Oyster & Shrimp Dragnet II Dragnet Inc Dragnet Seafood LLC Dubberly's Mobile Seafood Dudenhefer Seafood Dugas Shrimp Co LLC Dunamis Towing Inc Dupree's Seafood Duval & Duval Inc Dwayne's Dream Inc E & M Seafood E & T Boating E Gardner McClellan E&E Shrimp Co Inc East Coast Seafood East Coast Seafood East Coast Seafood East Coast Seafood Edisto Queen LLC Edward Garcia Trawlers EKV Inc El Pedro Fishing & Trading Co Inc Eliminator Inc Elizabeth Nguyen Ellerbee Seafoods Ellie May Elmira Pflueckhahn Inc Elmira Pflueckhahn Inc Elvira G Inc Emily's SFD Emmanuel Inc Ensenada Cruz Inc Enterprise Enterprise Inc Equalizer Shrimp Co Inc Eric F Dufrene Jr LLC Erica Lynn Inc Erickson & Jensen Seafood Packers Ethan G Inc Excalibur LLC F/V Apalachee Warrior F/V Atlantis I F/V Capt Walter B F/V Captain Andy F/V Eight Flags F/V Mary Ann F/V Miss Betty F/V Morning Star

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			F/V Nam Linh F/V Olivia B F/V Phuoc Thanh Mai II F/V Sea Dolphin F/V Southern Grace F/V Steven Mai F/V Steven Mai II Famer Boys Catfish Kitchens Family Thing Father Dan Inc Father Lasimir Inc Father Mike Inc Fiesta Cruz Inc Fine Shrimp Co Fire Fox Inc Fisherman's Reef Shrimp Co Fishermen IX Inc Fishing Vessel Enterprise Inc Five Princesses Inc FKM Inc Fleet Products Inc Flower Shrimp House Flowers Seafood Co Floyd's Wholesale Seafood Inc Fly By Night Inc Forest Billiot Jr Fortune Shrimp Co Inc FP Oubre Francis Brothers Inc Francis Brothers Inc Francis III Frank Toomer Jr Fran-Tastic Too Frederick-Dan Freedom Fishing Inc Freeman Seafood Frelich Seafood Inc Frenchie D-282226 Fripp Point Seafood G & L Trawling Inc G & O Shrimp Co Inc G & O Trawlers Inc G & S Trawlers Inc G D Ventures II Inc G G Seafood G R LeBlanc Trawlers Inc Gail's Bait Shop Gale Force Inc Gambler Inc Gambler Inc Garijak Inc Gary F White Gator's Seafood Gay Fish Co Gay Fish Co GeeChee Fresh Seafood Gemita Inc Gene P Callahan Inc George J Price Sr Ent Inc Georgia Shrimp Co LLC Gerica Marine Gilden Enterprises Gillikin Marine Railways Inc Gina K Inc Gisco Inc Gisco Inc Glenda Guidry Inc Gloria Cruz Inc Go Fish Inc God's Gift God's Gift Shrimp Vessel Gogie Gold Coast Seafood Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Golden Gulf Coast Pkg Co Inc Golden Phase Inc Golden Text Inc Golden Text Inc Golden Text Inc Goldenstar Gollott Brothers Sfd Co Inc Gollott's Oil Dock & Ice House Inc Gonzalez Trawlers Inc Gore Enterprises Inc Gore Enterprises Inc Gore Seafood Co Gore Seafood Inc Gove Lopez Graham Fisheries Inc Graham Shrimp Co Inc Graham Shrimp Co Inc Gramps Shrimp Co Grandma Inc Grandpa's Dream Grandpa's Dream Granny's Garden and Seafood Green Flash LLC Greg Inc Gregory Mark Gaubert Gregory Mark Gaubert Gregory T Boone Gros Tete Trucking Inc Guidry's Bait Shop Guidry's Net Shop Gulf Central Seafood Inc Gulf Crown Seafood Co Inc Gulf Fish Inc Gulf Fisheries Inc Gulf Island Shrimp & Seafood II LLC Gulf King Services Inc Gulf Pride Enterprises Inc Gulf Seaway Seafood Inc Gulf Shrimp Gulf South Inc Gulf Stream Marina LLC Gulf Sweeper Inc (Trawler Gulf Sweeper) Gypsy Girl Inc H & L Seafood Hack Berry Seafood Hagen & Miley Inc Hailey Marie Inc Hanh Lai Inc Hannah Joyce Inc Hardy Trawlers Hardy Trawlers Harrington Fish Co Inc Harrington Seafood & Supply Inc Harrington Shrimp Co Inc Harrington Trawlers Inc Harris Fisheries Inc Hazel's Hustler HCP LLC Heather Lynn Inc Heavy Metal Inc Hebert Investments Inc Hebert's Mini Mart LLC Helen E Inc Helen Kay Inc Helen Kay Inc Helen W Smith Inc Henderson Seafood Henry Daniels Inc Hermosa Cruz Inc Hi Seas of Dulac Inc Hien Le Van Inc High Hope Inc Hoang Anh

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Hoang Long I, II Holland Enterprises Holly Beach Seafood Holly Marie's Seafood Market Hombre Inc Home Loving Care Co Hondumex Ent Inc Hong Nga Inc Hongri Inc Houston Foret Seafood Howerin Trawlers Inc HTH Marine Inc Hubbard Seafood Hurricane Emily Seafood Inc Hutcherson Christian Shrimp Inc Huyen Inc Icy Seafood II Inc ICY Seafood Inc Icy Seafood Inc Ida's Seafood Rest & Market Ike & Zack Inc Independent Fish Company Inc Inflation Inc Integrity Fisheries Inc Integrity Fishing Inc International Oceanic Ent Interstate Vo LLC Intracoastal Seafood Inc Iorn Will Inc Irma Trawlers Inc Iron Horse Inc Isabel Maier Inc Isabel Maier Inc Isla Cruz Inc J & J Rentals Inc J & J Trawler's Inc J & R Seafood J Collins Trawlers J D Land Co Jackie & Hiep Trieu Jacob A Inc Jacquelin Marie Inc Jacquelin Marie Inc James D Quach Inc James E Scott III James F Dubberly James Gadson James J Matherne Jr James J Matherne Sr James Kenneth Lewis Sr James LaRive Jr James W Green Jr dba Miss Emilie Ann James W Hicks Janet Louise Inc Jani Marie JAS Inc JBS Packing Co Inc JBS Packing Inc JCM Jean's Bait Jeff Chancey Jemison Trawler's Inc Jenna Dawn LLC Jennifer Nguyen—Capt T Jensen Seafood Pkg Co Inc Jesse LeCompte Jr Jesse LeCompte Sr Jesse Shantelle Inc Jessica Ann Inc Jessica Inc Jesus G Inc Jimmy and Valerie Bonvillain Jimmy Le Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Jim's Cajen Shrimp Joan of Arc Inc JoAnn and Michael W Daigle Jody Martin Joe Quach Joel's Wild Oak Bait Shop & Fresh Seafood John A Norris John J Alexie John Michael E Inc John V Alexie Johnny & Joyce's Seafood Johnny O Co Johnny's Seafood John's Seafood Joker's Wild Jones—Kain Inc Joni John Inc (Leon J Champagne) Jon's C Seafood Inc Joseph Anthony Joseph Anthony Inc Joseph Garcia Joseph Martino Joseph Martino Corp Joseph T Vermeulen Josh & Jake Inc Joya Cruz Inc JP Fisheries Julie Ann LLC Julie Hoang Julie Shrimp Co Inc (Trawler Julie) Julio Gonzalez Boat Builders Inc Justin Dang JW Enterprise K & J Trawlers K&D Boat Company K&S Enterprises Inc Kalliainen Seafoods Inc KAM Fishing Kandi Sue Inc Karl M Belsome LLC KBL Corp KDH Inc Keith M Swindell Kellum's Seafood Kellum's Seafood Kelly Marie Inc Ken Lee's Dock LLC Kenneth Guidry Kenny-Nancy Inc Kentucky Fisheries Inc Kentucky Trawlers Inc Kevin & Bryan (M/V) Kevin Dang Khang Dang Khanh Huu Vu Kheng Sok Shrimping Kim & James Inc Kim Hai II Inc Kim Hai Inc Kim's Seafood Kingdom World Inc Kirby Seafood Klein Express KMB Inc Knight's Seafood Inc Knight's Seafood Inc Knowles Noel Camardelle Kramer's Bait Co Kris & Cody Inc KTC Fishery LLC L & M L & N Friendship Corp L & O Trawlers Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			L & T Inc L&M LA-3184 CA La Belle Idee La Macarela Inc La Pachita Inc LA-6327-CA LaBauve Inc LaBauve Inc Lade Melissa Inc Lady Agnes II Lady Agnes III Lady Amelia Inc Lady Anna I Lady Anna II Lady Barbara Inc Lady Carolyn Inc Lady Catherine Lady Chancery Inc Lady Chelsea Inc Lady Danielle Lady Debra Inc Lady Dolcina Inc Lady Gail Inc Lady Katherine Inc Lady Kelly Inc Lady Kelly Inc Lady Kristie Lady Lavang LLC Lady Liberty Seafood Co Lady Lynn Ltd Lady Marie Inc Lady Melissa Inc Lady Shelly Lady Shelly Lady Snow Inc Lady Stephanie Lady Susie Inc Lady T Kim Inc Lady TheLna Lady Toni Inc Lady Veronica Lafitte Frozen Foods Corp Lafont Inc Lafourche Clipper Inc Lafourche Clipper Inc Lamarah Sue Inc Lan Chi Inc Lan Chi Inc Lancero Inc Lanny Renard and Daniel Bourque Lapeyrouse Seafood Bar Groc Inc Larry G Kellum Sr Larry Scott Freeman Larry W Hicks Lasseigne & Sons Inc Laura Lee Lauren O Lawrence Jacobs Sfd Lazaretta Packing Inc Le & Le Inc Le Family Inc Le Family Inc Le Tra Inc Leek & Millington Trawler Privateer Lee's Sales & Distribution Leonard Shrimp Producers Inc Leoncea B Regnier Lerin Lane Li Johnson Liar Liar Libertad Fisheries Inc Liberty I

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Lighthouse Fisheries Inc Lil Aly Lil Arthur Inc Lil BJ LLC Lil Robbie Inc Lil Robbie Inc Lil Robin Lil Robin Lilla Lincoln Linda & Tot Inc Linda Cruz Inc Linda Hoang Shrimp Linda Lou Boat Corp Linda Lou Boat Corp Lisa Lynn Inc Lisa Lynn Inc Little Andrew Inc Little Andy Inc Little Arthur Little David Gulf Trawler Inc Little Ernie Gulf Trawler Inc Little Ken Inc Little Mark Little William Inc Little World LJL Inc Long Viet Nguyen Longwater Seafood dba Ryan H Longwater Louisiana Gulf Shrimp LLC Louisiana Lady Inc Louisiana Man Louisiana Newpack Shrimp Co Inc Louisiana Pride Seafood Inc Louisiana Pride Seafood Inc Louisiana Seafood Dist LLC Louisiana Shrimp & Packing Inc Louisiana Shrimp and Packing Co Inc Lovely Daddy II & III Lovely Jennie Low Country Lady (Randolph N Rhodes) Low County Lady Luchador Inc Lucky Lucky I Lucky Jack Inc Lucky Lady Lucky Lady II Lucky Leven Inc Lucky MV Lucky Ocean Lucky Sea Star Inc Lucky Star Lucky World Lucky's Seafood Market & Poboys LLC Luco Drew's Luisa Inc Lupe Martinez Inc LV Marine Inc LW Graham Inc Lyle LeCompte Lynda Riley Inc Lynda Riley Inc M & M Seafood M V Sherry D M V Tony Inc M&C Fisheries M/V Baby Doll M/V Chevo's Bitch M/V Lil Vicki M/V Loco-N Motion M/V Patsy K 1556871 M/V X L

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Mabry Allen Miller Jr Mad Max Seafood Madera Cruz Inc Madison Seafood Madlin Shrimp Co Inc Malibu Malolo LLC Mamacita Inc Man Van Nguyen Manteo Shrimp Co Marco Corp Marcos A Maria Elena Inc Maria Sandi Mariachi Trawlers Inc Mariah Jade Shrimp Company Marie Teresa Inc Marine Fisheries Marisa Elida Inc Mark and Jace Marleann Martin's Fresh Shrimp Mary Bea Inc Master Brandon Inc Master Brock Master Brock Master Dylan Master Gerald Trawlers Inc Master Hai Master Hai II Master Henry Master Jared Inc Master Jhy Inc Master John Inc Master Justin Inc Master Justin Inc Master Ken Inc Master Kevin Inc Master Martin Inc Master Mike Inc Master NT Inc Master Pee-Wee Master Ronald Inc Master Scott Master Scott II Master Seelos Inc Master T Master Tai LLC Master Tai LLC Mat Roland Seafood Co Maw Doo Mayflower McQuaig Shrimp Co Inc Me Kong Melerine Seafood Melody Shrimp Co Mer Shrimp Inc Michael Lynn Michael Nguyen Michael Saturday's Fresh Every Day South Carolina Shrimp Mickey Nelson Net Shop Mickey's Net Midnight Prowler Mike's Seafood Inc Miley's Seafood Inc Militello and Son Inc Miller & Son Seafood Inc Miller Fishing Milliken & Son's Milton J Dufrene and Son Inc Milton Yopp—Capt'n Nathan & Thomas Winfield Minh & Liem Doan

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Mis Quynh Chi II Miss Adrianna Inc Miss Alice Inc Miss Ann Inc Miss Ann Inc Miss Ashleigh Miss Ashleigh Inc Miss Barbara Miss Barbara Inc Miss Bernadette A Inc Miss Bertha (M/V) Miss Beverly Kay Miss Brenda Miss Candace Miss Candace Nicole Inc Miss Carla Jean Inc Miss Caroline Inc Miss Carolyn Louise Inc Miss Caylee Miss Charlotte Inc Miss Christine III Miss Clea Jo Inc Miss Courtney Inc Miss Courtney Inc Miss Cynthia Miss Danielle Gulf Trawler Inc Miss Danielle LLC Miss Dawn Miss Ellie Inc Miss Faye LLC Miss Fina Inc Miss Georgia Inc Miss Hannah Miss Hannah Inc Miss Hazel Inc Miss Hilary Inc Miss Jennifer Inc Miss Joanna Inc Miss Julia Miss Kandy Tran LLC Miss Kandy Tran LLC Miss Karen Miss Kathi Inc Miss Kathy Miss Kaylyn LLC Miss Khayla Miss Lil Miss Lillie Inc Miss Liz Inc Miss Loraine Miss Loraine Inc Miss Lori Dawn IV Inc Miss Lori Dawn V Inc Miss Lori Dawn VI Inc Miss Lori Dawn VII Inc Miss Lorie Inc Miss Luana D Shrimp Co Miss Luana D Shrimp Co Miss Madeline Inc Miss Madison Miss Marie Miss Marie Inc Miss Marilyn Louis Inc Miss Marilyn Louise Miss Marilyn Louise Inc Miss Marissa Inc Miss Martha Inc Miss Martha Inc Miss Mary T Miss Myle Miss Narla Miss Nicole Miss Nicole Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Miss Plum Inc Miss Quynh Anh I Miss Quynh Anh I LLC Miss Quynh Anh II LLC Miss Redemption LLC Miss Rhianna Inc Miss Sambath Miss Sandra II Miss Sara Ann Miss Savannah Miss Savannah II Miss Soriya Miss Suzanne Miss Sylvia Miss Than Miss Thom Miss Thom Inc Miss Tina Inc Miss Trinh Trinh Miss Trisha Inc Miss Trisha Inc Miss Verna Inc Miss Vicki Miss Victoria Inc Miss Vivian Inc Miss WillaDean Miss Winnie Inc Miss Yvette Inc Miss Yvonne Misty Morn Eat Misty Star MJM Seafood Inc M'M Shrimp Co Inc Mom & Dad Inc Mona-Dianne Seafood Montha Sok and Tan No Le Moon River Inc Moon Tillett Fish Co Inc Moonlight Moonlight Mfg Moore Trawlers Inc Morgan Creek Seafood Morgan Rae Inc Morning Star Morrison Seafood Mother Cabrini Mother Teresa Inc Mr & Mrs Inc Mr & Mrs Inc Mr Coolly Mr Fox Mr Fox Mr G Mr Gagel LLC Mr Henry Mr Natural Inc Mr Neil Mr Phil T Inc Mr Sea Inc Mr Verdin Inc Mr Williams Mrs Judy Too Mrs Tina Lan Inc Ms Alva Inc Ms An My Angel II My Blues My Dad Whitney Inc My Girls LLC My Thi Tran Inc My Three Sons Inc My V Le Inc My-Le Thi Nguyen

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Myron A Smith Inc Nancy Joy Nancy Joy Inc Nancy Joy Inc Nanny Granny Inc Nanny Kat Seafood LLC Napolean Seafoods Napoleon II Napoleon Seafood Napoleon SF Naquin's Seafood Nautilus LLC Nelma Y Lane Nelson and Son Nelson Trawlers Inc Nelson's Quality Shrimp Company Nevgulmarco Co Inc New Deal Comm Fishing New Way Inc Nguyen Day Van Nguyen Express Nguyen Int'l Enterprises Inc Nguyen Shipping Inc NHU UYEN Night Moves of Cut Off Inc Night Shift LLC Night Star North Point Trawlers Inc North Point Trawlers Inc Nuestra Cruz Inc Nunez Seafood Oasis Ocean Bird Inc Ocean Breeze Inc Ocean Breeze Inc Ocean City Corp Ocean Emperor Inc Ocean Harvest Wholesale Inc Ocean Pride Seafood Inc Ocean Seafood Ocean Select Seafood LLC Ocean Springs Seafood Market Inc Ocean Wind Inc Oceanica Cruz Inc Odin LLC Old Maw Inc Ole Holbrook's Fresh Fish Market LLC Ole Nelle One Stop Bait & Ice Open Sea Inc Orage Enterprises Inc Orn Roeum Shrimping Otis Cantrelle Jr Otis M Lee Jr Owens Shrimping Palmetto Seafood Inc Papa Rod Inc Papa T Pappy Inc Pappy's Gold Parfait Enterprises Inc Paris/Asia Parramore Inc Parrish Shrimping Inc Pascagoula Ice & Freezer Co Inc Pat-Lin Enterprises Inc Patricia Foret Patrick Sutton Inc Patty Trish Inc Paul Piazza and Son Inc Paw Paw Allen Paw Paw Pride Inc Pearl Inc dba Indian Ridge Shrimp Co

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Pei Gratia Inc Pelican Point Seafood Inc Penny V LLC Perlita Inc Perseverance I LLC Pete & Queenie Inc Phat Le and Le Tran Phi Long Inc Phi-Ho LLC Pip's Place Marina Inc Plaisance Trawlers Inc Plata Cruz Inc Poc-Tal Trawlers Inc Pointe-Aux-Chene Marina Pontchaubrain Blue Crab Pony Express Poppee Poppy's Pride Seafood Port Bolivar Fisheries Inc Port Marine Supplies Port Royal Seafood Inc Poteet Seafood Co Inc Potter Boats Inc Price Seafood Inc Prince of Tides Princess Ashley Inc Princess Celine Inc Princess Cindy Inc Princess Lorie LLC Princess Mary Inc Prosperity PT Fisheries Inc Punch's Seafood Mkt Purata Trawlers Inc Pursuer Inc Quality Seafood Quang Minh II Inc Queen Lily Inc Queen Mary Queen Mary Inc Quinta Cruz Inc Quoc Bao Inc Quynh NHU Inc Quynh Nhu Inc R & J Inc R & K Fisheries LLC R & L Shrimp Inc R & P Fisheries R & R Bait/Seafood R & S Shrimping R & T Atocha LLC R&D Seafood R&K Fisheries LLC R&R Seafood RA Lesso Brokerage Co Inc RA Lesso Seafood Co Inc Rachel-Jade Ralph Lee Thomas Jr Ralph W Jones Ramblin Man Inc Ranchero Trawlers Inc Randall J Pinell Inc Randall J Pinell Inc Randall K and Melissa B Richard Randall Pinell Randy Boy Inc Randy Boy Inc Rang Dong Raul L Castellanos Raul's Seafood Raul's Seafood Rayda Cheramie Inc Raymond LeBouef

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			RCP Seafood I II III RDR Shrimp Inc Reagan's Seafood Rebecca Shrimp Co Inc Rebel Seafood Regulus Rejimi Inc Reno's Sea Food Res Vessel Reyes Trawlers Inc Rick's Seafood Inc Ricky B LLC Ricky G Inc Riffle Seafood Rigolets Bait & Seafood LLC Riverside Bait & Tackle RJ's Roatex Ent Inc Robanie C Inc Robanie C Inc Robanie C Inc Robert E Landry Robert H Schrimpf Robert Johnson Robert Keenan Seafood Robert Upton or Terry Upton Robert White Seafood Rockin Robbin Fishing Boat Inc Rodney Hereford Jr Rodney Hereford Sr Rodney Hereford Sr Roger Blanchard Inc Rolling On Inc Romo Inc Ronald Louis Anderson Jr Rosa Marie Inc Rose Island Seafood RPM Enterprises LLC Rubi Cruz Inc Ruf-N-Redy Inc Rutley Boys Inc Sadie D Seafood Safe Harbour Seafood Inc Salina Cruz Inc Sally Kim III Sally Kim IV Sam Snodgrass & Co Samaira Inc San Dia Sand Dollar Inc Sandy N Sandy O Inc Santa Fe Cruz Inc Santa Maria I Inc Santa Maria II Santa Monica Inc Scavanger Scooby Inc Scooby Inc Scottie and Juliette Dufrene Scottie and Juliette Dufrene Sea Angel Sea Angel Inc Sea Bastion Inc Sea Drifter Inc Sea Durbin Inc Sea Eagle Sea Eagle Fisheries Inc Sea Frontier Inc Sea Gold Inc Sea Gulf Fisheries Inc Sea Gypsy Inc Sea Hawk I Inc

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Sea Horse Fisheries Sea Horse Fisheries Inc Sea King Inc Sea Pearl Seafood Company Inc Sea Queen IV Sea Trawlers Inc Sea World Seabrook Seafood Inc Seabrook Seafood Inc Seafood & Us Inc Seaman's Magic Inc Seaman's Magic Inc Seaside Seafood Inc Seaweed 2000 Seawolf Seafood Second Generation Seafood Shark Co Seafood Inter Inc Sharon—Ali Michelle Inc Shelby & Barbara Seafood Shelby & Barbara Seafood Shelia Marie LLC Shell Creek Seafood Inc Shirley Elaine Shirley Girl LLC Shrimp Boat Patrice Shrimp Boating Inc Shrimp Express Shrimp Man Shrimp Networks Inc Shrimp Trawler Shrimper Shrimper Shrimpy's Si Ky Lan Inc Si Ky Lan Inc Si Ky Lan Inc Sidney Fisheries Inc Silver Fox Silver Fox LLC Simon Sims Shrimping Skip Toomer Inc Skip Toomer Inc Skyla Marie Inc Smith & Sons Seafood Inc Snowdrift Snowdrift Sochenda Soeung Phat Son T Le Inc Son's Pride Inc Sophie Marie Inc Soul Mama Inc Souther Obsession Inc Southern Lady Southern Nightmare Inc Southern Star Southshore Seafood Spencers Seafood Sprig Co Inc St Anthony Inc St Daniel Phillip Inc St Dominic St Joseph St Joseph St Joseph II Inc St Joseph III Inc St Joseph IV Inc St Martin St Martyrs VN St Mary Seafood St Mary Seven St Mary Tai

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			St Michael Fuel & Ice Inc St Michael's Ice & Fuel St Peter St Peter 550775 St Teresa Inc St Vincent Andrew Inc St Vincent Gulf Shrimp Inc St Vincent One B St Vincent One B Inc St Vincent SF St Vincent Sfd Inc Start Young Inc Steamboat Bills Seafood Stella Mestre Inc Stephen Dantin Jr Stephney's Seafood Stipelcovich Marine Wks Stone-Co Farms LP Stone-Co Farms LP Stormy Sean Inc Stormy Seas Inc Sun Star Inc Sun Swift Inc Sunshine Super Coon Inc Super Cooper Inc Swamp Irish Inc Sylvan P Racine Jr—Capt Romain T & T Seafood T Brothers T Cvitanovich Seafood LLC Ta Do Ta T Vo Inc Ta T Vo Inc Tana Inc Tanya Lea Inc Tanya Lea Inc Tanya Lea Inc Tasha Lou T-Brown Inc Tee Frank Inc Tee Tigre Inc Tercera Cruz Inc Terrebonne Seafood Inc Terri Monica Terry Luke Corp Terry Luke Corp Terry Luke Corp Terry Lynn Inc Te-Sam Inc Texas 1 Inc Texas 18 Inc Texas Lady Inc Texas Pack Inc Tex-Mex Cold Storage Inc Tex-Mex Cold Storage Inc Thai & Tran Inc Thai Bao Inc Thanh Phong The Boat Phat Tai The Fishermans Dock The Last One The Light House Bait & Seafood Shack LLC The Mayporter Inc The NGO The Seafood Shed Thelma J Inc Theresa Seafood Inc Third Tower Inc Thomas Winfield—Capt Nathan Thompson Bros Three C's Three Dads

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Three Sons Three Sons Inc Three Sons Inc Thunder Roll Thunderbolt Fisherman's Seafood Inc Thy Tra Inc Thy Tra Inc Tidelands Seafood Co Inc Tiffani Claire Inc Tiffani Claire Inc Tiger Seafood Tikedo Inc Timmy Boy Corp Tina Chow Tina T LLC Tino Mones Seafood TJ's Seafood Toan Inc Todd Co Todd's Fisheries Tom LE LLC Tom Le LLC Tom N & Bill N Inc Tommy Bui dba Mana II Tommy Cheramie Inc Tommy Gulf Sea Food Inc Tommy's Seafood Inc Tonya Jane Inc Tony-N Tookie Inc Tot & Linda Inc T-Pops Inc Tran Phu Van Tran's Express Inc Travis—Shawn Travis—Shawn Trawler Azteca Trawler Becky Lyn Inc Trawler Capt GC Trawler Capt GC II Trawler Dalia Trawler Doctor Bill Trawler Gulf Runner Trawler HT Seaman Trawler Joyce Trawler Kristi Nicole Trawler Kyle & Courtney Trawler Lady Catherine Trawler Lady Gwen Doe Trawler Linda B Inc Trawler Linda June Trawler Little Brothers Trawler Little Gavino Trawler Little Rookie Inc Trawler Mary Bea Trawler Master Alston Trawler Master Jeffery Inc Trawler Michael Anthony Inc Trawler Mildred Barr Trawler Miss Alice Inc Trawler Miss Jamie Trawler Miss Kelsey Trawler Miss Sylvia Inc Trawler Mrs Viola Trawler Nichols Dream Trawler Raindear Partnership Trawler Rhonda Kathleen Trawler Rhonda Lynn Trawler Sandra Kay Trawler Sarah Jane Trawler Sea Wolf Trawler Sea Wolf Trawler SS Chaplin

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Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Weems Bros Seafood Co Weiskopf Fisheries LLC Wendy & Eric Inc Wescovich Inc West Point Trawlers Inc Westley J Domangue WH Blanchard Inc Whiskey Joe Inc White and Black White Bird White Foam White Gold Wilcox Shrimping Inc Wild Bill Wild Eagle Inc William E Smith Jr Inc William Lee Inc William O Nelson Jr William Patrick Inc William Smith Jr Inc Willie Joe Inc Wind Song Inc Wonder Woman Woods Fisheries Inc Woody Shrimp Co Inc Yeaman's Inc Yen Ta Yogi's Shrimp You & Me Shrimp Ysclaskey Seafood Zirlott Trawlers Inc Zirlott Trawlers Inc

[FR Doc. 07-2635 Filed 5-25-07; 8:45 am]

BILLING CODE 9111-14-P



Federal Register

**Tuesday,
May 29, 2007**

Part III

Department of Housing and Urban Development

24 CFR Part 1000

**Self-Insurance Plans Under the Indian
Housing Block Grant Program; Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR-4897-F-02]

RIN 2577-AC58

Self-Insurance Plans Under the Indian Housing Block Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes standards for recipients under the Indian Housing Block Grant (IHBG) program to purchase insurance through nonprofit insurance entities owned and controlled by Indian tribes and tribally designated housing entities (TDHEs). This rule follows publication of a March 7, 2006, proposed rule, and takes into account the public comments received on the proposed rule. This final rule provides additional clarifications in the preamble and adopts, with one change, the regulations in the March 7, 2006, proposed rule.

DATES: *Effective Date:* June 28, 2007.

FOR FURTHER INFORMATION CONTACT:

Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410-5000; telephone (202) 401-7914 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Information Relay Service at (800) 877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*) provides, pursuant to Congress' constitutional authority over Indian affairs, a comprehensive program of housing assistance to Indian tribes and their tribally designated housing entities. NAHASDA eliminated several separate assistance programs for Indian tribes and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. The regulations for the IHBG program are codified at 24 CFR part 1000.

Section 203(c) of NAHASDA requires recipients of IHBG program assistance to "maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts

provided under this Act." (See 25 U.S.C. 4133(c).) Section 102 of NAHASDA requires each Indian Housing Plan (IHP) to include a certification that "the recipient will maintain adequate insurance coverage for housing units that are owned and operated with grant amounts provided under this Act, in compliance with such requirements as may be established by the Secretary."

Current regulatory requirements for housing insurance in the Native American housing program are found at 24 CFR 1000.38, 1000.136, and 1000.138. Section 1000.38 delineates when flood insurance is necessary. Section 1000.136(a) requires the funding recipient under the program to provide casualty insurance against fire, weather, and liability claims for all housing units owned or operated by the recipient. Section 1000.136(b) allows for cases where the recipient does not have to provide insurance. These exceptions apply to non-repayable grants to families for housing under the following conditions: there is no risk of loss or substantial financial exposure to the recipient, or the amount of the assistance is less than \$5,000. Section 1000.136(c) requires the funding recipient to require that contractors and subcontractors have adequate insurance or indemnification coverage to cover their activities. Section 1000.136(d) clarifies that the insurance requirements of that section are in addition to the flood insurance requirements of § 1000.38.

Section 1000.138 defines what is considered "adequate insurance." Insurance must be purchased from an insurance provider or plan of self-insurance "in an amount that will protect the financial stability of the recipient's IHBG program." Insurance may be purchased from nonprofit entities without regard to competitive selection if the entities are owned and controlled by the recipients under the program and have been approved by HUD.

II. The March 7, 2006, Proposed Rule

On March 7, 2006, HUD published a proposed rule (71 FR 11464) to establish specific standards under which IHBG assisted housing units may be insured by nonprofit Indian housing risk pools. Historically, commercial insurers have been unwilling to provide insurance for Indian housing at an affordable rate so HUD encouraged the National American Indian Housing Council (NAIHC) to form a risk pool composed solely of Indian housing authorities to provide the legally required insurance coverage. Current regulations in 24 CFR part 1000 generally address required insurance,

but do not set specific standards under which IHBG-assisted housing units may be insured by nonprofit Indian housing risk pools. The proposed rule was intended to ensure that the statutory requirement of NAHASDA regarding the maintenance of adequate insurance is met in a cost-effective manner by regulating the provision of insurance for IHBG-assisted properties. A detailed description of the proposed rule can be found at 71 FR 11464-11468.

III. This Final Rule

This final rule follows publication of the March 7, 2006, proposed rule and takes into account the six public comments received. After careful consideration of the public comments, HUD is making one change to § 1000.139(g) concerning the scope of preemption of this rule. In the proposed rule, § 1000.139(g) stated, in relevant part, "The [self-insurance] plan shall not be bound by or subject to any state or local law that imposed conflicting or additional requirements * * *" At this final rule stage, HUD is amending § 1000.139(g) to more closely reflect the scope of preemption discussed in the preamble of the proposed rule. In the preamble to the proposed rule, HUD stated that its intention in establishing this regulation governing self-insurance plans is to provide a limited preemption necessary to ensure that insurance services for federally assisted housing on tribal lands are provided as required by federal law. (See 71 FR 11465.)

HUD believes that revising paragraph (g) in § 1000.139 to preempt conflicting state laws that impose widely varying and costly requirements on tribally owned housing entities that provide insurance for IHBG-assisted housing best reflects the limited preemption contemplated by HUD by this rule. The preemptive effect of this rule applies to matters covered in § 1000.139, including, for example, the existence, operation, and organization of the self-insurance plan; however, this rule is not intended to apply to external matters such as, for example, laws governing liability, tort actions, and jurisdictional issues.

As described in further detail in section IV, the issues raised by the commenters primarily requested clarifications in the preamble to the proposed rule and did not seek the changes to the proposed regulatory text. Although the regulatory provisions, with the exception as discussed above, are not revised at this final rule stage, HUD is providing additional explanation in this preamble to the final rule about two matters raised by the commenters.

First, this final rule applies to insurance under section 203(c) of NAHASDA and 24 CFR 1000.136 and 1000.138, which, among other things, require insurance in adequate amounts to indemnify the recipient against loss from liability claims. Second, HUD affirms that the phrase “tribal lands,” which was used in the preamble to the proposed rule, is ambiguous and should refer to insurance for “IHBG-assisted housing,” as utilized in the regulation at § 1000.139(g).

IV. Discussion of Public Comments on the March 7, 2006, Proposed Rule

The public comment period on the proposed rule closed on May 8, 2006. HUD received six public comments. Comments were received from a tribally owned nonprofit Indian housing risk pool, an Indian housing authority, a national Indian housing organization, an Indian tribe, an inter-tribal council, and a state insurance division.

In general, all of the commenters expressed general support for the proposed rule but requested that HUD make changes to the preamble and, in one case, to the rule. The summary of comments that follows presents the major issues and questions raised by the public commenters on the March 7, 2006, proposed rule.

Comment: HUD should explain in the preamble to the final rule that the regulation applies to liability insurance. Two commenters explained that historically, it was nearly impossible for Indian tribes to secure liability insurance at reasonable rates, but there was no similar difficulty with respect to securing property insurance. Three other commenters stated that the proposed rule preamble reference to property insurance but not to liability insurance suggested that the preemption covers only property insurance.

HUD Response. HUD agrees with the commenters that the rule’s applicability to liability insurance should be clear. This rule applies to insurance coverage required by section 203(c) of NAHASDA and 24 CFR 1000.136 and 1000.138. The provisions in § 1000.136 require insurance in adequate amounts to indemnify the recipient against loss from liability claims.

Comment: The preamble to the final rule should clarify the scope of the limited preemption to “Indian areas,” as defined by NAHASDA. These commenters suggested that, for purposes of clarity, the rule should track the statutory language of NAHASDA and refer to “Indian areas” rather than “tribal lands” when describing the scope of the preemption provision.

HUD Response. HUD agrees with the commenters that the phrase “tribal lands” in the preamble to the proposed rule could be ambiguous. Therefore, HUD clarifies that the preemption permitted by this final rule is solely for the provision of insurance for “IHBG-assisted housing,” as described in 24 CFR 1000.139(g).

Comment: HUD should clarify that the scope of the preemption is limited to insurance plans providing the coverage required by NAHASDA. One commenter objected to any preemption of state insurance law, given the statutory grant of jurisdiction provided to the states under the McCarran-Ferguson Act (15 U.S.C. 1012–1015). Further, the commenter was concerned that the scope of the preemption might be misinterpreted broadly, contrary to HUD’s stated intent. The commenter suggested that the rule be revised to require that self-insurance plans provide coverage only for the type of insurance required under § 1000.136.

HUD Response. One of the purposes of the rule is to clarify that limited federal preemption is intended. HUD does not agree that it is necessary to amend the rule because the scope of the preemption is limited to the types of coverage required in section 203(c) of NAHASDA and 24 CFR 1000.136 and 1000.138. HUD does not agree that the McCarran-Ferguson Act is applicable. The Supreme Court ruled that the McCarran-Ferguson Act was intended to limit congressional preemption power only under the interstate commerce power, such that the anti-preemption rule does not apply when Congress acts under another grant of authority (*see American Ins. Assoc. v. Garamendi*, 539 U.S. 396 (2003), which held that McCarran-Ferguson does not temper Congress’ authority to act under its power over foreign affairs). The IHBG program is authorized by NAHASDA, which was promulgated under Congress’ plenary authority over the field of Indian affairs and trust responsibility based on the Indian commerce clause, not the interstate commerce clause (*see* sections 2(2)–(5) of NAHASDA, 25 U.S.C. 4101(2)–(5)).

Comment: In the final rule, HUD should revise the preamble to state that the rule does not establish any indemnification or other third-party rights against a nonprofit insurance entity. One commenter stated that this change is necessary to maintain consistency with 24 CFR 1000.136(a), which requires NAHASDA block grant recipients to provide “insurance in adequate amounts to indemnify the recipient against loss.”

HUD Response. The purpose of this rule is to create the regulatory framework for the Indian housing self-insurance program. Accordingly, § 1000.139(a) specifies the type and amount of insurance that is required under the IHBG program. The commenter is asking HUD to opine not on what type or amount of insurance is required, but on the rights of beneficiaries and nonprofit insurance entities. These types of matters are outside the scope of this rulemaking. Accordingly, HUD has not revised the rule in response to the comment.

V. Federalism Summary Impact Statement

In accordance with Executive Order 13132 (Federalism), and the Department’s own policy on federalism, the Department, by letter dated December 16, 2004, notified the attorneys general of each of the 50 states of its intention to promulgate regulations that would govern the insurance of tribal housing under the IHBG program. Because insurance is regulated by state law, HUD recognized the necessity to consult and solicit the views of state governments on this issue. NAHASDA requires tribes and TDHEs to maintain adequate insurance for housing owned and operated using funds that the government provides under NAHASDA. Indian tribes may meet this statutory requirement through tribally owned and operated insurance entities. There is currently one such self-insurance entity, although, once the rule is promulgated, Indian tribes could establish additional ones.

The Department’s December 16, 2004, letter described the current regulatory environment and stated the reason for promulgating the rule. While NAHASDA requires IHBG program recipients to maintain adequate insurance, HUD investigation, including feedback from IHBG program recipients, has determined that in many areas, adequate insurance for federally assisted Indian housing is either unavailable from private insurance companies or prohibitively expensive. The Department believes that the final rule will effectively address this issue by providing regulations under which IHBG program recipients can establish new self-insurance entities, and under which the sole existing IHBG self-insurance risk pool, AMERIND, can operate. Because state insurance laws could potentially conflict with the regulation intended to be established by this rulemaking and, thereby, defeat the important federal purpose underlying this rulemaking by subjecting tribal housing self-insurance entities to widely

varying and costly requirements, the Department determined it was necessary to preempt state law in the area of housing insurance for IHBG-assisted housing. The preemptive effect of this rule is limited to this one area. HUD requested views and comments from the state attorneys general by January 31, 2005. A number of states responded with requests for further clarifications, which HUD provided. Other states asked for copies of the rule or provided a contact point for further information.

On January 27, 2005, a trade association wrote to HUD on behalf of its members seeking an extension of time until February 15, 2005, for the association and its members to provide any additional comments they might have. HUD agreed to this extension. HUD did not receive further correspondence from the association or its members.

HUD believes that regulatory preemption is appropriate in this case, given the limited nature of the preemption, the fact that the limited preemption is necessary to ensure that insurance services for IHBG-assisted housing are provided as required by federal law, and the limited number of self-insurance entities involved.

VI. Tribal Consultation

HUD's policy is to consult with Indian tribes early in the rulemaking process on matters that have tribal implications. Accordingly, on April 12, 2005, HUD sent letters to all eligible funding recipients under NAHASDA and their TDHEs informing them of the nature of the forthcoming rule and soliciting comments. The deadline for comments under this informal consultation was June 3, 2005. The Department received five responses to the April 12, 2005, consultation letter. HUD considered their comments on the proposed changes in the preparation of the March 7, 2006, proposed rule for publication. In the proposed rule, HUD attempted to address all the issues raised by the tribes. In addition, the proposed rule provided Indian tribes with an additional opportunity to comment on the proposed regulatory changes.

VII. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0218. An agency may not

conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Impact

This rule does not direct, provide for assistance or loan or mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule governs only the provision of insurance for IHBG-assisted housing by entities wholly owned and controlled by IHBG recipients. Because there is only one such entity currently in existence, the number of entities affected is not substantial. Therefore, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order.

HUD has determined that the policies contained in this rule have federalism implications and are subject to review under the order. Specifically, the rule provides for preemption of state regulation of tribal housing self-insurance entities in their coverage of federally assisted housing. HUD's federalism summary impact statement, as required by section 6(b)(2)(B) of the Executive Order, and which discusses this matter in more detail, is presented in Section V of this preamble.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). OMB determined that this rule is a “significant regulatory action,” as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance number is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Low- and moderate-income housing, Public housing, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 1000 to read as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Subpart B—Affordable Housing Activities

■ 2. Add § 1000.139, to read as follows:

§ 1000.139 What are the standards for insurance entities owned and controlled by recipients?

(a) *General.* A recipient may provide insurance coverage required by section 203(c) of NAHASDA and §§ 1000.136 and 1000.138 through a self-insurance plan, approved by HUD in accordance

with this section, provided by a nonprofit insurance entity that is wholly owned and controlled by IHBG recipients.

(b) *Self-insurance plan.* An Indian housing self-insurance plan must be shown to meet the requirements of paragraph (c) of this section.

(c) *Application.* For a self-insurance plan to be approved by HUD, an application and supporting materials must be submitted containing the information specified in paragraphs (c)(1) through (c)(9) of this section. Any material changes made to these documents after initial approval must be submitted to HUD. Adverse material changes may cause HUD to revoke its approval of a self-insurance entity. The application submitted to HUD must show that:

(1) The plan is organized as an insurance entity, tribal self-insurance plan, tribal risk retention group, or Indian housing self-insurance risk pool;

(2) The plan limits participation to IHBG recipients;

(3) The plan operates on a nonprofit basis;

(4)(i) The plan employs or contracts with a third party to provide competent underwriting and management staff;

(A) The underwriting staff must be composed of insurance professionals with an average of at least five years of experience in large risk commercial underwriting exceeding \$100,000 in annual premiums or at least five years of experience in underwriting risks for public entity plans of self-insurance;

(B) The management staff must have at least one senior manager who has a minimum of five years of insurance experience at the level of vice president of a property or casualty insurance entity; as a senior branch manager of a branch office with annual property or casualty premiums exceeding five million dollars; or as a senior manager of a public entity self-insurance risk pool;

(ii) Satisfaction of this requirement may be demonstrated by evidence such as résumés and employment history of the underwriting staff for the plan and of the key management staff with day-to-day operational oversight of the plan;

(5) The plan maintains internal controls and cost containment measures, as shown by the annual budget;

(6) The plan maintains sound investments consistent with its articles

of incorporation, charter, bylaws, risk pool agreement, or other applicable organizational document or agreement concerning investments;

(7) The plan maintains adequate surplus and reserves, as determined by HUD, for undischarged liabilities of all types, as shown by a current audited financial statement and an actuarial review conducted in accordance with paragraph (e) of this section;

(8) The plan has proper organizational documentation, as shown by copies of the articles of incorporation, charter, bylaws, subscription agreement, business plan, contracts with third-party administrators, and other organizational documents; and

(9) A plan's first successful application for approval under this section must also include an opinion from the plan's legal counsel that the plan is properly chartered, incorporated, or otherwise formed under applicable law.

(d) *HUD consideration of plan.* HUD will consider an application for approval of a self-insurance plan submitted under this section and approve or disapprove that application no later than 90 days from the date of receipt of a complete application. If an application is disapproved, HUD shall notify the applicant of the reasons for disapproval and may offer technical assistance to a recipient to help the recipient correct the deficiencies in the application. The recipient may then resubmit the application under this section.

(e) *Annual reporting.* An approved plan must undergo an audit and actuarial review annually. In addition, an evaluation of the plan's management must be performed by an insurance professional every three years. These audits, actuarial reviews, and management reviews must be submitted to HUD within 90 days after the end of the insuring entity's fiscal year and be prepared in accordance with the following standards:

(1) The annual financial statement must be prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent auditor in accordance with generally accepted government auditing standards. The independent auditor shall state in writing an opinion on whether the plan's financial statement is presented fairly, in accordance with GAAP;

(2) The actuarial review of the plan shall be done consistently with requirements established by the Association of Governmental Risk Pools and conducted by an independent property or casualty actuary who is a member of a recognized professional actuarial organization, such as the American Academy of Actuaries. The report issued and submitted to HUD must include the actuary's written opinion on any over- or under-reserving and the adequacy of the reserve maintained for open claims and for incurred but unreported claims;

(3) The management review must be prepared by an independent insurance consultant who has received the professional designation of a chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), and must cover the following:

(i) The efficiency of the management or third-party administrator of the plan;

(ii) Timeliness of the claim payments and reserving practices; and

(iii) The adequacy of reinsurance or excess insurance coverage.

(f) *Revocation of approval.* HUD may revoke its approval of a plan under this section when the plan no longer meets the requirements of this section. The plan's management will be notified in writing of the proposed revocation of its approval and of the manner and time in which to request a hearing to challenge the determination, in accordance with the dispute resolution procedures set forth in this part for model housing activities (§ 1000.118).

(g) *Preemption.* In order that tribally owned Indian housing insurance entities that provide insurance for IHBG-assisted housing will not be subject to conflicting state laws and widely varying and costly requirements, any self-insurance plan under this section that meets the requirements of this section and that has been approved by HUD shall be governed by the regulations of this subpart in its provision of insurance for IHBG-assisted housing.

Dated: May 18, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7-10176 Filed 5-25-07; 8:45 am]

BILLING CODE 4210-67-P



Federal Register

**Tuesday,
May 29, 2007**

Part IV

Department of Housing and Urban Development

24 CFR Part 982

**Housing Choice Voucher Program
Homeownership Option; Eligibility of
Units Not Yet Under Construction;
Proposed Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR-4991-P-01]

RIN 2577-AC60

Housing Choice Voucher Program Homeownership Option; Eligibility of Units Not Yet Under Construction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing; HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations for the homeownership option authorized under the Housing Choice Voucher (HCV) program. Through the homeownership option, a public housing agency may provide voucher assistance for an eligible family that purchases a dwelling unit for residence by the family. The current homeownership option regulations provide that, to be eligible for purchase with voucher assistance, a unit must be either an existing unit or under construction at the time the family enters into the contract for sale. This proposed rule would permit the use of voucher homeownership assistance for the purchase of units not yet under construction at the time the family contracts to purchase the home. This proposed rule also makes conforming changes for purposes of the homeownership option. These revisions would expand the housing choices available to families participating in the homeownership option under the HCV program.

DATES: *Comment Due Date:* July 30, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001. Communications should refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted

electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Alfred C. Jurison, Office of Public and Indian Housing, 451 Seventh Street SW., Room 4210, Washington, DC 20410-8000; telephone (202) 708-0477 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The HCV Homeownership Option

Through the HCV program, HUD pays rental subsidies so that eligible families can afford decent, safe, and sanitary housing. Under the homeownership option of the HCV program, a public housing agency (PHA) may provide voucher assistance for an eligible family to purchase, rather than rent, a dwelling unit for residence by the family. The regulations for the homeownership option are codified in subpart M of the HCV program regulations at 24 CFR part 982. Subpart M describes program requirements for alternatives to the basic HCV program.

In general, a PHA that administers assistance under the HCV program may offer homeownership assistance as an option for qualified families. Before commencing homeownership assistance for a family, the PHA determines whether the family is qualified, the unit is eligible, and the family has satisfactorily completed the required

PHA program of pre-assistance homeownership counseling.

B. Ineligibility of Units Not Yet Under Construction

The current homeownership option regulations provide that, to be eligible for purchase with voucher assistance, a unit must be either an existing unit or under construction at the time the family enters into the contract for sale. Upon re-consideration, HUD believes that the housing eligibility requirements may be overly restrictive.

For example, job growth in an area will frequently trigger the construction of new housing developments. The current eligibility prohibition has the potential to deter voucher families from moving to such an area in search of employment opportunities. In addition, the current requirements hamper efforts to use homeownership voucher assistance in combination with mutual self-help or other sweat-equity programs in those high-cost market areas where affordable homeownership opportunities otherwise remain elusive for participating homeownership voucher families. Further, many localities have established affordable housing requirements on developers of new housing subdivisions mandating that a specified percentage of the homes to be constructed be set aside for purchase by low-income families. The current eligibility restriction prohibits voucher families from benefiting from these local affordable housing initiatives prior to the construction of new homes.

Since few existing homes are accessible to persons with impaired mobility, the current prohibition also has the potential to make it more difficult for persons with disabilities to purchase a home with voucher assistance. Modification of the home following purchase may not be easily accomplished, and may require the purchaser to incur significant additional costs. Allowing the purchase of units not yet under construction would allow individuals with disabilities to make design changes for accessibility purposes while the home is being built, thus minimizing homeownership costs.

II. This Proposed Rule

To address the programmatic concerns described above, this proposed rule would permit the use of voucher homeownership assistance for the purchase of units not yet under construction at the time the family contracts to purchase the home. However, the PHA may not commence homeownership assistance for the family until: (1) HUD has approved an environmental certification and request

for release of funds under 24 CFR part 58 or has notified the PHA of environmental approval of the site under 24 CFR part 50 prior to commencement of construction; (2) completion of construction of the unit; and (3) the unit's passing of the required Housing Quality Standards and independent inspections required under § 982.631(a).

Since the regulatory amendment authorizes the provision of federal homeownership assistance to be used for units not yet under construction, the assistance must comply with applicable federal environmental review requirements. Individual actions on up to four dwelling units are generally excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). Such actions, however, must comply with other federal environmental review authorities (such as those regarding the preservation of historic properties, the management of floodplains, and the protection of wetlands). HUD's regulations implementing NEPA and related environmental laws and authorities are codified at 24 CFR parts 50 and 58.

Under 24 CFR part 58, a unit of general local government, a county, or a state (referred to in 24 CFR part 58 as the "responsible entity") is responsible for the required federal environmental reviews, pursuant to a number of HUD program statutes, including Title I of the United States Housing Act of 1937, which authorizes the HCV program. If a PHA objects in writing to the performance of the federal environmental review by the responsible entity, or if the responsible entity declines to perform the review, then HUD may perform the environmental review itself (see 24 CFR 58.11). HUD's performance of the environmental review is governed by 24 CFR part 50.

The proposed rule reflects the environmental review requirements applicable to the use of federal assistance in connection with housing construction. The proposed rule would also require additional terms to be included in the contract of sale if the unit is not yet under construction and instructs PHAs when it is appropriate to begin providing homeownership assistance. Specifically, the contract of sale between the family and the seller must provide that: (1) The purchaser is not obligated to purchase the unit unless an environmental review has been performed and the site has received environmental approval prior to commencement of construction, in accordance with 24 CFR 982.628; (2)

construction will not commence until the required environmental review has been completed and the seller has received written notice from the PHA that environmental approval has been obtained. Conduct of the environmental review may not necessarily result in environmental approval, and environmental approval may be conditioned on the contracting parties' agreement to modifications to the unit design or to mitigation actions; and (3) commencement of construction in violation of the preceding clause voids the purchase contract and renders homeownership assistance under this part unavailable for purchase of the unit. A PHA may not commence homeownership assistance for the family until either: (1) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and request for release of funds; or (2) HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental approval of the site. This proposed rule would permit voucher families to benefit from local affordable housing initiatives and in areas where job growth is occurring, as well as aid in reducing the cost of making homes accessible to persons with mobility impairments while still complying with applicable federal environmental review requirements.

In conformity with the regulatory changes described above, this proposed rule also would make explicit that the initial environmental review requirements for units not yet under construction are broader than for those units that are constructed or that are under construction. Similarly, this proposed rule emphasizes that when a family receiving homeownership assistance chooses to move to another unit, environmental review requirements must be satisfied for that unit in order for the family to continue receiving tenant-based assistance. This includes completing a new environmental review for any unit not yet under construction.

III. Findings and Certifications

Paperwork Reduction Act

Under section 3504(h) of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a current valid control number. This rule does not contain information

collection requirements, as defined under the PRA.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule is exclusively concerned with PHAs that administer tenant-based housing assistance under the HCV program. Specifically, the proposed rule would expand the types of units that are eligible for purchase under the homeownership option to include units not yet under construction at the time

the family enters into the contract of sale. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of fewer than 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance Number for the HCV program is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Revise § 982.626(c) to read as follows:

§ 982.626 Homeownership option: Initial Requirements.

(c) *Environmental requirements.* The PHA is responsible for complying with the authorities listed in § 58.6 of this title requiring the purchaser to obtain and maintain flood insurance for units in special flood hazard areas, prohibiting assistance for acquiring units in the coastal barrier resources system, and requiring notification to the purchaser of units in airport runway clear zones and airfield clear zones. In the case of units not yet under construction at the time the family enters into the contract for sale, the additional environmental review requirements referenced in § 982.628(e) of this part also apply, and the PHA shall submit all relevant environmental information to the responsible entity or to HUD to assist in completion of those requirements.

3. Amend § 982.628 as follows:

- a. Remove paragraph (a)(2);
- b. Redesignate paragraphs (a)(3), (a)(4), and (a)(5) as paragraphs (a)(2), (a)(3), and (a)(4), respectively; and
- c. Add paragraph (e) to read as follows:

§ 982.628 Homeownership option: Eligible units.

(e) *Units not yet under construction.* Families may enter into contracts of sale for units not yet under construction at the time the family enters into the contract for sale. However, the PHA shall not commence homeownership assistance for the family for that unit unless and until:

(1) Either:

(i) The responsible entity completed the environmental review procedures required by 24 CFR part 58, and HUD approved the environmental certification and request for release of funds prior to commencement of construction; or

(ii) HUD performed an environmental review under 24 CFR part 50 and notified the PHA in writing of environmental approval of the site prior to commencement of construction;

(2) Construction of the unit has been completed; and

(3) The unit has passed the required Housing Quality Standards (HQS)

inspection (see § 982.631(a)) and independent inspection (see § 982.631(b)).

4. Add § 982.631(c)(3) to read as follows:

§ 982.631 Homeownership option: Home inspections, contract of sale, and PHA disapproval of seller.

(c) * * *

(3) In addition to the requirements contained in paragraph (c)(2) of this section, a contract for the sale of units not yet under construction at the time the family is to enter into the contract for sale must also provide that:

(i) The purchaser is not obligated to purchase the unit unless an environmental review has been performed and the site has received environmental approval prior to commencement of construction in accordance with 24 CFR 982.628.

(ii) The construction will not commence until the environmental review has been completed and the seller has received written notice from the PHA that environmental approval has been obtained. Conduct of the environmental review may not necessarily result in environmental approval, and environmental approval may be conditioned on the contracting parties' agreement to modifications to the unit design or to mitigation actions.

(iii) Commencement of construction in violation of paragraph (c)(3)(ii) of this section voids the purchase contract and renders homeownership assistance under 24 CFR part 982 unavailable for purchase of the unit.

* * *

5. Revise § 982.637(b) to read as follows:

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

* * *

(b) *Requirements for continuation of homeownership assistance.* The PHA must determine that all initial requirements listed in § 982.626 (including the environmental requirements with respect to a unit not yet under construction) have been satisfied if a family that has received homeownership assistance wants to move to such a unit with continued homeownership assistance. However, the following requirements do not apply:

* * *

Dated: April 12, 2007.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–10177 Filed 5–25–07; 8:45 am]

BILLING CODE 4210–67–P



Federal Register

**Tuesday,
May 29, 2007**

Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

**42 CFR Parts 433, 447, and 457
Medicaid Program; Cost Limit for
Providers Operated by Units of
Government and Provisions To Ensure
the Integrity of Federal-State Financial
Partnership; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 433, 447, and 457

[CMS-2258-FC]

RIN 0938-A057

Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This regulation clarifies that entities involved in the financing of the non-Federal share of Medicaid payments must be a unit of government; clarifies the documentation required to support a Medicaid certified public expenditure; limits Medicaid reimbursement for health care providers that are operated by units of government to an amount that does not exceed the health care provider's cost of providing services to Medicaid individuals; requires all health care providers to receive and retain the full amount of total computable payments for services furnished under the approved Medicaid State plan; and makes conforming changes to provisions governing the State Child Health Insurance Program (SCHIP) to make the same requirements applicable, with the exception of the cost limit on reimbursement.

The Medicaid cost limit provision of this regulation does not apply to: Stand-alone SCHIP program payments made to governmentally-operated health care providers; Indian Health Service (IHS) facilities and tribal 638 facilities that are paid at the all-inclusive IHS rate; Medicaid Managed Care Organizations (MCOs), Prepaid Inpatient Health Plans (PIHPs), and Prepaid Ambulatory Health Plans (PAHPs); Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs). Moreover, disproportionate share hospital (DSH) payments and payments authorized under Section 701(d) and Section 705 of the Benefits Improvement Protection Act of 2000 are not subject to the newly established Medicaid cost limit for governmentally-operated health care providers.

Except as noted above, all Medicaid payments and SCHIP payments made under the authority of the State plan and under waiver and demonstration authorities, as well as associated State

Medicaid and SCHIP financing arrangements, are subject to all provisions of this regulation. Finally, this regulation solicits comments from the public on issues related to the definition of the Unit of Government.

DATES: *Effective Dates:* This regulation is effective on July 30, 2007.

Comment Date: Comments only on issues related to Unit of Government Definition (§ 433.50) will be considered if we receive them at one of the addresses provided below, no later than 5 p.m. on July 13, 2007.

ADDRESSES: In commenting, please refer to file code CMS-2258-FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three 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 mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2258-FC, P.O. Box 8014, Baltimore, MD 21244-8014.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2258-FC, 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.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Aaron Blight, (410) 786-9560.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public only on issues related to Unit of Government Definition (§ 433.50). You can assist us by referencing the file code CMS-2258-FC and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

This **Federal Register** document is also available from the **Federal Register** online database through Government Printing Office Access a service of the U.S. Government Printing Office. The Web site address is: <http://www.access.gpo.gov/nara/index.html>.

I. Background

[If you choose to comment only on issues related to Unit of Government Definition (§ 433.50) in this section, please include the caption "Background" at the beginning of your comments.]

The Medicaid program is a cooperative Federal-State program established in 1965 for the purpose of providing Federal financial participation (FFP) to States that choose to reimburse certain costs of medical treatment for needy persons. It is authorized under title XIX of the Social Security Act (the Act), and is administered by each State in accordance with an approved Medicaid State plan. States have considerable flexibility in designing their programs, but must comply with Federal requirements specified in the Medicaid statute, regulations, and program guidance.

FFP is available under section 1903(a)(1) of the Act only when there is a corresponding State expenditure for a covered Medicaid service to a Medicaid recipient. Federal payment is based on statutorily-defined percentages of total computable State expenditures for medical assistance provided to recipients under the approved Medicaid State plan, and of State expenditures related to the cost of administering the Medicaid State plan. CMS has the responsibility to ensure that Medicaid payment and financing arrangements comply with statutory intent.

Sections 1902(a)(2), 1903(a) and 1905(b) of the Act require States to share in the cost of medical assistance and in the cost of administering the State plan. Under section 1905(b) of the Act, the Federal medical assistance percentage (FMAP) is defined as "100 per centum less the State percentage," and section 1903(a) of the Act requires Federal reimbursement to the State of the FMAP of expenditures for medical assistance under the plan (and 50 percent of expenditures necessary for the proper and efficient administration of the plan). Section 1902(a)(2) of the Act and implementing regulations at 42 CFR 433.50(a)(1) require States to share in the cost of medical assistance expenditures but permit the State to delegate some responsibility for the non-Federal share of medical assistance expenditures to local sources under some circumstances.

Under Pub. L. 102-234, which inserted significant restrictions on States' use of provider related taxes and donations at section 1903(w) of the Act, the Congress made clear that participation by local sources was limited to: (1) Permissible taxes or donations and (2) intergovernmental transfers (IGTs) and certified public expenditures (CPEs) from units of government. Specifically, units of government were permitted to participate in the funding of the non-Federal share of Medicaid payments

through an exemption from provider tax or donation restrictions at section 1903(w)(6)(A) of the Act that reads:

Notwithstanding the provisions of this subsection, the Secretary may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this title, regardless of whether the unit of government is also a health care provider, except as provided in section 1902(a)(2), unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share under this section.

Subsequent regulations implementing Pub. L. 102-234 give effect to this statutory language. Amendments made to the regulations at 42 CFR part 433, at 47 FR 55119 (November 24, 1992) explained:

Funds transferred from another unit of State or local government which are not restricted by the statute are not considered a provider-related donation or health care-related tax. Consequently, until the Secretary adopts regulations changing the treatment of intergovernmental transfer, States may continue to use, as the State share of medical assistance expenditures, transferred or certified funds derived from any governmental source (other than impermissible taxes or donations derived at various parts of the State government or at the local level).

The above statutory and regulatory authorities clearly specify that in order for an intergovernmental transfer (IGT) or certified public expenditure (CPE) from a health care provider or other entity to be exempt from analysis as a provider-related tax or donation, it must be from a unit of State or local government. Section 1903(w)(7)(G) of the Act identifies the four types of local entities that, in addition to the State, are considered a unit of government: A city, a county, a special purpose district, or other governmental units in the State. The provisions of this final regulation conform our regulations to the aforementioned statutory language and further define the characteristics of a unit of government for purposes of Medicaid financing.

II. Provisions of the Proposed Rule

In the January 18, 2007 proposed rule, we proposed to (1) clarify that only units of government are able to participate in the financing of the non-Federal share of Medicaid expenditures; (2) establish minimum requirements for documenting Medicaid cost when using a CPE; (3) limit health care providers operated by units of government to Medicaid reimbursement that does not

exceed the cost of providing covered services to eligible Medicaid recipients; (4) explicitly require that all health care providers receive and retain the total computable amount of their Medicaid payments; and (5) make conforming changes to the SCHIP regulations to make the same requirements applicable, with the exception of the cost limit on reimbursement.

We proposed that the Medicaid cost limit provision of this regulation would apply to Medicaid payments to all governmentally-operated health care providers of Medicaid services, except Medicaid payments to governmentally-operated managed care organizations. We proposed that stand-alone SCHIP program payments made to governmentally-operated health care providers would not be subject to the Medicaid cost limit provision of this regulation. Except as noted above, we proposed that all Medicaid and SCHIP payments made to governmentally-operated providers under the authority of the State plan and under waiver and demonstration authorities would be subject to all provisions of the proposed regulation.

Specifically, under the proposed regulation, we provided the following changes to our existing regulations:

- We proposed to add new language to § 433.50 to define a unit of government to conform to the provisions of section 1903(w)(7)(G) of the Act.
- We proposed to amend the provisions of § 433.51 to conform the language to the provisions of sections 1903(w)(6)(A) and 1903(w)(7)(G) of the Act and to clarify that the State share of Medicaid expenditures may be contributed only by units of government.
- We proposed to include provisions requiring auditable documentation of CPEs that are used as part of the State share of claimed expenditures.
- We proposed that the Secretary would issue a form (or forms) that would be required for governments using a CPE for certain types of Medicaid services where we have found improper claims.
- We proposed to limit reimbursement for governmentally-operated health care providers to amounts consistent with economy and efficiency by establishing a limit of reimbursement not to exceed cost. The proposed Medicaid cost limit in § 447.206 specified that the Secretary will determine a reasonable method for identifying allowable Medicaid costs that incorporates not only OMB Circular A-87 cost principles but also Medicare cost principles, as appropriate, and the

statutory requirements of sections 1902, 1903, and 1905 of the Act.

- We proposed a new regulatory provision at § 447.207 requiring that all health care providers receive and retain the full amount of the total computable payment provided to them for services furnished under the approved State plan (or the approved provisions of a waiver or demonstration, if applicable).

- We proposed to eliminate § 447.271(b), as this provision would no longer be relevant due to the proposed Medicaid cost limit for units of government.

- We proposed a corresponding modification to the Medicaid upper payment limit (UPL) rules found at § 447.272 for inpatient hospital, nursing facility and intermediate care facilities for the mentally retarded (ICFs/MR) services and § 447.321 for outpatient hospital and clinic services, to incorporate by reference the proposed cost limit for providers operated by units of government and to make the defined UPL facility groups consistent with proposed § 433.50. We proposed that formerly established UPL transition periods remain unchanged.

- We proposed to make conforming changes to § 457.220 to mirror § 433.51.

- We proposed to make conforming changes to § 457.628 to incorporate § 433.50.

- We proposed incorporating proposed § 447.207 requiring retention of payments in § 457.628 because this provision applies to SCHIP payments as well as Medicaid payments.

- We developed a form questionnaire to collect information necessary to determine whether or not individual health care providers are units of government.

III. Analysis of and Responses to Public Comments

[If you choose to comment only on issues related to Unit of Government Definition (§ 433.50) in this section, please include the caption “*Analysis of and Responses to Public Comments*” at the beginning of your comments.]

We received 422 items of timely public correspondence, containing over 1,000 public comments that raised over 260 individual issues, in response to the January 18, 2007 proposed rule (72 FR 2236 through 2248). The comments came from a variety of correspondents, including professional associations, national and State organizations, physicians, hospitals, advocacy groups, State Medicaid programs, State and local government agencies, and members of the Congress. The majority of commenters urged us to reconsider the proposed criteria for defining a unit

of government for purposes of Medicaid State financing and Medicaid reimbursement. The majority of commenters also expressed concern with the administrative burden and cost of properly documenting services to Medicaid individuals. The following is a summary of the comments received and our response to those comments.

A. Unit of Government Definition (§ 433.50)

1C. Comment: A number of commenters asserted that the proposed definition of a unit of government, when applied to specific health care providers, did not produce a definitive conclusion as to whether or not the health care provider qualifies as a unit of government.

1R. Response: The regulation codifies existing statutory criteria for a unit of government that can participate in financing the non-federal share of Medicaid expenditures. This codification of existing Federal statutory requirements was set forth in an effort to assist States in identifying the universe of governmentally-operated health care providers for this purpose.

In this final rule, we are providing that States must apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. As we indicated in the proposed rule, we have developed a “Tool to Evaluate the Governmental Status of Health Care Providers.” In response to comments on this rule, we have modified that form to allow States to indicate their initial determination of a health care provider’s governmental status.

We recognize that there is considerable variation in organizational arrangements and financial relationships between health care providers and units of government, and their treatment under State law. Therefore, application of the statutory and regulatory criteria to specific health care providers will require careful evaluation of the circumstances and applicable State law. We believe the statutory and regulatory criteria provide a consistent framework and yet have sufficient flexibility to accommodate these differences. We see this flexibility as essential to ensuring accurate and consistent determinations within each State.

Because we recognize that this is a complex determination that providers and States may rely upon, we agree that changes in the determination resulting either from a more careful evaluation, or from a change in circumstances, should be applied prospectively only (in the absence of fraud). Thus, to the extent

that a State had previously applied the statutory and regulatory criteria to a health care provider’s governmental status, in the absence of fraud, CMS intends to consider changes to that status on a prospective basis and does not intend to require retrospective changes in treatment of a provider.

States will be required to maintain these determinations on file and will be required to submit these forms to CMS upon request, in connection with CMS review of Medicaid institutional and non-institutional reimbursement State plan amendments involving governmental providers and with Medicaid or SCHIP financial management reviews. In addition, we intend to request, under our general authority to require supporting documentation for claimed expenditures, and the existing regulatory authority at 42 CFR § 431.16, that States submit a complete list of governmentally-operated health care providers to the Associate Regional Administrator for Medicaid of each State’s respective CMS Regional Office with the first quarterly expenditure report due after 90 days of the effective date of the regulation.

If CMS disagrees with a State’s initial determination of governmental status, CMS intends to request a timely change in the State’s determination prior to pursuing any other measures including, but not limited to, denial of Medicaid reimbursement SPAs and/or disallowances of claims for Federal financial participation. States can appeal such actions through existing appeal processes.

2C. Comment: A number of commenters asked CMS to clarify that the regulation does not affect the transfer of local governmental funding for non-provider specific Medicaid payments by the State and that the regulation allows local governmental entities to voluntarily transfer funds for the benefit of health care providers in their community.

2R. Response: The Federal statute at section 1902(a)(2) of the Act allows States to share their fiscal obligation to the Medicaid program with local governments. Section 1903(w)(6)(A) of the Act specifically recognizes the use of local tax dollars as a permissible source of the non-Federal share of Medicaid payments.

3C. Comment: One commenter expressed concern that CMS’s view of what a “unit of government” is may evolve over time, thus resulting in inconsistent application of the provisions of the regulation to different health care providers. The commenter argued that the criteria used to

determine what is a “unit of government” should be standardized, impartial and result in consistent outcomes.

3R. Response: The provisions of the regulation were designed to ensure a consistent framework to determine status as a unit of government. CMS recognizes that States play a major role in the administration of the Medicaid program and that legal and financial arrangements between health care providers and units of government vary on a case by case basis. Therefore, CMS has developed standardized regulatory criteria, based upon the provisions of Federal statute, that States must apply on a consistent basis to each health care provider within the State to determine whether or not the health care provider is a unit of government.

A State's determination of governmental status must be applied in two ways, to ensure consistent treatment. First, a health care provider, determined by a State to be governmentally-operated, would be eligible to participate in financing the non-Federal share of Medicaid payments (that is, IGTs and CPEs). Second, Medicaid payments to a health care provider, determined by a State to be governmentally-operated, would be limited to the cost of providing services to Medicaid individuals. States must apply the statutory and regulatory criteria regarding governmental status consistently to each health care provider and the initial State determination of governmental status must be consistent. In other words, States cannot consider a health care provider to be governmentally-operated for purposes of participation in IGTs or CPEs, but consider the health care provider non-governmentally operated for purposes of the Medicaid cost limit.

4C. Comment: One commenter suggested that the determination of governmental status of health care providers be made by States, not the Federal government, to identify which health care providers within the State may be involved in IGT and CPE and are subject to the cost limit. The commenter stated that such deference to the States would allow them to make these determinations up front and ensure the continued operation of their Medicaid programs without the threat of retroactive disallowances.

4R. Response: We agree that States should make the initial determination of governmental status by applying the statutory and regulatory criteria to each individual health care provider. We have modified the “Tool to Evaluate the Governmental Status of Health Care Providers” to allow States to indicate

their initial determination of a health care provider's governmental status.

CMS has responsibility to ensure that the determinations of governmental status made by States are consistent with the Federal statutory and regulatory criteria. To the extent that a State had previously applied the statutory and regulatory criteria to a health care provider's governmental status, absent fraud, CMS intends to consider changes to that status on a prospective basis and does not intend to require retroactive changes in treatment of the provider. If CMS disagrees with a State's initial determination of governmental status, CMS intends to request a timely change in the State's determination prior to pursuing other measures including, but not limited to, denial of Medicaid reimbursement SPAs and/or disallowances of claims for Federal financial participation. States can appeal such actions through existing appeal processes.

5C. Comment: Many commenters recommended that CMS change the proposed definition of unit of government to provide deference to applicable State or local law.

5R. Response: Application of State law in the determination of a health care provider's governmental status for Medicaid purposes must be consistent with the terms of the Federal statute and regulation. This rule would not limit State or local law from recognizing a health care provider as a governmental entity for other purposes.

The provisions of the regulation were designed to ensure consistent application of the Federal statutory instructions regarding what constitutes a unit of government for purposes of Medicaid financing and payment. CMS recognizes that States play a major role in the administration of the Medicaid program and that legal and financial arrangements between health care providers and units of government vary on a case by case basis. Therefore, CMS has developed standardized and impartial regulatory criteria based upon the provisions of Federal statute that States must apply on a consistent basis to each health care provider within the State.

6C. Comment: A number of commenters suggested that CMS allow health care providers currently involved in financing the non-Federal share via IGT or CPE to be grandfathered into the regulation's definition of “unit of government,” thereby permitting these health care providers to continue to finance the non-Federal share after the effective date of the provisions of the regulation.

6R. Response: CMS does not view grandfathering to be appropriate for several reasons. First, section 1903(w) contains clear statutory restrictions on States' receipt of funds from non-governmental health care providers to fund Medicaid payments. Indeed, there are severe penalties imposed for such practices. Second, There is nothing in the Medicaid statute that permits non-governmental units to finance the non-federal share of Medicaid payments, and severe statutory penalties. Second, we believe it is important to maintain consistent and equivalent treatment of all States and providers under a uniform regulatory framework.

7C. Comment: Several commenters requested that CMS clarify that the definition of “unit of government” is for purposes outlined in the provisions of this regulation only and that CMS does not intend to place restrictions on public status elsewhere. This request was made because the use of the term “public” appears in several different contexts throughout the Medicaid statute, and many states employ their own definitions of public status within their Medicaid state plans. For example, federal financial participation is available at the rate of 75 percent of the costs of skilled professional medical personnel of the state agency or “any other public agency.” A Medicaid managed care organization that is a “public entity” is exempt from certain otherwise applicable solvency standards. “Public institutions” that provide inpatient hospital services for free or at nominal charges are not subject to the charge limit otherwise applicable to inpatient services. Moreover, many states adopt special reimbursement provisions in their state plans for “public hospitals,” “governmental hospitals” or other types of public health care providers.

7R. Response: This final regulation defines a unit of government for purposes of financing the non-Federal share of Medicaid payments and for the application of a new Medicaid upper payment limit on such governmental health care providers.

The reference to “any other public agency” in § 432.50 and the exemption from solvency standards for public entities are unaffected by this regulation. As part of this final regulation, the reference to public institutions that provide inpatient hospital services for free or at nominal charges has been deleted in light of the new upper payment limit structure. It is our understanding that virtually every health care provider has a customary charge structure used to bill patients who have sufficient resources and third

party payers, and so no exception to that limit is required. In the unlikely event that a health care provider does not customary charge either patients or liable third parties and thus does not have such a customary charge structure at all, then we would view the customary charge limit to be inapplicable.

8C. Comment: One commenter asked if a health care provider that is operated by a local government which is required by ordinance to levy a tax to support its operations must actually use these tax revenues annually in order to meet the definition of a unit of government.

8R. Response: We would not require that a health care provider use tax revenues in order to be considered a unit of government. Health care providers operated by a local government with taxing authority are always able to directly access tax revenue. This ability to directly access tax revenues through standard appropriation processes and without the need for a contractual arrangement to access such tax revenue is a characteristic that reflects a health care provider's governmental status.

9C. Comment: Several commenters requested that CMS revise the proposed regulatory definition for unit of government. One commenter suggested that the criteria used to define a "unit of government" be modified as follows: "A provider will be recognized as a unit of government if (1) more than twenty-five (25) percent of its services are provided to individuals eligible for Medicaid, the uninsured, or the underinsured; and (2) the provider can reasonably be expected to receive direct government subsidies to maintain operations should the provider be at risk for discontinuing operations."

Another commenter suggested that the criteria at § 433.50(a)(1)(i) used to define a "unit of government" be modified as follows: "A unit of government is a State, a city, a county, a special district, a health authority, or other governmental unit in the State that has taxing authority, or is specifically established as a unit of government under the State's constitution."

Finally, another commenter suggested a new subsection (C) to the proposed § 433.50(a)(1)(ii) to read: "(C) The health care provider, although it does not meet the requirements of subparagraphs (A) or (B), is able to demonstrate to CMS that the sources of its funding are of a nature that would permit a finding that it is a unit of government for purposes of this section."

9R. Response: The suggested elements are not consistent with statutory criteria regarding the participation of a unit of

government in financing the non-federal share of Medicaid expenditures. Section 1903(w)(6) does not refer to entities that provide a particular level of Medicaid services, nor to the potential for general governmental subsidies. It uses the term "unit of government" and refers to the use of "State or local tax revenues." While the term "unit of government" is not specifically defined, in section 1903(w)(7)(G), there is a definition of "unit of local government" that contains a list of entities that generally share the common characteristic of possessing taxing authority. The statutory list includes "special purpose district" and "other governmental unit" (which are not defined terms and are used to refer to a wide range of entities, some of which do not have taxing authority, direct access to tax revenues, or other indications of governmental status). We read these terms to permit flexibility to include such entities when they share the common characteristic of other listed governmental units of taxing authority (or direct access to tax revenues). We take this reading to ensure consistency with the required use of "State or local tax revenues" when a unit of government participates in financing the non-federal share of Medicaid expenditures.

Moreover, we believe that it is essential to have a clear and uniform standard that can be consistently applied in every State and to every provider. Thus we do not see a justification to include open-ended language in the regulatory definition. We have, however, made clear in the final rule our intent to permit flexibility to accommodate entities that do not have independent taxing authority but have direct access to tax revenues. We discuss this further below.

In sum, our reading of the Medicaid statute is that the type of services provided by a health care provider, its reasonable expectation to receive direct government subsidies when at-risk for discontinuing operations, its specific establishment under State constitution, or its funding sources are not characteristics contemplated under the statute as representative of a unit of government that can participate in financing the non-federal share of Medicaid expenditures. The criteria we have set forth are based on our reading of the Medicaid statute, and are intended to permit flexibility to recognize different characterizations of arrangements that fall within a uniform, consistent framework.

10C. Comment: A number of commenters asked CMS to expressly state that the provisions of the

regulation have no effect on regulations pertaining to provider taxes.

10R. Response: The provisions of the regulation clarify the statutory exception to the requirements governing health care related taxes and provider related donations. Nothing in this regulation is intended to impact the requirements on health care related taxes and provider related donations. All statutory and regulatory requirements governing health care related taxes and provider related donations still apply.

11C. Comment: One commenter asked CMS to clarify what is meant by the term "other governmental unit."

11R. Response: Section 1903(w)(7)(A) of the Act includes in the definition of the term "unit of local government" certain specified entities and "other governmental unit[s] in the State." This term is undefined, and we are interpreting it to refer to entities that possess certain qualities that we believe are key to governmental status for purposes of Medicaid financing and payment. In the context of the list as a whole, CMS is interpreting this term to mean entities that are not cities, counties or special purpose districts, but have qualities that are generally shared by those specifically listed entities (and, as discussed below, CMS interprets the broad term "special purpose district" in a similar manner). In other words, entities may be considered as units of government for these Medicaid purposes even not specifically listed in the definition if the entities have the same basic qualities as those governmental units that are specifically listed in the statute.

12C. Comment: One commenter observed that it appeared that CMS would determine whether or not a health care provider would be considered a unit of government under the provisions of the regulation. Due to the significant impact (positive or negative) such a determination may have on a health care provider, the commenter proposed that there should be a method of appeal.

12R. Response: In the proposed rule, we anticipated that CMS would make final determinations of governmental status, but in this final rule, we are requiring that States apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. To the extent that governmental status affects Medicaid payment to a provider, the provider may have access to State appeal processes.

With respect to the availability of federal financial participation, CMS is responsible to ensure that the

determinations of governmental status made by States are consistent with the Federal statutory and regulatory criteria and may take appropriate action including, but not limited to, denial of Medicaid reimbursement State plan amendments and/or disallowances of claims for Federal financial participation, in the event of noncompliance with any provision of this regulation. States can appeal such actions through existing appeals processes.

13C. Comment: One commenter pointed out that the regulation requires a demonstration that a health care provider is a unit of government in order to be involved in IGTs or CPEs. However, the commenter believes that the regulation exceeded this proposal by requiring a similar demonstration by all governmental health care providers, regardless of any use of IGTs or CPEs.

13R. Response: Under the provisions of this regulation, Medicaid payments to all governmentally-operated health care providers are limited to the cost of providing services to Medicaid individuals. Therefore, all entities that meet the regulatory definition as governmentally-operated health care providers within the State must be identified.

14C. Comment: One commenter asked what is the definition of a "component unit" on the consolidated annual financial report referenced in the regulation's preamble, and whether or not an "enterprise fund" entry on the consolidated annual financial report would qualify an entity as being considered a unit of government.

14R. Response: The purpose of CMS' use of the term component unit was to assist States in identifying health care providers that are an integral part of a unit of government. A component unit that appears on the consolidated annual financial statement of a unit of government because the unit of government is responsible for the component unit's expenses, liabilities and deficits would be indicative that the component unit may be considered a unit of government. It is our understanding that enterprise funding is an accounting method used to account for operations intended to be financed and operated like private businesses, with costs covered primarily through user fees or otherwise kept on a distinct basis. To the extent that this accounting method is applied to an entity that would otherwise be accounted for as a component unit on the consolidated financial statement, the use of enterprise accounting should not make a difference in that status.

15C. Comment: One commenter noted the regulation's language requiring that a unit of government must have a role in funding a health care provider's expenses, liabilities, and deficits in order for the health care provider to be considered a unit of government. However, the commenter indicated that it was not clear whether the unit of government must have full responsibility for all three of these areas or whether partial responsibility for some of these areas would be sufficient. The commenter opines that regardless of the answer to that question, CMS would still find it necessary to conduct individualized investigation and analysis, regardless of information collection, making the form unnecessary and duplicative. Therefore, the commenter recommends withdrawal of the form.

15R. Response: For a health care provider to be considered as a unit of government, the operating unit of government must have full responsibility for funding a health care provider's expenses, liabilities, and deficits in order for the health care provider to be considered a unit of government. We do not intend this to preclude an enterprise funding accounting method, as discussed above, where the operation of the health care provider is intended to be primarily funded through user fees. But this definition would not include health care providers that are independent legal entities that contract with a unit of government, even if the contract includes partial funding among its terms.

16C. Comment: A number of commenters argued that principles of federalism, rooted in the Tenth Amendment to the Constitution, support a State's right to determine what constitutes a unit of government within the State and argued that the provisions of this regulation would intrude upon the State's ability to organize itself as deemed necessary.

16R. Response: The provisions of this regulation concern the question of whether, in determining the amount of federal funds to which a State is entitled under the Medicaid program, transfers of funds to the State government from a Medicaid health care provider that is an entity other than the State government will be exempt from consideration as a provider tax or donation, and when expenditures of such an entity can be certified as "public expenditures" that constitute the non-Federal share of Medicaid expenditures. It also sets forth a consistent definition of entities that must be treated as governmental in

determining the reasonableness of Medicaid payment rates.

The Tenth Amendment to the U.S. Constitution does not accord any special privileges with respect to Medicaid funding, and the provisions of this regulation would not affect a State's ability to organize itself for other purposes.

Nevertheless, we have determined in response to comments to provide States with the primary role in identifying units of government using the criteria set forth under this regulation, as long as the identification is consistently applied. This responsibility falls within the overall duty to document claims for federal financial participation.

17C. Comment: A number of commenters noted the distinction between the terms "unit of local government," found at Section 1903(w)(7)(G), and the term "units of government within a State," found at Section 1903(w)(6)(A) of the Act. One such commenter identified a recent decision from the Departmental Appeals Board (Ga. Dept. of Comty. Health, DAB No. 1973 (2005)) in an effort to highlight the differences in these terms. These commenters assert that Congress deliberately left "units of government" undefined in order to afford States discretion in how they choose to finance their Medicaid programs.

17R. Response: We have considered both statutory terms in developing criteria to determine if an entity is a unit of government for purposes of transferring funds or certifying expenditures under Medicaid; we have looked at what characteristics were generally shared by the entities specifically referenced in the statute, and we have also considered what the underlying intent appears to be. In section 1903(w)(6)(A) of the Social Security Act, Congress clearly expressed the intent that these entities must be able to use "funds derived from State or local taxes (or funds appropriated to State university teaching hospitals) * * *". Unlimited discretion is not consistent with the plain language of this provision. The cited DAB decision primarily rested on a different issue, not changed by this rule, the limitation on protected Medicaid financing by units of government to those "in the State."

18C. Comment: One commenter suggested that the proposed changes in the provisions of this regulation are beyond mere clarifications of existing policy and therefore could not be implemented on a retrospective basis without violating the notice and comment requirements of the Administrative Procedure Act.

18R. Response: The provisions of the regulation will be effective 60 days after publication of the final regulation and therefore are not being implemented on a retrospective basis. Moreover, all requirements of the Administrative Procedure Act are being met. The publication as a notice of proposed rulemaking with a 60-day comment period afforded all interested parties the opportunity to provide input and comment. CMS has fully considered all public comments received during that 60-day period in the development of the final provisions of the regulation.

19C. Comment: One commenter suggested that provisions of the regulation may violate the Spending Clause of the U.S. Constitution. This commenter argues that the regulatory change in the definition of "unit of government" will dramatically and adversely affect a State's level of funding for Medicaid, which would effectively "coerce" the States in a manner that contradicts the Spending Clause (see *South Dakota v. Dole*, 483 U.S. 203, 207, 211 (1987)).

19R. Response: The provisions of this regulation concern the question of whether, in determining the amount of federal funds to which a State is entitled under the Medicaid program, transfers of funds to the State government from a Medicaid health care provider that is an entity other than the State government will be entitled to exemption from consideration as a provider tax or donation, and when expenditures of such an entity can be certified as "public expenditures" that constitute the non-Federal share of Medicaid expenditures.

This rule also sets forth a consistent definition of entities that must be treated as governmentally-operated in determining the reasonableness of Medicaid payment rates. It does not "coerce" the State to take any action outside of the scope of the Medicaid program enacted under the Spending Clause. Nor do the provisions of this regulation affect rights of others outside of the operation of the Medicaid program.

20C. Comment: A number of commenters expressed that section 1903(w)(6)(A) was a provision that Congress included in the Act which was intended to limit CMS' authority to regulate the financing sources for the non-Federal share of the Medicaid program. Commenters made this point to suggest that it is inappropriate for CMS to issue regulatory provisions governing sources of State or local funds used to satisfy the non-Federal share.

20R. Response: Section 1903(w)(6)(A) of the Act carved out an exception to the

financing restrictions that Congress itself enacted in section 1903(w). Section 1903(w)(6)(A) of the Act has very specific language and we believe that the provisions of this regulation give meaning to each of the terms used in that section. This regulation interprets and implements those terms. The language of section 1903(w)(6)(A) of the Act cannot reasonably be read as a general prohibition on CMS review to determine if the criteria of section 1903(w)(6)(A) of the Act have been met.

21C. Comment: A number of commenters noted that by Executive Order binding on CMS, federal agencies must "closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action." Executive Order 13132, 64 FR at 43256 (August 4, 1999). Similarly, wherever feasible, agencies must "seek views of appropriate State, local and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities" and must "seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with regulatory objectives." Executive Order 12866, Sec. 1(b)(9), as amended 58 FR 51735 (February 26, 2002). The commenters assert that CMS has failed to respect those mandates here.

21R. Response: We believe we have fully met the requirements of the cited Executive Orders. First, the provisions of this regulation have been the result of years of review and reflection on State submissions and financial reviews of State programs. Second, this regulation has been issued after advance notice of its general terms was issued in Presidential budget documents, and numerous discussions with State officials and other interested parties. Third, affected parties have had full opportunity for input through the informal rulemaking procedures under the Administrative Procedure Act. These processes have indeed significantly affected the proposed and final regulation. But these processes do not supersede CMS responsibilities to safeguard the integrity of the Medicaid program, and ensure that federal dollars are spent only when matched by actual, documented, expenditures from State or local non-federal funds that meet applicable criteria under the law.

22C. Comment: Several commenters noted that many governments have organized or reorganized public hospitals into separate entities in order to provide them with the autonomy and

flexibility to deliver more efficient and higher quality health care. It was asserted that because some of these hospitals would not be recognized as governmental under the regulation, they will not be as able to fulfill their mission of delivering accessible care in an efficient and effective manner, nor will they be permitted to finance the non-Federal share of Medicaid payments via IGT or CPE. Many commenters also expressed concern that existing financing arrangements involving IGTs or CPEs from certain health care providers would be undone because some of these health care providers may not be considered units of government under the regulation. To the extent such IGT or CPE arrangements need to change after the provisions of the regulation are effective, the funding for these health care providers will be at risk. This concern was particularly emphasized relative to any affected safety net health care providers because of their services to our nation's most vulnerable populations.

22R. Response: A health care provider that is not recognized as governmentally-operated under the Federal statutory and regulatory criteria will not be subject to the cost limitation on Medicaid payments. Therefore, such health care providers may receive Medicaid payments up to the applicable regulatory upper payment limit, to the extent States use permissible sources of non-federal share funding to make such payments. Furthermore, such health care providers would not be subject to obligations to fund the non-federal share of a State's Medicaid program. To the extent that such a health care provider was previously obligated to fund certain Medicaid payments, total Medicaid revenues to that facility can be sustained through alternative permissible sources of non-federal share funding. These health care providers may realize significantly greater net Medicaid revenues if State or local government funding sources are utilized to fund the non-federal share historically financed by the health care providers. Therefore, such health care providers will not necessarily be affected in their mission to deliver accessible care in an efficient and effective manner.

Indeed, the provisions of the regulation were actually designed to protect health care providers. Non-governmentally operated health care providers, including many of the "public" safety net providers, are not affected by the cost limit provision of the regulation and therefore, may continue to receive Medicaid payments

in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. Governmentally operated health care providers may receive the full cost of furnishing Medicaid services, which could mean rates that substantially exceed those available to other classes of facilities.

Moreover, § 447.207 protects health care providers because it requires that health care providers be allowed to fully retain their Medicaid payments. This requirement assures that payments to providers are actual expenditures and are available to support the provision of services to Medicaid beneficiaries. These requirements demonstrate the Federal government's intent to protect the nation's public safety net providers and the ability of those providers to serve our nation's most vulnerable populations.

23C. Comment: Many commenters pointed out that there are public hospitals that have been involved in financing the non-Federal share via IGT or CPE for years without any objection from CMS. Under the provisions of the regulation, however, certain public hospitals would no longer be permitted to finance the non-Federal share via IGT or CPE because they would not qualify as units of government. These commenters found it unreasonable that CMS would eliminate long-standing funding arrangements for Medicaid services provided at these hospitals, saying that the elimination of Federal funding for such hospitals could be catastrophic. These commenters asserted that the loss of Federal funding could result in increased costs to State or local government, increased provider taxes, cuts in Medicaid eligibility, or reductions in Medicaid coverage or reimbursement.

23R. Response: The numerous comments regarding particular health care provider's inability to continue financing the non-Federal share of Medicaid payments through IGTs, or CPEs, indicates that States have been ignoring the statutory limitation to "units of government" in the provision permitting IGTs or CPEs without regard to provider tax and donation rules. Instead, it appears many States relied on a health care provider's "public" mission as sufficient evidence of eligibility to make IGTs or CPEs. By doing so, the States imposed an additional burden on these non-governmental safety net providers to shoulder the fiscal responsibility of state and local units of government under the Medicaid statute.

In other words, the provisions of the regulation were actually designed to

protect health care providers, including the safety net providers. Under the provisions of the regulation, governmentally-operated health care providers are assured opportunity to receive full cost reimbursement for serving Medicaid individuals. Non-governmentally-operated health care providers, including many of the "public" safety net hospitals, are not affected by the Medicaid cost limit provision of the regulation and therefore, may continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. Moreover, the final rule provides that payments to these health care providers cannot be diverted, but must be retained by the providers and available to support provider services.

24C. Comment: One hospital that would be considered a unit of government under the provisions of the regulation suggested that even though it qualifies as a unit of government, it would be adversely affected by the unit of government definition because the regulation would disqualify other hospitals in the State from participating in IGTs and CPEs. This disqualification, the commenter asserts, would jeopardize the fiscal health of the hospital that qualifies as a unit of government.

24R. Response: This final rule would permit States to pay governmental providers the full cost of furnishing covered services to Medicaid beneficiaries, and thus a governmental hospital need not incur any loss from participation in the Medicaid program. To the extent certain health care providers are no longer eligible to participate in the IGT process, no loss of Federal funds will occur for such affected health care provider if State and/or local government satisfy the non-Federal share of the Medicaid payments historically funded by non-governmentally-operated health care providers. Moreover, nothing in statute or regulation requires States to increase a governmentally-operated hospital's fiscal obligation to Medicaid in order to supplant non-Federal obligations historically satisfied by non-governmentally-operated hospitals.

25C. Comment: One commenter noted that recently CMS has expanded financial controls over the CPE process by requiring reconciliations to a cost report and instruction on how a certified public expenditure is calculated. This commenter questioned how converting ownership status to private-owned for those health care providers who have been historically considered as public-owned by CMS

under the regulation's provisions would increase financial controls.

25R. Response: CMS is not "converting" ownership status of any facilities as a result of the provisions of this regulation but this final rule will ensure more accurate determinations of governmental status based on the underlying facts and the statutory and regulatory requirements. These determinations will identify the universe of governmentally-operated health care providers for purposes of the new upper payment limit and of participation in financing of the non-Federal share of Medicaid payments. The final rule will ensure that claims for federal expenditures are supported by actual state and local expenditures.

26C. Comment: Some commenters suggested that the regulation's definition of a unit of government will undermine marketplace incentives to operate public health care providers through independent entities. This argument postulates that public hospitals, which fill a unique role in serving the poor and uninsured, were historically operated as a department of the state or local government, with associated bureaucratic controls. Over time, however, many governments that had previously operated public hospitals as integrated governmental agencies began searching for new ways to organize and operate these entities to provide them more autonomy and equip them to better control costs and compete in a managed care environment. Acknowledging the wide variance in the structure of these public hospitals today, the commenters suggest that the provisions of the regulation would only permit health care providers following the most traditional model to be considered units of government, thus reversing incentives to make operating enhancements resulting from the devolution of provider control from a government to a non-governmental entity.

26R. Response: The provisions of the regulation were not designed to undermine marketplace incentives to give "public" health care providers increased autonomy. We recognize, however, that some changes in organizational structure may require adjustment of arrangements to finance Medicaid expenditures.

For example, a provider that is truly independent of any governmental unit (for example, a former county hospital leased by a private corporation) would not be permitted to contribute the non-federal share of Medicaid expenditures. To the extent that such a provider had claims for covered services to Medicaid eligible individuals, a governmental

unit such as the county) that pays for such care can certify a public expenditure (at rates under the approved State plan) to support a claim for federal financial participation.

We believe the uniform regulatory definition of a unit of government in this final rule will guide States, localities and providers in arranging their relationships to comply with the Medicaid statute. At the same time, as discussed above, the uniform regulatory definition will protect the fiscal integrity of the program by ensuring that claims for federal financial participation are supported by actual non-federal expenditures that meet statutory requirements. And this rule will protect health care providers and ensure that Medicaid payments are available for covered care to eligible individuals.

27C. Comment: Multiple commenters requested that CMS clarify the unit of government definition's applicability to other areas of Medicaid.

27R. Response: This regulation directly concerns only the treatment of financial transactions that involve entities that meet the definition of a unit of government. This rule attempts to set forth a consistent definition for that purpose. But this rule does not address the definition of a unit of government or public agency for other purposes. Whether we would interpret other requirements similarly may depend on the context and circumstances of those requirements.

28C. Comment: Many commenters stated that specific entities within a State would not qualify as units of government under the provisions of the regulation. Other commenters requested that CMS affirmatively specify that certain named health care providers could continue to fund the non-federal share of Medicaid payments through IGTs and/or CPEs. To the extent such entities have been involved in financing the non-Federal share of Medicaid payments, such entities would be required to change financing arrangements and would be at risk of losing Medicaid funding for their services.

One commenter observed that Local Education Agencies (LEAs) without taxing authority may be currently involved in certified public expenditures (CPEs) but may also be fiscally independent from county governments. The commenter is concerned that such a LEA would not qualify as a unit of government under the provisions of the regulation, eliminating existing CPE practices and placing school based services or school-based administrative claims at risk. Several commenters stated that the

definition of "unit of government" would no longer permit many public health care providers that operate under public benefit corporations from helping States finance the non-Federal share of Medicaid funding.

Several commenters stated that the definition of "unit of government" would no longer permit many State universities from helping States finance the non-Federal share of Medicaid funding.

One commenter opined that under the regulation's definition of governmental providers, Regional Councils of Governments would not be eligible to provide matching funds for the non-Federal share of Medicaid payments. The commenter states that the Federal government created Councils of Governments to assist in the implementation of programs such as Medicaid, that State and local governments should have the prerogative of decision making with respect to operational responsibility for Medicaid, and that the unit of government definition compromises such arrangements at the State and local levels. One commenter made a suggestion that CMS modify the provisions of the regulation to recognize the public status of public community hospitals organized and operated in the State of Mississippi under Miss. Code Ann §§ 41-13-10, et seq. (1972 and supplements) and include these hospitals under the unit of government definition.

A number of commenters wrote concerning the impact the regulation's definition of unit of government may have on "public entity" (PE) community health centers (CHCs), which may current certify public expenditures within a State. PE model CHCs are created by units of government but generally do not have taxing authority. However, they must adhere to governance rules established by the Health Resources and Services Administration (HRSA) that mandate a Board of Directors comprised of at least 51 percent users of the CHC. Each of the PE models has a slight variation in governance structure. The commenters are concerned that some of these PE model CHCs would not be recognized under the provisions of the regulation as a unit of government and would therefore lose the federal funding based on expenditures they are currently certifying via the CPE process.

One commenter wanted to know whether or not a State's regional school districts, charter schools, and municipal school districts would qualify as units of government under the provisions of the regulation.

28R. Response: As these comments point out, there is a wide variety in the organization of, and relationship between, governmental and non-governmental entities. We cannot predetermine which entities have governmental status for purposes of participating in financing the non-federal share of Medicaid expenditures, or application of the governmental upper payment limits. This regulation establishes criteria assist States in making those determinations in order to document claimed expenditures for purposes of obtaining federal financial participation.

As discussed previously, some of the commenters appear to be confusing public mission with governmental status. Neither section 1903(w)(6)(A) nor section 1903(w)(7)(G) of the Act refer to a public mission; instead these sections refer to specific governmental entities, governmental status, and the use of State and local tax revenues. Moreover, while a provider determined to be non-governmental cannot participate in financing the non-federal share of Medicaid expenditures, units of government that fund covered services to Medicaid eligible individuals at the provider can certify a public expenditure (at rates under the approved State plan) to support a claim for federal financial participation.

29C. Comment: A number of commenters questioned the proposed provision at § 433.50(a)(1)(ii)(B) allowing a health care provider without taxing authority to be considered a unit of government only if the government with taxing authority has a legal obligation to fund the health care provider's expenses, liabilities, and deficits. These commenters argued that some providers were deliberately designed by the government to be autonomously funded yet also possess governmental attributes under applicable State or local laws. It was therefore asserted that the provisions of the regulation penalize providers that have reduced their reliance on taxpayer support and creates incentives to redesign provider structures into a less flexible, more inefficient governmental form that is more dependent on the taxpayer.

29R. Response: The provisions of the regulation were not designed to penalize governmentally operated health care providers that have reduced their reliance on taxpayer support. Nor is the regulation intended to create incentives to redesign health care provider structures into a less flexible, more inefficient governmental form that is more dependent on the taxpayers.

We have modified the regulation at § 433.50 to address concerns regarding taxing authority as a requirement for an entity to be considered a unit of government. The regulation has been revised to indicate that a unit of government must have either taxing authority or direct access to tax revenues. We have added the phrase “has direct access to tax revenues” to recognize as governmental those entities that do not have taxing authority, and may not have immediate needs for tax support, but do have direct access to tax revenues of a related unit of government because of the direct responsibility of that unit of government for the provider.

30C. Comment: Two commenters raised questions about special purpose districts. One asked CMS to clarify what is meant by the term “special purpose district,” while another stated that the provisions of the regulation seemed to eliminate the ability of special purpose districts to participate in funding Medicaid.

30R. Response: As noted previously, we interpret the broad statutory language to rely on the characteristics of the entity in question rather than on its label. We believe that the statutory reference to special purpose district has to be read in the statutory context to refer to an entity that resembles the other entities in the list. By grouping “special purpose districts” with “cities” and “counties,” we read the statute to refer to special purpose districts that share qualities generally held by cities and counties. One of those qualities, for example, is authority to impose taxes or directly access tax revenues. While there may be some entities that a State calls special purpose districts that do not have such authority, in context we read the statute to refer only to those entities that have qualities similar to cities and counties.

31C. Comment: One commenter discussed hospital authorities, which have been given certain governmental powers but not the authority to tax in a State. In fact, the State’s legislature specifically granted local governments the power to agree by contract with the hospital authorities to utilize tax revenues for their services. The commenter expresses concern that under the provisions of the regulation, all hospital authorities in the State would not qualify as a unit of government, per the proposed language about contracts at § 433.50(a)(1)(ii)(B).

31R. Response: The regulatory text at § 433.50(a)(1)(ii)(B) specifies that a contractual arrangement with the State or local government is not the “primary or sole basis for the health care provider to receive tax revenues.” This language

suggests that the presence of a contractual arrangement does not automatically preclude a health care provider from being considered a unit of government. However, if the only way for a health care provider to access general tax revenue is under a contract for services with a unit of government, then the health care provider is likely not a unit of that government. States must apply all statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status.

32C. Comment: One commenter wrote that the regulation’s preamble on certified public expenditures indicates that the “plain meaning of the Act” precludes not-for-profit entities from financing the non-Federal share. The commenter expresses that there is no support provided for this statement in this section of the regulation. Therefore, the commenter asks CMS to provide relevant statutory provisions supporting the conclusion.

32R. Response: Medicaid is a shared responsibility between Federal and State government. State governments may share their fiscal obligation to the Medicaid program with local governments according to the instruction of Congress. Under Public Law 102–234, the Congress made clear that States may allow governmental health care providers to participate in a State’s fiscal obligation to the Medicaid program through the use of intergovernmental transfers and certified public expenditures.

The provision of the regulation regarding certified public expenditures is a clarification to existing Federal statutory instruction at section 1903(w)(6)(A) of the Act. Consistent with this explicit statutory instruction, a certified public expenditure (CPE) means that State or local tax dollars were used to satisfy the cost of serving Medicaid individuals (and the cost of providing inpatient and outpatient hospital services to the uninsured for purposes of Medicaid DSH payments).

Under the provisions of the regulation, all health care providers maintain some level of ability to participate in the CPE process. Governmentally-operated health care providers are able to certify their costs without having to demonstrate that State or local tax dollars were used to provide Medicaid services. This policy is based on the fact that governmentally-operated health care providers always have the ability to access State and/or local tax dollars as an integral component of State or local government. Governmentally-operated health care providers need only produce cost

documentation via national, standardized cost reporting to receive Federal matching funds as a percentage of such allowable Medicaid (and DSH) costs.

Non-governmentally-operated health care providers may also produce cost documentation to support the costs of providing services to Medicaid individuals (and certain uninsured costs for purposes of Medicaid DSH payments). However, in order to maintain consistency with the Federal statutory instruction governing CPEs, a State or local government must actually certify that tax dollars were provided to the non-governmentally-operated health care provider. Federal matching funds can be available, to the extent consistent with the approved State plan, for allowable Medicaid costs incurred by the non-governmentally-operated health care provider that are funded with such State and/or local tax support.

33C. Comment: One commenter requested that if the proposed definition of unit of government is adopted, that CMS clarify its interpretation of nonpublic provider.

33R. Response: The term “nonpublic provider” is referenced in section 1903(w)(3)(B) of the Act for purposes of evaluating a broad-based health care related tax. This rule addresses only the governmental exception from provider tax and donation rules, and does not address the substance of the provider tax and donation rules. Changes to those rules are outside the scope of the proposed rule and would be more appropriately addressed in separate rulemaking. Therefore, we do not find it necessary to further clarify the term “nonpublic provider” in this rule.

34C. Comment: Multiple commenters described concerns regarding Medicaid Behavioral Health Plans that have been characterized as government entities by a county or group of counties to manage the risk-based contract. The commenters stated that under this arrangement, local dollars are paid to the health plan for Medicaid match and these funds are then submitted to the State to cover the match. The commenters are concerned that this IGT agreement does not meet the definition of a unit of government since the plans were not given taxing authority and the counties do not have the legal obligation of the plan’s debts. The commenters requested that the proposed regulation explicitly state that local dollars will be considered valid IGTs if they originated at a unit of government regardless of the entity that submits the payment to the State.

34R. Response: Entities that are not units of government can not make IGTs or CPEs regardless of where the entity

gets funding. Section 1903(w)(6)(A) specifically refers to funding transferred or certified from “units of government” and does not provide a basis for tracing the source of funding transferred or certified from other entities. Any transfer of funds from a non-governmentally-operated health care provider to a State constitutes a provider-related donation, not an intergovernmental transfer. In the situation discussed by commenters, the parties may want to explore restructuring their relationship to provide that the local unit of government make an IGT to the State directly.

35C. Comment: Many commenters disagreed with any suggestion that not-for-profit status in and of itself should disqualify an entity as a unit of government. The commenters noted that many traditional public health care providers are nonprofit corporations under Section 501(c)(3) of the Internal Revenue Code, and these health care providers not only have a public-oriented mission but are subject to public oversight and receive substantial financial support from the communities in which they operate.

Further, they argued that the fact that an enterprise is organized in corporate form is not inconsistent with its being a public entity. The commenters cited examples of federal public entities that operate in corporate form, including the Federal Deposit Insurance Corporation, the Tennessee Valley Authority, and the Communications Satellite Corporation.

Similarly, multiple commenters observed that frequently, State laws creating hospital districts allow the hospital to operate as a 501(c)(3) nonprofit corporation, while the authorizing legislation vests the hospital with governmental status. The commenters assert that hospitals operated under these hospital district laws have, until this rulemaking, been viewed as public hospitals.

Many other commenters stated that nonprofit corporations have many attributes of public entities and should therefore be allowed to qualify for purposes of financing the non-Federal share of Medicaid. The commenters remarked that not for profit corporations are required to serve a “public interest,” 26 CFR. § 1.501(c)(3)–1(d)(1)(ii). They note that unlike for-profit corporations, there are no shareholders, and no private persons can have any ownership interest in the nonprofit corporation. Nonprofit corporations can have “members” (though this is not required), but members have no ownership interest in the assets or business of the nonprofit corporation.

Further, the commenters observe that when a nonprofit corporation terminates its operations, its assets must (depending on the applicable State law) be contributed either to another nonprofit or to the federal, State, or local government for a public purpose. In other words, once assets are committed to a benevolent purpose being carded out through a nonprofit corporation, those assets must remain available for a benevolent purpose. The commenters also point out that localities or hospital districts frequently choose to organize a hospital as a 501(c)(3) organization in order to ensure that the hospital will be able to accept private charitable donations, which would be permitted under Section 1903(w) of the Act. These commenters essentially argue that the public-oriented nature of non-profit corporations should be sufficient to allow such corporations to be considered tantamount to units of government for purposes of Medicaid financing.

35R. Response: While it may be that nonprofit corporations have some public service qualities that governmental units have, there is no question that they are not units of government. Section 1903(w) contains severe penalties on the use of donations from health care providers to finance the non-federal share of the Medicaid program, but includes an exception for funding transferred or expenditures certified by units of government. There is nothing in the Medicaid statute that would indicate non-governmental “public” units could help a State finance its share of Medicaid payments.

Medicaid is a shared responsibility between Federal and State government. State governments may share their fiscal obligation to the Medicaid program with local governments according to the instruction of Congress. Under Public Law 102–234, the Congress made clear that States may allow governmentally-operated health care providers to participate in a State’s fiscal obligation to the Medicaid program through the use of intergovernmental transfers and certified public expenditures. However, the Congress was also clear that States may not receive funds from non-governmentally-operated health care providers for purposes of financing Medicaid payments.

This final rule will assist States in identifying the universe of governmentally-operated health care providers that could receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and clarifies which types of health care providers can participate in financing of

the non-Federal share of Medicaid payments.

36C. Comment: A number of commenters noted that the Medicare regulation governing location requirements for determining whether a facility has provider-based status recognize that a unit of State or local government may “formally grant governmental powers” to a health care provider organized as a public or nonprofit corporation. See 42 CFR § 413.65(e)(3)(ii)(B). The commenters offer this to suggest that there are instances in which a nonprofit corporation may be considered governmental.

36R. Response: The provisions of the regulation are limited to the purposes of Medicaid payment and financing, and are based on the statutory provisions governing those issues. This regulation does not affect Medicare provider-based status location requirements. States will need to apply Medicaid statutory and regulatory criteria to each individual health care provider to make determinations of governmental status for purposes of the Medicaid program.

37C. Comment: Many commenters questioned the rationale for including taxing authority, or the ability to access funding as an integral part of a government with taxing authority, as a requirement for a health care provider to qualify as a unit of government under the provisions of the regulation.

37R. Response: As discussed previously, we read the statutory definition of governmental entities to require certain common qualities, such as taxing authority, or the ability to directly access tax funding. Moreover, we believe this requirement is consistent with the overall statutory rationale. The governmental exception from provider tax and donation restrictions at section 1903(w)(6)(A) of the Act is limited to the “use of funds where such funds are derived from State or local taxes” (with a special provision for State university teach hospitals that receive appropriated funds which we discuss in the following response). We read the exception to be intended to permit wide flexibility in the use of tax funds, whether State or local. The limitation of this exception to the use of tax funds supports our interpretation that the reference to “units of government” was intended only to include entities with access to such tax funds.

As important, the purpose of the provider tax and donation restrictions in general was to prevent situations in which the health care provider contributed a non-federal share of claimed expenditures but was

essentially repaid through Medicaid or other payments. The provision at section 1903(w)(6)(A) of the Act is based on the rationale that such repayment does not occur when the health care provider uses state or local tax funding for its contribution. To give that full effect, the health care provider needs to have either taxing authority or direct access to tax funding.

38C. Comment: A number of commenters noted that the provisions of the regulation were silent on the explicit reference in section 1903(w)(6)(A) of the Act to “funds appropriated to State university teaching hospitals” as being permissible sources of the non-Federal share. These commenters argued that the provisions of the regulation violated Congressional intent with respect to funding arrangements involving such institutions.

38R. Response: We agree with this comment and we revised § 433.50(a)(i) and (ii) to include appropriations to State university teaching hospitals, and to define “State university teaching hospital.” We believe the specific provision that State university teaching hospitals could transfer funds derived from State appropriations rather than State or local tax revenues is only necessary because the statutory provisions otherwise embody the general principle that units of government must have taxing authority or direct access to tax funds. The State university teaching hospital exception makes that general principle clear, and we are revising the provisions of the regulation to reflect that exception.

39C. Comment: A number of commenters pointed out that State law typically looks beyond the presence of taxing authority to other indicia of governmental status. For example, courts may look to whether an entity enjoys sovereign immunity, whether its employees are public employees, whether it is governed by a publicly appointed board, whether it receives public funding, and whether its enabling statute declares it to be a political subdivision or a public entity. These examples were provided to suggest that CMS look beyond just taxing authority as the standard of determining whether or not an entity is a unit of government.

39R. Response: This regulation addresses governmental status for a very limited purpose and therefore we look only to criteria that are related to that purpose. For purposes of Medicaid payment and financing, the relevant characteristics of a governmental entity are those that relate to its financial organization including the source of funding and liability for its debts. These

characteristics relate specifically to issues raised by the Medicaid statute. The provision of the regulation requiring that a unit of government must have access to tax revenues is consistent with the Congressional instruction contained in section 1903(w) of the Social Security Act.

As discussed previously, we read the statutory definition of governmental entities to require certain common qualities, such as taxing authority, or the ability to directly access tax funding. Moreover, we believe this requirement is consistent with the overall statutory rationale. The governmental exception from provider tax and donation restrictions at section 1903(w)(6)(A) of the Act is limited to the “use of funds where such funds are derived from State or local taxes” (with a special provision for State university teach hospitals that receive appropriated funds which we discuss in the following response). We read the exception to be intended to permit wide flexibility in the use of tax funds, whether State or local. The limitation of this exception to the use of tax funds supports our interpretation that the reference to “units of government” was intended only to include entities with access to such tax funds.

40C. Comment: A number of commenters questioned CMS’ meaning with respect to a unit of government with “taxing authority” because this term was not defined in the regulatory text or the preamble, leaving units of government vulnerable to arbitrary or inconsistent use of this term in applying the provisions of the regulation.

40R. Response: We do not believe that this term is generally regarded as ambiguous, but we are clarifying in this response and in the regulation text at § 433.50(a)(1)(ii)(B) that we meant to refer to “taxing authority or direct access to tax revenues.” We believe that, in general, States have clear legal parameters setting forth those entities that have authority under their law to levy taxes. In addition, tax levies have particular treatment for purposes of federal and state taxes, and the distinction between tax levies and user fees is generally clear. We intend to defer to determinations by the State and the applicable tax authorities as to whether an entity has authority to impose taxes. The added phrase “or direct access to tax revenues” permits flexibility for those entities which have direct access to taxes that are imposed by a parent or related entity. For example, when a tax is imposed and collected by the State itself but is dedicated to the use of a municipality

or other entity, that entity would satisfy the criteria of direct access to tax funds.

41C. Comment: A commenter asked if a legislatively created entity constitutes a “unit of government” if it does not have taxing authority but received government appropriations. Similarly, the commenter asked whether an entity that does not receive government appropriations, but has legislatively-established revenue raising authority or performs a legislatively-mandated function, would qualify as a unit of government.

41R. Response: In response to comments such as this one, we have modified the regulation at § 433.50 to make clear that a unit of government has either taxing authority or direct access to tax revenues. We have added the phrase “has direct access to tax revenues” to recognize as governmental those entities that do not have taxing authority, but do have direct access to tax revenues that are imposed by a related unit of government. By direct access, we do not mean simply that the entity receives appropriated funds or enters into a contractual arrangement with a unit of government. The entity must have the ability to receive funding as an integral part of a unit of government with taxing authority which is legally obligated to fund the health care provider’s expenses, liabilities, and deficits.

42C. Comment: A commenter asked if a legislatively created entity constitutes a “unit of government” if it does not have taxing authority but receives both a government appropriation and other revenues through its legislatively-established revenue raising authority. If the answer is yes, the inquirer asks if there are any limits on the amount or source of funds that such an entity may spend, transfer, or contribute as the non-Federal share of an expenditure eligible for FFP.

42R. Response: The determination of governmental status is a fact-specific determination and may depend on the precise circumstances. States must apply the Federal statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. In this instance, it is relevant whether the entity has direct access to tax revenues as an integral part of a unit of government with taxing authority which is legally obligated to fund the health care provider’s expenses, liabilities, and deficits.

43C. Comment: A commenter asked if the proposed § 433.50(a)(1)(ii)(B), which speaks directly of health care providers, also includes governmental units

without taxing authority that are not health care providers.

43R. Response: This provision of the regulation is only applicable to health care providers. However, we have revised § 433.50(a)(1)(i) to address the situation of governmental units that do not have direct taxing authority, but are able to directly access funding as an integral part of a unit of government with taxing authority which is legally obligated to fund the health care provider's expenses, liabilities, and deficits, so that a contractual arrangement with the State or local government is not the primary or sole basis for the health care provider to receive tax revenues.

44C. Comment: A number of commenters inquired about whether or not appropriations made by a government for the benefit of a public or private university college of medicine, which operates a faculty practice plan, would be a permissible source of the non-Federal share of Medicaid expenditures.

44R. Response: Governmentally-operated health care providers may use appropriated tax revenues to fund the non-Federal share of Medicaid expenditures through IGTs or CPEs. Governmentally-operated health care providers are not required to demonstrate that the funds transferred or certified are, in fact, tax revenues. A governmentally-operated health care provider is always able to access tax revenue, a characteristic of which reflects a health care provider's governmental status, and helps to define eligibility to participate in IGTs and/or CPEs.

Under Public Law 102-234, Congress included an exception to a general prohibition on the receipt of voluntary contributions from health care providers by allowing units of government, including governmentally-operated health care providers, to participate in the intergovernmental transfer and certified public expenditure process. Specifically, section 1903(w)(6)(A) of the Social Security Act states:

Notwithstanding the provisions of this subsection, the Secretary may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this title, regardless of whether the unit of government is also a health care provider, except as provided in section 1902(a)(2), unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share under this section.

This statutory language is very clear in its direction regarding eligibility to participate in financing the non-federal share of Medicaid payments. There is nothing in the Medicaid statute that would indicate non-governmental units could help a State finance its share of Medicaid payments, particularly in light of the significant statutory penalties States face for receiving provider-related donations as the non-Federal share of Medicaid payments (that is, non-bona fide provider-related donations).

45C. Comment: One commenter asked CMS to modify the provisions of the regulation to recognize an entity as a unit of government even though the entity may not itself have taxing authority, so long as the entity's owner has taxing authority and can transfer funds or lend its bonding authority to the entity.

45R. Response: We have modified the regulation at § 433.50 to indicate that a unit of government has either taxing authority or direct access to tax revenues. We have added the phrase "has direct access to tax revenues" to recognize as governmental those entities that do not have taxing authority, but do have direct access to tax revenues that are imposed by a parent or related unit of government.

For example, when a tax is imposed and collected by a State but is dedicated for use by a municipality or other entity, that entity would satisfy the criteria of direct access to tax revenues. Similarly, a county-operated hospital that is recognized in the county's budget to receive local tax subsidies via the county appropriation process, and without the need to contract for such tax revenues, would satisfy the criteria of direct access to tax revenues.

46C. Comment: Multiple commenters noted that taxing authority is not a precondition for an entity to be a unit of government. These commenters observe that while no one would doubt that a municipality is a unit of government, States frequently restrict, and may (absent State constitutional considerations) entirely suspend, municipalities' powers of taxation. Thus, these commenters contend that CMS's requirement that a governmental entity must have "taxing authority" in order to be considered a unit of government whose funds may be used as the state share of Medicaid expenditures is adding a requirement that fundamentally interferes with a State's own internal governmental structure. Therefore, the commenters argue that CMS should omit taxing authority as a necessary precondition for unit of government status and defer to State decisions in this matter.

46R. Response: The provisions of this regulation concerns the question of whether, in determining the amount of federal funds to which a State is entitled under the Medicaid program, transfers of funds to the State government from a Medicaid health care provider that is an entity other than the State government will be entitled to exemption from consideration as a provider tax or donation, and when expenditures of such an entity can be certified as "public expenditures" that constitute the non-Federal share of Medicaid expenditures. It also sets forth a consistent definition of entities that must be treated as governmental in determining the reasonableness of Medicaid payment rates. This regulation does not control how the State will organize itself. Moreover, the provisions of this regulation do not preclude entities that do not qualify as units of government from participating in the Medicaid program and contributing funds that are consistent with applicable provider tax and donation requirements.

47C. Comment: Many commenters questioned CMS's authority to define a "unit of government" in the manner described in this regulation. Several commenters questioned the basis for the regulation's requirement that a health care provider must have taxing authority or be an integral part of a unit of government with taxing authority. In this regard, commenters asserted their belief that Congress provided greater latitude in the statute for States and localities to determine which entities are units of government.

47R. Response: As discussed previously, we read the statutory definition of governmental entities to require certain common qualities, such as taxing authority, or the ability to directly access tax funding. Moreover, we believe this requirement is consistent with the overall statutory rationale. The governmental exception from provider tax and donation restrictions at section 1903(w)(6)(A) of the Act is limited to the "use of funds where such funds are derived from State or local taxes" (with a special provision for State university teaching hospitals that receive appropriated funds which we discuss in the following response). An entity that has no taxing authority or direct access to tax revenues would be unable to qualify for that exception. Thus limitation of this exception to the use of tax funds supports our interpretation that the reference to "units of government" was intended only to include entities with access to such tax funds.

We disagree that this definition removes flexibility to finance Medicaid programs with state or local tax funds. The accounting treatment for such financing, however, may need to change to ensure program integrity consistent with the requirements of the new regulatory definition. This definition means that, for permissible financing arrangements, the entity that has taxing authority or direct access to tax funds must be the entity that either transfers the funds to the control of the State Medicaid agency, or that certifies expenditures eligible for FFP. For example, if a hospital district does not have taxing authority or direct access to tax revenues, it would not meet the requirements as a unit of government. To the extent that a county government, which had taxing authority or direct access to tax revenues, was funding Medicaid services through payments to the hospital district, however, the county could use that funding to make intergovernmental transfers, or could (with supporting documentation from the hospital) certify public expenditures based on that funding.

48C. Comment: A number of commenters noted statements in the provisions of the regulation that CMS is modifying provisions at § 433.50(a)(1) to make the definition of a unit of government consistent with section 1903(w)(7)(G) of the Act, but observed that the inclusion of “taxing authority” in the proposed regulatory provision is not found in section 1903(w)(7)(G) of the Act. Other commenters note that the term “taxing authority” is not found at section 1902(a)(2) of the Act either. Therefore, these commenters assert that the provisions of the regulation are inconsistent with the Social Security Act.

48R. Response: As discussed previously, the various statutory references to, and definitions of, governmental entities appear to reflect an understanding that such entities have common qualities, one of which is taxing authority or the ability to directly access tax funding. As noted above, we read the statutory language at section 1903(w)(7)(G) of the Act to refer to entities that have the qualities generally associated with all of the listed terms. Section 1902(a)(2) of the Act is silent on what “local sources” may contribute the non-federal share of Medicaid expenditures and must be read in conjunction with section 1903(w) of the Act and the overall statutory rationale. The governmental exception from provider tax and donation restrictions at section 1903(w)(6)(A) of the Act is limited to the “use of funds where such funds are derived from State or local

taxes” (with a special provision for State university teach hospitals that receive appropriated funds which we discuss in the following response). We read the exception to be intended to permit wide flexibility in the use of tax funds, whether State or local. The limitation of this exception to the use of tax funds supports our interpretation that the reference to “units of government” was intended only to include entities with taxing authority or direct access to such tax funds.

As important, the purpose of the provider tax and donation restrictions in general was to prevent situations in which the State claimed that the health care provider contributed a non-federal share of claimed expenditures but the health care provider may have been actually discounting its rate or repaid through Medicaid or other payments. The provision at section 1903(w)(6)(A) of the Act was based on the rationale that this concern does not arise when the health care provider is a governmental entity using state or local tax funding for its contribution. To give that full effect, the health care provider needs to have either taxing authority or direct access to tax funding.

49C. Comment: Many commenters who questioned the basis for the requirement that a health care provider must have taxing authority or be an integral part of a unit of government with taxing authority offered characteristics that they thought should be recognized as indicative of governmental status. These characteristics include: The delegation of select governmental powers by the unit of government to the entity; criteria of governmental status used by the Internal Revenue Service (IRS); an entity’s public mission; the power to issue bonds; exemption from income or property tax; governmental involvement in a health care provider’s Board of Directors; government ownership of the property on which the health care provider operates; level of public oversight; provider agreements with a government to provide indigent care; rights of a health care provider to receive specific local tax revenues; creating and enabling legislative provisions; government authority to terminate an agreement for nonperformance; and financing of the health care provider’s capital costs by the government.

49R. Response: This regulation addresses governmental status for a very limited purpose and therefore we look only to criteria that are related to that purpose. For purposes of Medicaid payment and financing, the relevant characteristics of a governmental entity

are those that relate to its financial organization including the source of funding and liability for its debts. These characteristics relate specifically to issues raised by the Medicaid statute. The provision of the regulation requiring that a unit of government must have access to tax revenues is consistent with the Congressional instruction contained in section 1903(w) of the Social Security Act.

As discussed previously, we read the statutory definition of governmental entities to require certain common qualities, such as taxing authority, or the ability to directly access tax funding. Moreover, we believe this requirement is consistent with the overall statutory rationale. The governmental exception from provider tax and donation restrictions at section 1903(w)(6)(A) of the Act is limited to the “use of funds where such funds are derived from State or local taxes.” We read the exception to be intended to permit wide flexibility in the use of tax funds, whether State or local. The limitation of this exception to the use of tax funds supports our interpretation that the reference to “units of government” was intended only to include entities with access to such tax funds.

50C. Comment: Several commenters cited section 1903(d)(1) of the Act to argue Congressional intent with respect to the types of entities that may participate in the financing of the non-Federal share of Medicaid. This section of the statute requires States to submit quarterly reports for purposes of drawing down the Federal share, in which they must identify “the amount appropriated or made available by the State and its political subdivisions.” The commenters observed that this reference to political subdivisions does not include a requirement that the subdivisions have taxing authority, suggesting that the regulation’s linkage to taxing authority as a requirement for recognition as a unit of government belies Congressional intent.

50R. Response: While the commenters did not cite to any definition of “political subdivision” of a State, the definition and criteria that we proposed for a unit of government is broader than a “political subdivision” of the State itself. That definition includes entities that are substantially independent of the State, but have been accorded tax authority or direct access to tax funding. If we were to restrict the ability to contribute the non-federal share only to political subdivisions of the State, that would not be consistent with the other relevant statutory provisions.

51C. Comment: Multiple commenters discussed preamble language which

says that tax revenue that is contractually obligated between a governmental entity and a health care provider to provide indigent care is not considered a permissible source of the non-Federal share of funding for purposes of Medicaid payments, and argued that this restriction violates Section 1903(w)(6) of the Act, which states that the Secretary may not restrict any transfers or certifications "where such funds are derived from State or local taxes." A number of commenters disagreed with this same language, claiming that CMS has no authority to limit how a health care provider and unit of government use tax revenue to best achieve the objective of providing indigent care.

Other commenters recommended that CMS clarify that it will not view the transfer of taxpayer funding for a specific health care provider as an indirect provider donation and allow those appropriations to be considered IGTs. The commenters pointed to language in the preamble that stipulates that "health care providers that forego tax revenue that has been contractually obligated for the provision of health care services to the indigent * * * are making provider-related donations." A commenter also questioned whether the following situation with respect to appropriated funds would be considered an indirect provider donation or an eligible IGT: a county that is statutorily required to provide a fixed appropriation to a private hospital, and the statute expressly allows that appropriation to be used as IGT. The commenter provided another scenario and questioned if this would qualify as an appropriate IGT: a formerly public hospital received a State appropriation, which it currently uses as an IGT.

51R. Response: Section 1903(w)(6)(A) of the Medicaid statute provides that only governmental units may transfer or certify funds based on governmental status, and separately indicates that the funds must be derived from state or local tax revenues. A non-governmental provider cannot transfer or certify funds (except consistent with provider donation rules) under any circumstances. If a non-governmental provider receives appropriated funds or other payments from a unit of government, that unit of government may certify any expenditures made to that non-governmental provider that would qualify for FFP as an expenditure under the State plan. Tax revenue that has been contractually or otherwise obligated to a non-governmentally-operated health care provider for non-Medicaid services is not a permissible source of the non-Federal share of

Medicaid payments under the statute. If a health care provider would forego revenues from that governmental unit, it would be a donation from that non-governmental provider. A Medicaid payment that can be linked to a provider-related donation renders such donation non-bona-fide and thus an impermissible source of the non-Federal share. This is consistent with section 1903(w)(6)(A) of the Act, which permits transferred funds from a local government to the State to be used for purposes of financing the non-Federal share of Medicaid payments, "unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share."

52C. Comment: A number of commenters noted the regulation's preamble statement that in order for tax funding to be eligible as the non-Federal share, it cannot be committed or earmarked for non-Medicaid activities. One such commenter stated that State or local appropriations are not precisely related to Medicaid activities and that the applicable allotments of tax revenues are committed for defined purposes, such as public assistance programs that include "Medicaid and other activities" or "Medicaid and other needy individuals." This commenter observed that the Departmental Appeals Board recognizes the difference between expenditures for these items and the accounting entries that determine Medicaid expenditures eligible for FFP. Governmental appropriations are routinely committed or earmarked for the former, while FFP is applicable only to the latter. Another commenter feared that this preamble language was ambiguous because government funding can be "earmarked" for a purpose other than Medicaid that is actually consistent with the use of funds for Medicaid. Therefore, these commenters believe that this provision of the regulation requires clarification and more explanation about how it would be applied.

52R. Response: In response to this comment, we clarify that our intent was that we would not recognize as units of government qualified to contribute non-federal share those entities with access to tax funds that were committed or earmarked solely for non-Medicaid activities (or to recognize contributions in excess of the amount of funding available for Medicaid activities). Our concern was to preclude arrangements where entities whose access to tax funding was limited to non-Medicaid activities "borrow" those funds to contribute the non-federal share of Medicaid expenditures and then

"repay" those funds from Medicaid reimbursements (with the result that the remaining Medicaid funding is federal only). We did not intend to suggest that it would be a problem if Medicaid was one of several permissible uses for the tax funding.

53C. Comment: One commenter disagreed with the part of the regulation which says that tax revenue that is contractually obligated between a governmental entity and a health care provider to provide indigent care is not considered a permissible source of the non-Federal share of funding for purposes of Medicaid payments. The commenter indicated that CMS should permit funding under an indigent care contract to be transferred by the local government to the State to draw down Federal matching funds for Medicaid payments.

53R. Response: Local government tax dollars that are not contractually committed for the purpose of indigent care services or any other non-Medicaid activity can be directly transferred by the local government to a State as the non-Federal share of Medicaid payments. But when a non-governmental provider forgoes payment to which it is contractually entitled from a local government, it would be making a provider donation.

54C. Comment: One commenter stated their understanding of section 1903(w)(6)(A) of the Act to indicate that as long as the funds used by a governmental entity for the non-federal share of Medicaid payments issue from or originate from local taxes, they would fall under the type of funds that may not be restricted by CMS. The commenter disagreed with CMS' position in the provision of the regulation that the non-federal share of Medicaid payments must be funded by taxes. The commenter requested that CMS clarify that *all* of an entity's revenues, whether received as direct appropriations from its local taxing authority or derived from such appropriations, which help to pay for capital improvements, employees and other costs, are public funds and can be used as the non-federal share of Medicaid payments.

54R. Response: We disagree. Section 1903(w)(6)(A) of the Act protects IGTs and CPEs only when "derived from State or local taxes (or funds appropriated to a State university teaching hospital)." This statutory clause would not be necessary if any governmental entity revenues could be used for protected transactions. When funds are received by a health care provider in the course of its normal operations, those funds are not "derived from State or local taxes" unless they

are tax funds or are funds appropriated by a government entity from tax revenues and paid for Medicaid services at the health care provider. Funds appropriated from tax revenues and paid for non-Medicaid services at the health care provider lose their characteristic as “derived from State or local taxes” and, to the extent unexpended on the designated non-Medicaid services, would be profits derived from the provision of those services.

Such funds could not be used to contribute the non-Federal share of Medicaid expenditures because they are derived from the operations of the health care provider, rather than from State or local tax revenues. We recognize that funds received for specific costs, such as capital improvements or employee costs, may in part fund the costs of Medicaid services. These funds could be used to fund the non-Federal share to the extent that those specific costs may be properly allocated to Medicaid services, in accordance with the governmentally-operated health care provider's approved cost allocation plan. We also recognize that funds from different sources can be commingled in health care provider accounts. As a result, in this regulation we are not requiring that governmentally-operated health care providers trace funding precisely. We are requiring that, to qualify as a unit of government, the entity must have taxing authority or direct access to State or local tax funds in at least the amount of the IGT or CPE; and we are requiring that a health care provider retain the full amount of the total computable payment claimed by the State under the Medicaid State plan.

B. “Tool to Evaluate the Governmental Status of Providers” Form

55C. Comment: Several commenters noted that the “Tool to Evaluate the Governmental Status of Providers” form does not include an indication of the final result on the form and recommended that the form include such a final determination.

55R. Response: We agree and we have revised the form to include an indication of the State's determination of a health care provider's governmental status. * * *

56C. Comment: A few commenters noted that the “Tool to Evaluate the Governmental Status of Providers” form would need to be completed and submitted by all purportedly governmental providers in America within three months of the effective date of the regulation and suggested that CMS will not have the resources to

review all these submissions and determine whether or not each health care provider is a “unit of government” in a timely manner. Concern was expressed that delays by CMS in reaching a decision about whether or not entities are governmental may impede provider reimbursements.

56R. Response: In this final rule, we are providing that States must apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. As we indicated in the proposed rule, we have developed a “Tool to Evaluate the Governmental Status of Health Care Providers.” In response to comments on this rule, we have modified that form to allow States to indicate their initial determination of a health care provider's governmental status.

States must apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. We have modified the “Tool to Evaluate the Governmental Status of Health Care Providers” to allow States to indicate their initial determination of a health care provider's governmental status.

States will be required to maintain these determinations on file and will be required to submit these forms to CMS upon request, in connection with CMS review of Medicaid institutional and non-institutional reimbursement State plan amendments involving governmental providers and with Medicaid or SCHIP financial management reviews. In addition, we intend to request, under our general authority to require supporting documentation for claimed expenditures, and the existing regulatory authority at 42 CFR § 431.16, that States submit a complete list of governmentally-operated health care providers to the Associate Regional Administrator for Medicaid of each State's respective CMS Regional Office with the first quarterly expenditure report due after 90 days of the effective date of the regulation.

CMS is not requiring States to complete the “Tool to Evaluate the Governmental Status of Health care Providers” form for each Indian tribe and tribal organization within the State, because the unique criteria for determining the governmental status of tribes and tribal organizations makes the tool inapplicable to these entities. However, CMS will require each State to identify the qualifying tribes and tribal organizations (per the criteria at § 433.50) in any list of governmentally-operated health care providers submitted to CMS. Although tribal

facilities are exempt from the Medicaid cost limit, the inclusion of tribes and tribal organizations in this list will comprehensively identify the universe of entities that have been determined by the State as eligible to participate in financing the non-Federal share of Medicaid payments.

57C. Comment: A number of commenters asked for more details concerning CMS actions upon receipt of the “Tool to Evaluate the Governmental Status of Providers” form. Specifically, the commenters wanted more information on the timeframes for CMS decisions; how CMS will notify States of a determination; means for amending information previously provided; and avenues for appeal when States, local governments, or health care providers disagree with the decision as to whether or not a health care provider is found to be a unit of government.

57R. Response: As discussed above, in response to comments, we have provided in the final rule that States must apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. We have modified the “Tool to Evaluate the Governmental Status of Health Care Providers” to allow States to indicate their initial determination of a health care provider's governmental status. States may develop reasonable determination, notice and appeal processes for health care providers affected by State determinations as they deem appropriate. If CMS disagrees with a State's initial determination of governmental status, CMS intends to request a timely change in the State's determination prior to pursuing any other measures including, but not limited to, denial of Medicaid reimbursement SPAs and/or disallowances of claims for Federal financial participation. States can appeal such actions through existing appeal processes.

58C. Comment: Multiple commenters commented on the administrative burden associated with completion of the “Tool to Evaluate the Governmental Status of Providers” form. These commenters stated that for some health care providers, completion of the form may require extensive legal research and analysis because of the potential for complicated legal implications. These commenters contend that the burden associated with completing the form is disproportionate to the form's utility, especially since it is not clear how CMS will ultimately use the form to determine governmental status.

58R. Response: The “Tool to Evaluate the Governmental Status of Health Care

Providers” is designed to guide State decision making in applying the statutory and regulatory criteria regarding the definition of a unit of government. The provisions of the regulation were designed to ensure consistent application of the Federal statutory instructions regarding the definition of a unit of government. CMS recognizes that for purposes of Medicaid State financing legal and financial arrangements between health care providers and units of government vary on a case by case basis. We have developed standardized and impartial regulatory criteria based upon the Federal statute, which States must apply on a consistent basis to each health care provider within the State.

CMS does not believe the information required in the form requires the extensive, legal research and analysis as the commenters suggest. CMS has the responsibility to ensure that the State’s initial determinations are consistent with the Federal statutory and regulatory criteria and reserves the right to take any appropriate action including, but not limited to denial of Medicaid reimbursement State plan amendments and/or disallowances of claims for Federal financial participation, in the event of noncompliance with any provision of this regulation. States can appeal such actions through existing appeals processes.

59C. Comment: One commenter recommended that instead of using the form, CMS require certifications and assurances from health care providers and State and local governments regarding their governmental status.

59R. Response: We do not believe that certifications and assurances are adequate in determining compliance with Federal statutory and regulatory provisions regarding the unit of government definition.

60C. Comment: One commenter argued that the Federal government should fund 100% of all costs associated with any mandate involving the completion of the questionnaire or submission of such information to CMS.

60R. Response: Each State is responsible for the proper and efficient administration of its Medicaid program. Expenses incurred for administration of the Medicaid program are eligible for Federal matching funds at the regular 50 percent administrative matching rate.

61C. Comment: A number of commenters asserted that the “Tool to Evaluate the Governmental Status of Providers” form is unnecessary because CMS should defer to States and local governments to define which entities are units of government for purposes of

Medicaid financing, based on arguments such as statutory authority, principles of federalism, and marketplace incentives.

61R. Response: The “Tool to Evaluate the Governmental Status of Health Care Providers” is designed to guide State decision making in applying the statutory and regulatory criteria regarding the definition of a unit of government. The provisions of the regulation were designed to ensure consistent application of the Federal statutory instructions regarding the definition of a unit of government for purposes of Medicaid reimbursement and State financing. CMS recognizes that States play a major role in the administration of the Medicaid program and that legal and financial arrangements between health care providers and units of government vary on a case by case basis. We have developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State.

We considered the possibility of deferring to State determinations but we concluded that it was important for effective oversight review to receive standardized information and establish a clear, uniform and enforceable standard.

We believe the form will be useful to States which will have to apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. CMS has the responsibility to ensure that the State’s initial determinations are consistent with the Federal statutory and regulatory criteria and reserves the right to take any appropriate action including, but not limited to, denial of Medicaid reimbursement State plan amendments and/or disallowances of claims for Federal financial participation, in the event of noncompliance with any provision of this regulation.

62C. Comment: One commenter asked CMS for more written guidance on the use of this form when the final regulation is published. Specifically, the commenter asked who is responsible for completing the form and what, if any, supporting documentation is required. Moreover, the commenter noticed that the form does not, in its current format, require an official signature.

62R. Response: States must apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. We have modified the “Tool to Evaluate the Governmental Status of Health Care Providers” to require that an appropriate State official sign the

State’s initial determination regarding the governmental status of a health care provider. The State official that will be responsible for signing the form will be a decision of the State. Further, the State will determine what supporting documentation may be necessary on a case-by-case basis in support of its initial determination of a health care provider’s governmental status.

63C. Comment: A number of commenters noted that the provisions of the regulation suggest that a health care provider may be considered a unit of government if the health care provider appears on the unit of government’s consolidated annual financial report. Likewise, the commenters observed, the provisions of the regulation mention a unit of government’s liability for a health care provider’s expenses, liabilities, and deficits in order for the health care provider to be considered a unit of government. However, it is not clear that responses to questions presented on the tool will lead to a final determination as to whether or not a particular entity is considered a unit of government as per the provisions of the regulation. Therefore, the commenters find a “disconnect” between the provisions of the regulation and the “Tool to Evaluate the Governmental Status of Providers” form. This disconnect was viewed as creating problems when States attempt to evaluate whether or not they can rely upon IGTs or CPEs from a particular health care provider in the future, and it may also contribute to unnecessary and protracted litigation of an apparently arbitrary determination by CMS about the governmental status of a health care provider.

63R. Response: States must apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. We designed the “Tool to Evaluate the Governmental Status of Health Care Providers” to set up a process to collect and maintain information necessary for such determinations. We believe the form fully reflects the statutory and regulatory criteria necessary for States to make initial determinations of governmental status.

We have modified the form to allow States to indicate their initial determination of a health care provider’s governmental status. We understand that there will be challenges in implementing the determination process. As States apply the statutory and regulatory criteria, CMS will exercise oversight review and will issue guidance on the implementation of the

statutory and regulatory criteria if warranted.

64C. Comment: One commenter asked CMS to provide instructions and/or direction for the preparation and submission of the form to assist the State in analyzing the complex financial and organizational relationships which exist in the varied governmental units within the State. The commenter suggests that CMS provide the criteria and direction for the States to determine that a health care provider is unit of government with the provision that CMS may review or audit the State's determination.

64R. Response: The "Tool to Evaluate the Governmental Status of Health Care Providers" is designed to guide State decision making in applying the statutory and regulatory criteria regarding the definition of a unit of government. The provisions of the regulation were designed to ensure consistent application of the Federal statutory instructions regarding the definition of a unit of government. CMS recognizes that for purposes of Medicaid State financing legal and financial arrangements between health care providers and units of government vary on a case by case basis. We have developed standardized and impartial regulatory criteria based upon the Federal statute, which States must apply on a consistent basis to each health care provider within the State. CMS believes the form fully reflects the statutory and regulatory criteria necessary for States to make initial determinations of governmental status.

We understand that there will be challenges in implementing the determination process. As States apply the statutory and regulatory criteria, CMS will exercise oversight review and will issue guidance on the implementation of the statutory and regulatory criteria if warranted.

65C. Comment: Multiple commenters inquired specifically about the State Medicaid agency's responsibility for identifying a health care provider as governmentally operated. If the provider has not identified itself as a governmental health care provider, must the State Medicaid agency establish procedures to make such an identification?

65R. Response: It is the State's responsibility to make initial determinations regarding the governmental status of each health care provider. The "Tool to Evaluate the Governmental Status of Providers" form has been modified to reflect the State's initial determination, and a signature line to be signed by an appropriate State official has been added. States may

develop procedures to facilitate the identification of a governmentally-operated health care provider and include appeals processes for health care providers affected by State determinations.

66C. Comment: One commenter observed that CMS has collected information about the governmental status of health care providers in the past and stated that based on information previously obtained by CMS, the "Tool to Evaluate the Governmental Status of Providers" form is unnecessary and wasteful.

66R. Response: It is unclear as to what information was previously provided to CMS regarding governmental status of health care providers. The "Tool to Evaluate the Governmental Status of Health Care Providers" is designed to guide State decision making in applying the statutory and regulatory criteria regarding the definition of a unit of government. The provisions of the regulation were designed to ensure consistent application of the Federal statutory instructions regarding the definition of a unit of government. We have developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State.

CMS has the responsibility to ensure that the initial determinations are consistent with the Federal statutory and regulatory criteria and reserves the right to take any appropriate action including, but not limited to, denial of Medicaid reimbursement State plan amendments and/or disallowances of claims for Federal financial participation, in the event of noncompliance with any provision of this regulation.

67C. Comment: One commenter noted that the questionnaire "Tool to Evaluate the Governmental Status of Providers" form would need to be completed and submitted by all school districts in America within three months of the effective date of the regulation and suggested that CMS will not have the resources to review all these submissions and determine whether or not each school district is a "unit of government" in a timely manner. The commenter believes it is obvious that school districts are governmental and should therefore be exempt from the requirement to complete the questionnaire.

67R. Response: States must apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. We have modified the "Tool to Evaluate the Governmental Status of

Health Care Providers" to allow States to indicate their initial determination of a health care provider's governmental status.

States will be required to maintain these determinations on file and will be required to submit these forms to CMS upon request, in connection with CMS review of Medicaid institutional and non-institutional reimbursement State plan amendments involving governmental providers and with Medicaid or SCHIP financial management reviews.

C. Funds From Units of Government as the State Share of Financial Participation (§ 433.51)

1. Intergovernmental Transfers (IGTs)

68C. Comment: One commenter suggested that Congress intended that section 1903(w)(7)(G), which defines the term "unit of local government," was only applicable to section 1903(w)(1)(A) of the Act, and was not applicable to section 1903(w)(6)(A) of the Act. The writer noted the absence of the word "local" in section 1903(w)(6)(A) and suggested that such an omission was deliberate because Congress meant something different in this Section. Specifically, the commenter claimed that Congress used the narrower term "unit of local government" to define those government entities subject to the prohibition on provider donations and taxes (1903(w)(1)(A)), but recognized that other government entities may permissibly make IGTs, and thus purposely used the broader and different term "unit of government" in the IGT section of the statute (1903(w)(6)(A)). Therefore, the writer suggests, CMS is misguided in applying the statute's "unit of local government" reference to section 1903(w)(6)(A) of the Act.

68R. Response: As discussed previously, we are attempting to interpret the statutory references and definitions of governmental entities to ensure uniformity and consistency. We agree that we could have adopted different operational definitions for different purposes, but we concluded that such an approach would be confusing and was unnecessary. Our reading requires certain common qualities, one of which is taxing authority, or the ability to directly access tax funding. As noted above, we read the statutory language at section 1903(w)(7)(G) of the Act to refer to entities that have the qualities generally associated with the specifically identified listed terms. One of those qualities, which is referenced in the governmental exception at section

1903(w)(6)(A) of the Act, is taxing authority or the ability to directly access tax funding. Even though sections 1903(w)(6)(A) and 1903(w)(7)(G) of the Act are not directly binding for all statutory purposes, we sought a definition that would be consistent with readings of both statutory provisions.

69C. Comment: One commenter quoted prior CMS statements from regulations published in 2001 and 2002, wherein CMS did not take regulatory action with respect to intergovernmental transfers, suggesting that CMS is now not only contradicting itself but also imposing restrictions on IGTs that Congress never intended.

69R. Response: The provisions of this regulation continue to protect the use of IGTs; the regulation merely sets out in clear terms the circumstances in which the provisions of section 1903(w)(6)(A) of the Act provides that an IGT from a governmentally-operated health care provider would not trigger review as a provider tax or donation. This regulation supersedes prior CMS statements on the issue and would provide important clarity in an area that has been the subject of much confusion. Furthermore, we disagree with the commenters' contention concerning congressional intent. In section 1903(w)(6)(A) of the Act, the Medicaid statute clearly protects only IGTs or certified public expenditures that are "derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred or certified by units of government within a state." To the extent that the provisions of this regulation impose restrictions on IGTs, such restrictions are consistent with this statutory provision and serve to clarify and give meaning to the statutory language.

70C. Comment: Many commenters stated that the provisions of the regulation require sources of all IGTs must be state or local taxes and that such a restriction on IGT funding is inconsistent with the Medicaid statute. These commenters noted that governments derive their funding from a variety of sources, not just tax proceeds, and such funds are no less governmental due to their source. Some of the non-tax sources of governmental revenue that were cited include patient care revenues from other third party payers, penalties, fees, grants, earned interest, library fines, restaurant inspection fees, vending machine sales, traffic fines, unreserved general fund balances, sale or lease of public resources, legal settlements and judgments, revenue from bond issuances, tobacco settlement funds, and gifts. These commenters suggested that

CMS should allow all public funding, regardless of source, to be used as the non-Federal share of Medicaid expenditures. A number of commenters cited Section 1902(a)(2) of the Act, which permits up to 60 percent of the non-Federal share to come from "local sources," without further restriction. This citation was given to counter a perceived CMS position that the provisions of the regulation require that the sources of all IGTs must be state or local taxes. Several other commenters suggested that CMS should allow all public funding, regardless of source, to be used as the non-Federal share of Medicaid expenditures, and that CMS has no statutory authority to limit the sources of transferred funds to tax revenue only.

70R. Response: Provisions regarding non-federal share financing were established in recognition of the Federal Medicaid statute at section 1903(w), which places severe statutory restriction on States' receipt of funds from health care providers to fund Medicaid payments. (see Public Law 102-234, section 2, *Prohibition on Use of Voluntary Contributions*, and Limitation on the Use of Provider-Specific Taxes to Obtain Financial Participation under Medicaid."). Under Public Law 102-234, the Congress included an exception to a general prohibition on the receipt of voluntary contributions from health care providers by allowing units of government, including governmentally-operated health care providers, to participate in financing of the non-Federal share via intergovernmental transfers and certified public expenditures. Specifically, section 1903(w)(6)(A) of the Social Security Act states:

Notwithstanding the provisions of this subsection, the Secretary may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this title, regardless of whether the unit of government is also a health care provider, except as provided in section 1902(a)(2), unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share under this section.

This statutory language allows funding derived from State or local taxes to be used for purposes of financing the non-Federal share of Medicaid payments. CMS recognizes that units of government that are not health care providers may collect revenue from a variety of sources (including fees, grants, earned interest, fines, sale or

lease of public resources, legal settlements and judgments, revenue from bond issuances, tobacco settlement funds) that are ultimately deposited into the government's general fund, which is used to finance the government's operations. We find such general fund revenues to be acceptable sources of financing the non-Federal share of Medicaid payments, as long as the general fund does not derive any of its revenue from impermissible sources (such as, "recycled" Medicaid payments, Federal grants precluded from use as State match, impermissible taxes, non-bona fide provider-related donations).

Governmentally-operated health care providers may maintain accounts separate from the general fund to finance the operations of the governmentally-operated health care provider. The governmentally-operated health care provider's account may include patient care revenues from other third party payers and other revenues similar to those listed above. Such revenues would also be acceptable sources of financing the non-Federal share of Medicaid payments, as long as the governmentally-operated health care provider's operating account does not derive any of its revenue from impermissible sources (such as, "recycled" Medicaid payments, Federal grants precluded from use as State match, impermissible taxes, non-bona fide provider-related donations).

As previously explained, governmentally-operated health care providers are not required to demonstrate that funds transferred are, in fact, tax revenues. A governmentally-operated health care provider is always able to access tax revenue, a characteristic of which reflects a health care provider's governmental status, and helps to define eligibility to participate in IGTs.

71C. Comment: A number of commenters asked CMS to clarify that intragovernmental transfers (transfers within a unit of government, such as a transfer from the State's mental health agency to the State Medicaid Agency) are not considered "intergovernmental transfers" for purposes of § 433.51.

71R. Response: Neither the Medicaid statute nor Federal regulation uses the term "intragovernmental transfer." For purposes of the Medicaid statute, a transfer of funding between any governmental entity within a State to the State Medicaid Agency is considered an intergovernmental transfer, irrespective of whether or not those entities are operated by the same unit of government (e.g., a State Department of Mental Health

transferring funds to a State Medicaid agency).

72C. Comment: One commenter recommended that CMS permit IGTs from units of government in other States (like governmentally operated border hospitals) to be considered permissible sources of financing the non-Federal share. The commenter argues that it is illogical that States are required to reimburse such out-of-state health care providers the same as in-state health care providers but cannot rely upon those out-of-state governmental health care providers for assistance with financing.

72R. Response: A governmentally-operated health care provider in one State is not under the governmental control of another State. Therefore, funds transferred by a governmentally-operated health care provider to a State Medicaid Agency in another State are considered provider-related donations. See Georgia Department of Community Health, DAB No. 1973 (2005).

73C. Comment: One commenter asked that the regulation explicitly state the local dollars will be considered valid IGTs if they originated at a unit of government, regardless of the entity that actually transfers the payment to the State. This commenter specifically mentions Medicaid Behavioral Health Plans, which receive payments from local governments and, in turn, forward those payments to the State Medicaid Agency as matching funds to pay for the non-Federal share. Another commenter requested that CMS allow any payments made to health care providers by governmental entities responsible for providing health care services to be used as IGTs.

73R. Response: Any time state or local tax dollars are used to make "payments" for services to health care providers, such payments are considered revenues of the health care provider and are no longer considered State or local tax dollars. Governmentally-operated health care providers may participate in intergovernmental transfers (IGTs) and use operating revenues to make such transfers. Non-governmentally-operated health care providers cannot participate in IGTs, and contributions of their operating revenue constitutes a provider-related donation. A Medicaid payment that can be linked to a provider-related donation renders such donation non-bona fide and thus an impermissible source of the non-Federal share.

74C. Comment: Several commenters noted past abuses involving intergovernmental transfers and expressed support for CMS efforts to end such abusive practices. However,

the commenters contended that the provisions of the regulation reach too far, beyond the termination of abusive IGTs, and have the impact of drawing millions of Federal funds away from health care providers and States that were not "recycling" Federal funds through IGTs.

74R. Response: The provision of the regulation that addresses a unit of government codifies the existing statutory criteria for a unit of government that can participate in financing the non-federal share of Medicaid expenditures. This codification of existing Federal statute was established in an effort to assist States in identifying the universe of governmentally-operated health care providers that could receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and clarifies which types of health care providers can participate in financing of the non-Federal share of Medicaid payments.

A health care provider that is not recognized as governmentally-operated under the Federal statutory and regulatory criteria would not be affected by the cost limitation on Medicaid payments. Therefore, such health care providers may receive Medicaid payments up to the applicable regulatory upper payment limit, to the extent States use permissible sources of non-federal share funding to make such payments. Furthermore, a health care provider that is not recognized as governmentally-operated by a State when applying the statutory criteria would not be subjected to non-federal share obligations under a State's Medicaid program. For any health care provider previously obligated to fund certain Medicaid payments, total Medicaid revenues to that facility can be sustained through alternative permissible sources of non-federal share funding. Health care providers determined to be ineligible to participate in the State financing of Medicaid payments can actually realize greater net Medicaid revenues if State or local government funding sources are utilized to fund non-federal share obligations to Medicaid payments that may have been historically financed by non-governmentally-operated health care providers.

75C. Comment: One commenter requested that CMS allow the use of IGTs to finance payments for categorical Medicaid payments. The commenter also requested that CMS confirm the use of IGTs to finance Medicaid payments approved in the State plan.

75R. Response: Intergovernmental transfers, consistent with statutory and

regulatory provisions, are an allowable source of Medicaid financing for any payment authorized under the Medicaid State plan.

76C. Comment: One commenter noted that it will be administratively burdensome to have all school districts within the state demonstrate that their intergovernmental transfers are paid from tax revenues. In addition, the commenter states that the process of collecting the State match from each school district before the district's claims are paid cannot be implemented without significant changes to the State's MMIS, which would be a massive undertaking.

76R. Response: CMS recognizes that units of government may collect revenue from a variety of sources (including fees, grants, earned interest, fines, sale or lease of public resources, legal settlements and judgments, revenue from bond issuances, tobacco settlement funds) that are ultimately deposited into the government's general fund, which is used to finance the government's operations. Generally, we find such revenues to be acceptable sources of financing the non-Federal share of Medicaid payments, as long as the unit of government does not attempt to finance Medicaid payments using revenue from impermissible sources (such as, "recycled" Medicaid payments, Federal grants precluded from use as State match, impermissible taxes, non-bona fide provider-related donations).

Funds may be transferred by units of government that are not health care providers to the State Medicaid agency either before or after the payment to the provider is made, provided that the requirements of § 447.207 are satisfied. A principal concern in evaluating compliance with § 447.207 will be the determination as to whether or not the funding obligation to the non-Federal share of Medicaid payments has been fully satisfied by the State or local government. IGTs from a local or other State Agency unit of government's general fund may be considered a permissible source of the non-Federal share of Medicaid payments when: (1) Monies from the general fund are transferred to the State Medicaid agency; (2) such monies are used to fund the non-Federal share of Medicaid payments to the governmentally-operated health care provider; (3) the health care provider deposits such Medicaid payments into its operating account (a governmentally-operated health care provider will always maintain an operating account that is separate from the general fund managed by the corresponding unit of

government); and (4) no portion of Medicaid payments deposited into the operating account is sent back to the general fund to replenish the loss of funds resulting from the IGT. These conditions would demonstrate that the burden of the non-Federal share of the Medicaid payment was satisfied by the local government or other State Agency.

Governmentally-operated health care providers may *only* transfer prior to receiving a Medicaid payment to ensure funds were actually available to the governmentally-operated health care provider to satisfy the non-Federal share obligation to the Medicaid payment it receives. To permit non-Federal share transfer obligations made by a governmentally-operated health care provider after the Medicaid payment is received would allow a Medicaid Agency to “loan” the non-Federal share obligation to the governmentally-operated health care provider. Upon receipt of the Medicaid payment, the governmentally-operated health care provider would be able to “return” the “loan” to the Medicaid Agency via its non-Federal share transfer obligation. The end result of such a post-payment IGT would be that a State is able to direct Federal matching funds into a governmentally-operated health care provider without any unit of government satisfying the non-Federal share obligation. The State could then use the same funds to make additional Medicaid payments and attract new Federal matching funds.

2. Certified Public Expenditures (CPE)

77C. Comment: Two commenters expressed that “only hospitals that meet the new definition of public hospital and are reimbursed on a cost basis would be eligible to use CPEs to help states fund their programs,” claiming that this would result in fewer dollars available to pay for care for the nation’s most vulnerable people.

77R. Response: There is no new definition of a public hospital under the provisions of this regulation. The Federal Medicaid statute does not include a term nor discussion that references a “public” health care provider for purposes of State Medicaid financing. The Federal Medicaid statute at section 1903(w) of the Act places severe statutory restriction on States’ receipt of funds from health care providers to fund Medicaid payments. This section of the statute includes an exception to the general prohibition on the receipt of voluntary contributions from health care providers by allowing units of government, including governmentally-operated health care

providers, to participate in the certified public expenditure process.

The provision of the regulation regarding certified public expenditures is a clarification to existing Federal statutory instruction at 1903(w)(6)(A). Consistent with this explicit statutory instruction, a certified public expenditure means that State or local tax dollars were used to satisfy the cost of serving Medicaid individuals (and the cost of providing inpatient and outpatient hospital services to the uninsured for purposes of Medicaid DSH payments).

Under the provisions of the regulation, all health care providers maintain some level of ability to participate in the certified public expenditure (CPE) process. Governmentally-operated health care providers are able to certify their costs without having to demonstrate that State or local tax dollars were used to provide Medicaid services. This policy is based on the fact that governmentally-operated health care providers always have the ability to directly access State and/or local tax dollars as an integral component of State or local government. Governmentally-operated health care providers need only produce cost documentation via national, standardized cost reporting to receive Federal matching funds as a percentage of such allowable Medicaid (and DSH) costs.

Non-governmentally-operated health care providers may also produce cost documentation to support the costs of providing services to Medicaid individuals (and certain uninsured costs for purposes of Medicaid DSH payments). However, in order to maintain consistency with the Federal statutory instruction governing CPEs, a State or local government must actually certify that tax dollars were provided to the non-governmentally-operated health care provider. Federal matching funds will be available as a percentage of the allowable Medicaid costs incurred by the non-governmentally-operated health care provider up to the level of such State and/or local tax support.

78C. Comment: A number of commenters opined that when a public entity is contractually obligated to reimburse private faculty physicians, which are in turn obligated to provide services to the public entity’s patients, those public payments should qualify as CPEs. However, the commenters stated a belief that it was unclear what, if any, expenditures by public entities qualify as CPEs, and that the required documentation and approval process for such CPEs appear arbitrary. The commenters thus recommended that

CMS should defer to the services and payment methodologies approved in the Medicaid State Plan and that however the public entity pays the health care provider should qualify as a CPE.

78R. Response: The Federal Medicaid statute does not include a term nor discussion that references a “public” health care provider for purposes of State Medicaid financing. The Federal Medicaid statute at section 1903(w) places severe statutory restriction on States’ receipt of funds from health care providers to fund Medicaid payments. This section of the statute includes an exception to the general prohibition on the receipt of voluntary contributions from health care providers by allowing units of government, including governmentally-operated health care providers, to participate in the certified public expenditure process.

The options available to a unit of government for purposes of compliance with the CPE provisions of the regulation depend on whether or not the unit of government is the provider of the service. A governmental entity that is not a health care provider and that pays for a covered Medicaid service furnished by a health care provider (whether governmentally-operated or not) can certify its actual expenditure in an amount equal to the Medicaid State plan rate (or the approved provisions of a waiver or demonstration, if applicable) for the service. In this case, the CPE would represent the expenditure by the governmental unit to the service provider on behalf of the State Medicaid agency (and would not necessarily be related to the actual cost to the health care provider for providing the service).

If the unit of government is the health care provider, then it may generate a CPE from its own costs if the Medicaid State plan (or the approved provisions of a waiver or demonstration, if applicable) contains cost reimbursement methodology. If this is the case, the governmentally-operated health care provider may certify the costs that it actually incurred that would be reimbursed under the Medicaid State plan. If the Medicaid State plan does not contain an actual cost reimbursement methodology, then the governmentally-operated health care provider may not use a CPE because it would not be able to establish an expenditure under the authority of the Medicaid State plan. This is consistent with the requirements of 45 CFR 95.13, where there was no cost incurred that would be recognized under the Medicaid State plan. A governmentally-operated health care provider cannot establish an expenditure under the Medicaid State

plan by asserting that it would pay itself the Medicaid State plan rate.

79C. Comment: Several commenters stated that they thought the burden associated with documenting certified public expenditures under the proposed regulation is excessive. This view was emphasized for expenditures eligible for FFP which are not currently subject to cost reporting.

79R. Response: The documentation requirements for CPEs are necessary and appropriate. We have examined CPE arrangements in many States that include various service categories within the Medicaid program. We note that currently there are a variety of practices used by State and local governments in submitting a CPE as the basis of matching FFP for the provision of Medicaid services with little to no State oversight. Different practices often make it difficult to (1) Align claimed expenditures with specific services covered under the State plan or identifiable administrative activities; (2) properly identify the actual cost to the governmental entity of providing services to Medicaid individuals or performing administrative activities; and (3) audit and review Medicaid claims to ensure that Medicaid payments are appropriately made.

Further, we found that in many instances State Medicaid agencies do not currently review the CPE submitted by another unit of government to confirm that the CPE properly reflects the actual expenditure by the unit of government for providing Medicaid services or performing administrative activities. These circumstances do not serve to advance or promote the fiscal integrity of the Medicaid program. By establishing minimum standards for the documentation supporting CPEs, we anticipate that the provisions of this regulation would serve to enhance the fiscal integrity of CPE practices within the Medicaid program.

The provision of the regulation regarding certified public expenditures is also a clarification to existing Federal statutory instruction at 1903(w)(6)(A). Consistent with this explicit statutory instruction, a certified public expenditure means that State or local tax dollars were used to satisfy the cost of serving Medicaid individuals (and the cost of providing inpatient and outpatient hospital services to the uninsured for purposes of Medicaid DSH payments). It is not clear what method other than identification of the cost of providing services to Medicaid individuals (and certain uninsured costs for purposes of Medicaid DSH payments) would be appropriate to make Federal matching funds available

for purposes of health care providers certifying public expenditures.

The cost documentation process is necessary to demonstrate the services that have been provided to Medicaid individuals. The burden associated with cost reporting for hospitals and nursing facilities should be minimal because nationally recognized cost reports are already utilized by these health care providers. For non-hospital and non-nursing facility services in Medicaid, we note that a nationally recognized, standard cost report does not exist. Because of this, we are publishing a standardized cost reporting form that can be used to document the costs of providing non-institutional services to Medicaid individuals. The purpose of this standardized form is to minimize the burden associated with the review of expenditures for non-institutional services provided to Medicaid individuals.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS Web site at <http://www.cms.hhs.gov/MedicaidGenInfo/Downloads/CostLimitsRegulationCMS-2258-FC.zip> that specifically addresses methods under which institutional and non-institutional Medicaid costs will be determined for purposes of CPEs.

80C. Comment: One commenter asked if the State's obligation to demonstrate that a certifying entity is a unit of government, is a one-time obligation, or must the State so certify to support each and every CPE.

80R. Response: Section 433.51(b)(2) requires that "certified public expenditures must be * * * supported by auditable documentation * * * that explains whether the contributing unit of government is within the scope of the exception to limitations on provider-related taxes and donations." Therefore, the unit of government must attest to its governmental status and produce the necessary cost documentation for each CPE submitted to the Medicaid Agency, on which Federal matching funds would be claimed. States will have governmentally-operated health care provider determinations on file to verify the governmental status of the certifying health care provider.

A governmental entity that is not a health care provider which pays for a covered Medicaid service furnished by a health care provider (whether governmentally-operated or not) can certify its actual expenditure, in an amount equal to the Medicaid State plan rate (or the approved provisions of a waiver or demonstration, if applicable) for the service. In this case, the CPE would represent the expenditure by the

governmental unit to the service provider (and would not necessarily be related to the actual cost to the health care provider for providing the service) on behalf of the State Medicaid agency. The governmental entity that is not a health care provider must submit a certification statement to the State Medicaid agency attesting that the total computable amount of its claimed expenditures are eligible for FFP, in accordance with the Medicaid State plan and the revised provisions of § 433.51. That certification must be submitted and used as the basis for a State claim for FFP within 2 years from the date of the expenditure.

81C. Comment: One commenter expressed concern about a statement in the preamble that "certification must be submitted and used as the basis for a State claim for FFP within two years from the date of expenditure," claiming that the Medicaid statute does not presently impose such a two-year limit.

81R. Response: A CPE means that State or local tax dollars were used to satisfy the costs of providing services to Medicaid individuals. Federal matching funds are available as a percentage of such costs, incurred or rates paid under the authority of the Medicaid State plan, in recognition that a unit of government has satisfied the Medicaid payment in full (that is, both State and Federal share) for services provided to Medicaid individuals.

The statement within the preamble of the regulation was included to ensure compliance with section 1132(a)(2) of the Act and 45 CFR 95.7 which require that any claim by a State for payment with respect to an expenditure made be filed within the 2 year period.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS website that specifically addresses methods under which institutional and non-institutional Medicaid costs will be determined for purposes of CPEs.

82C. Comment: A number of commenters stated that the administrative burden would be placed on the State if it is required to periodically audit and review certified public expenditures as stipulated in the proposed regulation.

82R. Response: The provision of the regulation regarding certified public expenditures clarifies and implements the statutory instruction at 1903(w)(6)(A). Consistent with this explicit statutory instruction, a certified public expenditure means that State or local tax dollars were used to satisfy the cost of serving Medicaid individuals (and the cost of providing inpatient and outpatient hospital services to the

uninsured for purposes of Medicaid DSH payments). CMS believes States would support the establishment of periodic audit and review to ensure the fiscal integrity of CPE practices within their Medicaid programs.

For hospital and nursing facility services, nationally recognized cost reports are already available and are already audited by the Medicare fiscal intermediary. Therefore, the State's burden to review these cost reports should be minimal. For non-hospital and non-nursing facility services in Medicaid, we note that a nationally recognized, standard cost report does not exist. Because of this, we are publishing a standardized cost reporting form that can be used to document the costs of providing non-institutional services to Medicaid individuals. The purpose of this standardized form is to minimize the burden associated with the review of expenditures for non-institutional services.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS website that specifically addresses the methods under which institutional and non-institutional costs will be determined for purposes of CPEs.

83C. Comment: One commenter noted the new mandates required of States and local governments with respect to CPEs and expressed the opinion that the Federal government should fund 100 percent of all costs associated with these mandates.

83R. Response: Each State is responsible for the proper and efficient administration of its Medicaid program. Expenses incurred for administration of the Medicaid program are eligible for Federal matching funds at the regular 50 percent administrative matching rate.

84C. Comment: Numerous commenters recommended that CMS permit the use of CPEs for health care providers regardless of the payment methodology provided under the State plan. These commenters indicated that health care providers will incur costs associated with providing care to Medicaid individuals whether they are paid on a cost basis or not. An example was provided. If a health care provider incurs \$100 in cost in providing care to a Medicaid individual, but the payment methodology is a prospective one that results in a \$90 payment, the health care provider could still certify that it incurred \$100 in costs in connection with care for that individual. Because the payment is limited to \$90, however, only \$90 of the certification would be eligible for federal match. These commenters also argue that when payment is not based on a cost

methodology, CMS should allow health care providers to certify costs associated with care to Medicaid individuals not to exceed the amount of payments provided under the State plan methodology. Other commenters stipulated that once CMS has approved a payment methodology in the State's plan, demonstration of the expenditure, other than the usual claim for the Medicaid service provided, should not be necessary.

84R. Response: Medicaid State plan rate methodologies are incompatible with a governmentally-operated health care provider's use of certified public expenditures. The Medicaid State plan is the vehicle for determining expenditures that are eligible for Federal matching funds. Section 433.51 states that the CPE must, itself, be eligible for FFP. If the State plan does not contain an actual cost reimbursement methodology, then the governmentally-operated health care provider may not use a CPE because it would not be able to establish an expenditure under the Medicaid State plan, consistent with the requirements of 45 CFR 95.13, where there was no cost incurred that would be recognized under the Medicaid State plan. A health care provider cannot establish an expenditure under the Medicaid State plan by asserting that it would pay itself the Medicaid State plan rate. A cost reimbursement methodology specified within the Medicaid State plan would allow for reimbursement as a percentage of the governmentally-operated health care provider's cost of services to Medicaid individuals.

85C. Comment: One commenter is particularly concerned that the proposed regulation would require proof of actual Medicaid expenditures in order to CPE. The commenter stipulated that the Medicaid statute does not specifically limit the use of certifications of expenditures to Medicaid costs, but to expenditures under the Medicaid statute, which also include DSH payments. Therefore, CPEs could only be used to fund Medicaid expenditures that are stated on a cost report and would prevent governmental providers from using CPEs for DSH as well as for other costs of caring for Medicaid individuals not reflected in cost reporting methodologies.

85R. Response: The provisions of the regulation do not prohibit a State from utilizing CPEs for purposes of DSH payments, nor for non-institutional services provided to Medicaid individuals. Only certain hospitals within a State are eligible to receive DSH payments. DSH payments are limited to each qualifying hospital's uncompensated care costs associated

with providing inpatient and outpatient hospital services to Medicaid individuals and to individuals with no source of third party coverage for the inpatient and outpatient hospital services they received. These costs would be derived from the Medicare 2552-96 hospital cost report, a nationally recognized cost report which all hospitals utilize. To determine the costs eligible for purposes of CPE, States and governmentally-operated hospitals would utilize audited hospital financial statements and information from the Medicaid Management Information System (MMIS) to properly allocate the eligible Medicaid and uninsured costs from the hospital cost report.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS website that specifically addresses the methods under which institutional and non-institutional costs will be determined for purposes of CPEs.

86C. Comment: One commenter recommended that CMS modify the proposed regulation to allow a payment and corresponding CPE based on a current, inflated cost report without any reconciliation process and that any changes to costs will be captured in future cost reports.

86R. Response: The CPE process inherently requires a reconciliation of the certifying unit of government's actual costs of providing services to Medicaid individuals. Under a Medicaid cost reimbursement payment system funded by CPEs, States may utilize most recently filed cost reports to develop interim Medicaid payment rates and may trend these interim rates by an applicable health care-related index. Interim reconciliations must be performed by reconciling the interim Medicaid payment rates to the filed cost report for the spending year in which interim payment rates were made. Final reconciliation must also be performed by reconciling the interim payments and interim adjustments to the finalized cost report for the spending year in which interim payment rates were made.

87C. Comment: One commenter noted that they currently offset Medicaid expenditures using CPEs through the UPL financing to outpatient hospitals, nursing facilities and home health agencies. The commenter specifically requested that this offset continue to be allowed, but only when applied to Medicaid expenditures.

87R. Response: It is not clear what "offsetting Medicaid expenditures using CPEs through UPL financing" means. A CPE means that State or local tax dollars were used to satisfy the cost of serving Medicaid individuals. Historically,

Medicaid upper payment limits (UPLs) for governmentally health care providers were not limited to the cost of providing services to Medicaid individuals and often "UPL payments" were made in excess of Medicaid costs. However, UPL payments that were made in excess of Medicaid costs could not be funded through CPEs based on the statutory definition, which limits the CPE funding source to allowable Medicaid (and DSH) cost.

Under the provisions of this regulation, the UPL for governmentally-operated health care providers is Medicaid cost. Any revenues received by a governmentally-operated health care provider under the authority of the Medicaid State plan must be offset prior to determining if any uncompensated Medicaid costs exist that would be eligible under the CPE funding source.

88C. Comment: One commenter asked what the CPE requirements are when a unit of government makes a payment to a health care provider not operated by a unit of government.

88R. Response: A governmental entity that is not a health care provider which pays for a covered Medicaid service furnished by a health care provider (whether governmentally-operated or not) can certify its actual expenditure, in an amount equal to the Medicaid State plan rate (or the approved provisions of a waiver or demonstration, if applicable) for the service. In this case, the CPE would represent the expenditure by the governmental unit to the service provider (and would not necessarily be related to the actual cost to the health care provider for providing the service). The governmental entity that is not a health care provider must submit a certification statement to the State Medicaid agency attesting that the total computable amount of its claimed expenditures are eligible for FFP, in accordance with the Medicaid State plan and the revised provisions of § 433.51. That certification must be submitted and used as the basis for a State claim for FFP within 2 years of the expenditure consistent with filing requirements at section 1132(a)(2) of the Act and 45 CFR 95.7.

89C. Comment: A few commenters asked whether it would be possible for a unit of government that pays a private university for physician services to certify those funds under Medicaid, if the services provided by those physicians are approved under the State plan amendment, and would it be possible for State universities to certify as an expenditure the portion of a faculty physicians' salary spent treating Medicaid individuals.

89R. Response: The first part of the question relates to a unit of government making payments to a private health care provider. A governmental entity that is not a health care provider which pays for a covered Medicaid service furnished by a health care provider (whether governmental or not) can certify its actual expenditure, in an amount equal to the Medicaid State plan rate (or the approved provisions of a waiver or demonstration, if applicable) for the service. In this case, the CPE would represent the expenditure by the governmental unit to the service provider (and would not necessarily be related to the actual cost to the health care provider for providing the service).

The second part of the question raises the possibility of a State university certifying the expenditures for the portion of a faculty physician's salary associated with the delivery of clinical services to Medicaid individuals. CMS notes that the relationships between a faculty physician's clinical practice and the State university vary on a case by case basis. For example, some State universities require faculty physicians to provide clinical services in private faculty practice groups, while other State universities consider faculty physicians employees of the university when providing clinical care. In light of these arrangements, the response to the second part of this question can only be answered based on whether or not the State university is considered a unit of government (State university teaching hospitals are recognized as units of government in the statute and regulation) and whether or not the faculty physician is actually considered an integral part of that unit of government when delivering clinical care. If the State university is a unit of government and is the health care provider of the physician services, then the State university teaching hospital may generate a CPE from its own costs if the Medicaid State plan (or the approved provisions of a waiver or demonstration, if applicable) contains an actual cost reimbursement methodology. If this is the case, the State university may certify the costs that it actually incurred that would be paid under the Medicaid State plan. If the State plan does not contain an actual cost reimbursement methodology, then the State university may not use a CPE because it would not be able to establish an expenditure under the plan, consistent with the requirements of 45 CFR 95.13.

90C. Comment: One commenter noted that the preamble to the regulation indicated that a claimable expenditure must involve a shift of funds (either by

an actual transfer or a debit in the accounting records of the contributing unit of government and a credit in the records of a provider of medical services) and cannot merely be a refund or reduction in accounts receivable. The commenter stated that this restriction is unclear and appears unnecessary. The commenter described that government health care providers are directly funded by legislative appropriations and/or recurring revenues, then these health care providers certify allowable Medicaid expenditures through the submission of claims for covered services. The commenter went on to state that these claims are valued at the Medicaid reimbursement rate in the approved State plan and support the State's claim for FFP. Therefore, the commenter argued, there is no need for further accounting transactions by the health care provider or governmental entity.

90R. Response: According to 45 CFR 95.13(b), for expenditures for services under the Medicaid program, an expenditure is made "in the quarter in which any State agency made a payment to the service provider." There is an alternate rule for administration or training expenditures at 45 CFR 95.13(d), under which the expenditure is made in the quarter to which the costs were allocated or, for non-cash expenditures, in the quarter in which "the expenditure was recorded in the accounting records of any State agency in accordance with generally accepted accounting principles." The State Medicaid Manual, at section 2560.4.G.1.a(1), indicates that "the expenditure is made when it is paid or recorded, whichever is earlier, by any State agency." These authorities clearly indicate that there must be a record of an actual expenditure, either through cash or a transfer of funds in accounting records, in order for the expenditure to be considered eligible for Federal Financial Participation (FFP).

Moreover, as defined at 45 CFR 95.13(b), a Medicaid expenditure occurs when any State agency makes a payment to the service provider. Pursuant to § 433.10(a), the expenditure must be a total computable payment, including both Federal and State share, which forms the basis of the claim to draw down the corresponding FFP in accordance with the Federal Medical Assistance Percentage (FMAP) rate. These provisions clearly demonstrate that a unit of government cannot merely submit claims that would be considered somehow equivalent to certified public expenditures in order for the State to receive Federal matching funds.

The options available to a unit of government for purposes of compliance with the CPE provisions of the regulation depend on whether or not the unit of government is the provider of the service. A governmental entity that is not a health care provider and that pays for a covered Medicaid service furnished by a health care provider (whether governmentally-operated or not) can certify its actual expenditure in an amount equal to the Medicaid State plan rate (or the approved provisions of a waiver or demonstration, if applicable) for the service. In this case, the CPE would represent the expenditure by the governmental unit to the service provider on behalf of the State Medicaid agency (and would not necessarily be related to the actual cost to the health care provider for providing the service).

If the unit of government is the health care provider, then it may generate a CPE from its own costs if the Medicaid State plan (or the approved provisions of a waiver or demonstration, if applicable) contains a cost reimbursement methodology. If this is the case, the governmentally-operated health care provider may certify the costs that it actually incurred that would be reimbursed under the Medicaid State plan. If the Medicaid State plan does not contain an actual cost reimbursement methodology, then the governmentally-operated health care provider may not use a CPE because it would not be able to establish an expenditure under the authority of the Medicaid State plan. This is consistent with the requirements of 45 CFR 95.13, where there was no cost incurred that would be recognized under the Medicaid State plan. A governmentally-operated health care provider cannot establish an expenditure under the Medicaid State plan by asserting that it would pay itself the Medicaid State plan rate.

91C. Comment: A few commenters disagreed that a CPE equals 100 percent of a total computable Medicaid expenditure. The commenter stated that a certifying governmental unit may fund all or part of the cost within the health care provider. For example, the commenter noted that a governmental health care provider or entity may be responsible for funding the cost of prospective rate increases while the State Medicaid agency continues payments at the base period rate.

91R. Response: Statutory and regulatory provisions require that an expenditure must be a total computable payment, including both Federal and State share, in order to form the basis of a State's claim to draw down the corresponding FFP in accordance with

the Federal Medical Assistance Percentage (FMAP) rate. It is possible that a State uses two different funding sources for two different payments under different reimbursement methodologies in the Medicaid State Plan. For instance, the State Medicaid agency may use general fund appropriations to finance the non-Federal share of base Medicaid payments to a governmentally-operated health care provider. Under a separate reimbursement methodology in the approved Medicaid State Plan, the governmentally-operated health care provider may be eligible to receive reimbursement for its Medicaid costs in excess of base Medicaid payments received. Under the latter reimbursement methodology, the governmentally-operated health care provider could certify the uncompensated portion of its Medicaid costs (that is, total Medicaid costs minus total Medicaid revenues) and Federal financial participation would be available as a percentage of its total computable costs less revenues received as a CPE eligible for additional FFP.

The options available to a unit of government for purposes of compliance with the CPE provisions of the regulation depend on whether or not the unit of government is the provider of the service. A governmental entity that is not a health care provider and that pays for a covered Medicaid service furnished by a health care provider (whether governmentally-operated or not) can certify its actual expenditure in an amount equal to the Medicaid State plan rate (or the approved provisions of a waiver or demonstration, if applicable) for the service. In this case, the CPE would represent the expenditure by the governmental unit to the service provider on behalf of the State Medicaid agency (and would not necessarily be related to the actual cost to the health care provider for providing the service).

If the unit of government is the health care provider, then it may generate a CPE from its own costs if the Medicaid State plan (or the approved provisions of a waiver or demonstration, if applicable) contains a cost reimbursement methodology. If this is the case, the governmentally-operated health care provider may certify the costs that it actually incurred that would be reimbursed under the Medicaid State plan. If the Medicaid State plan does not contain an actual cost reimbursement methodology, then the governmentally-operated health care provider may not use a CPE because it would not be able to establish an expenditure under the authority of the Medicaid State plan. This is consistent

with the requirements of 45 CFR 95.13, where there was no cost incurred that would be recognized under the Medicaid State plan. A governmentally-operated health care provider cannot establish an expenditure under the Medicaid State plan by asserting that it would pay itself the Medicaid State plan rate.

92C. Comment: One commenter argued that the requirement of a CPE in the school setting is unnecessary because the majority of Medicaid costs in schools are funded "up front" using local tax dollars to cover the cost of services on a per child basis. Therefore, school districts are not making money on Medicaid reimbursements relative to the outlay of actual costs.

92R. Response: The provision of the regulation regarding certified public expenditures is a clarification to existing Federal statutory instruction at 1903(w)(6)(A). Consistent with this explicit statutory instruction, a certified public expenditure means that State or local tax dollars were used to satisfy the cost of serving Medicaid individuals (and the cost of providing inpatient and outpatient hospital services to the uninsured for purposes of Medicaid DSH payments). The cost documentation process is necessary to demonstrate that services have been provided to Medicaid individuals. Federal financial participation is available as a percentage of the total allowable costs. It is not clear what method other than identification of the cost of providing services to Medicaid individuals would be appropriate to make Federal matching funds available for purposes of health care providers certifying public expenditures.

D. Cost Limit for Providers Operated by Units of Government (§ 447.206)

93C. Comment: Numerous commenters argued strongly that CMS lacks the statutory authority to impose a provider specific cost limit. The commenters did not believe that CMS has the authority to change the existing upper payment limit (UPL) regulations in order to implement this new limit. These commenters believe that the NPRM represents a significant and unjustified departure from CMS' earlier understandings and implementation of Congressional intent and in some cases direct Congressional direction. Further, the commenters stated that Congress itself has rejected cost-based reimbursement principles and has historically through passage of various amendments to the Social Security Act (including the Boren Amendment in 1980 and its repeal in 1997) endorsed State flexibility in establishing

reimbursement rates for Medicaid providers.

Several commenters noted that the current Administration has repeatedly asked Congress to impose a cost limit on payments to public health care providers and Congress has refused to legislate this action. The commenters believe that because the Administration's request and the Congress' refusal to legislate only highlight the lack of authority for the proposed cost limit. Other commenters specified that State Medicaid programs feature a variety of targeted supplemental payments that enable States to tailor their Medicaid programs to meet the unique needs of their population. Eliminating the aggregate nature of the UPL restricts States' flexibility to address local needs through reimbursement policies and runs counter to the Administration's commitment and Congress' efforts to enhance State flexibility in managing their Medicaid program. Other commenters mentioned that the proposed cost limit is contrary to section 1902(a)(13) of the Act, which has always been interpreted to support rate setting flexibility on the part of States. One commenter questioned why CMS wants to limit States' flexibility in distributing supplemental payments.

93R. Response: We disagree with this comment. Under section 1902(a)(30)(A) of the Act, the Secretary has broad authority to set upper payment limits to ensure that Medicaid payments are "consistent with efficiency, effectiveness and quality of care." While section 1902(a)(13) of the Act no longer contains any general requirements that States pay for Medicaid institutional services on a cost, or cost-related basis, the Secretary retains the authority and responsibility to ensure that Medicaid payments are reasonable. Under the principles of Office of Management and Budget Circular A-87, management grantees and subgrantees are generally limited to reasonable costs and, as that term is defined, there is no provision for profit or other amounts above cost. A provider-specific cost limit is consistent with those principles.

Moreover, a provider-specific cost limit does not restrict State flexibility to use flexible rate systems for governmentally-operated health care providers that might, for example, encourage certain types of care or include performance incentives. All such a limit does is ensure that any such flexible rate system not result in payment in excess of actual documented costs. Such a limit is not designed to restrict the ability of the State to address local needs, since States may provide

for payment of the full cost of Medicaid services.

94C. Comment: Another commenter stated that States are in a better position to decide how best to use their Medicaid resources and this proposed regulation would increase Federal control over how States spend their Medicaid funds. Most commenters recommended that the proposed cost limit be eliminated for all types of health care providers and the current Medicare UPL for government providers be maintained. Other commenters pointed out that if a State employs a prospective payment system the prospective rate is an estimate and it will not correspond precisely to the actual costs incurred. (S.D. Dept. of Soc. Servs., DAB No. 934 (1988)). According to the commenter, the DAB held that these rates were not subject to later adjustment based on actual costs and there was no unfound profit when payments exceeded costs. The commenters noted in other decisions the DAB has distinguished the costs incurred by providers from the rates charged by providers to the State, and it has held that the latter are what form the basis of the State's claims for expenditures.

Several other commenters cited specific Departmental Appeals Board (DAB) decisions that reviewed CMS' authority to hold government health care providers to a different standard than applied to private health care providers, or to limit government health care providers to actual-cost reimbursement. The commenters cited one DAB decision (Ill. Dept. of Pub. Aid, DAB No. 467 (1983)) that stated "cost principles [do] not impose an actual cost ceiling on claims for reimbursement for medical assistance provided by state-owned [facilities]," and that a State does not impermissibly profit where its claim for FFP is based on the cost it incurs in reimbursing facilities according to a prospective class rate.

94R. Response: The cited DAB decisions were issued in the absence of rulemaking under the authority of section 1902(a)(30)(A) to ensure that provider rates are consistent with efficiency, economy and quality of care. This final rule establishes CMS authority to implement a provider-specific upper payment limit based on documented costs of furnishing covered Medicaid services to eligible individuals. A provider-specific cost limit does not restrict State flexibility to use flexible rate systems for governmentally-operated health care providers that might, for example, encourage certain types of care or include performance incentives. All

such a limit does is require that any such flexible rate system not result in payment in excess of actual documented costs. In this context, we anticipate that the provider-specific payment limits would only affect health care providers who are diverting Medicaid funds for other purposes, since that is the only circumstance in which Medicaid payments would not align with Medicaid costs. This circumstance necessarily results in a diminution of the resources available for care to Medicaid individuals.

By requiring that Medicaid payments align with Medicaid costs, we are ensuring that governmentally-operated providers use resources available through Medicaid payment rates to serve the Medicaid individuals. In other words, because anticipated Medicaid payments are an element in setting budgets, we anticipate that limiting matchable Medicaid revenues to Medicaid costs will result in the expansion of resources available to serve Medicaid individuals. With respect to the comment regarding the use of prospective rate systems, several OIG audits have found that such prospective systems have not resulted in accurate determinations of uncompensated care costs related to the disproportionate share hospital hospital-specific limits. Thus, we have elected not to provide any special rule for prospective payment systems in the new upper payment provisions.

The cited Departmental Appeals Board cases were decided under a different regulatory framework and do not limit our authority to issue new regulations to address the issue of governmentally-operated health care providers. Moreover, as States have evolved specialized payment systems to address the needs of governmentally-operated health care providers, it has become necessary to ensure the reasonableness of such payment systems using a specialized upper payment limit measure.

95C. Comment: Numerous comments disagreed with the change to the existing UPL regulations. The commenters argued that the new provider-specific limit for governmentally-operated providers will potentially create a system where Medicaid payments for private facilities could be higher than payments to governmentally-operated health care providers for the same services. These commenters urged CMS to reconsider these changes and that if health care providers must be held to an individual UPL test, the standard for determining the UPL for both private and government operated health care

providers be at least the same standard that exists currently. Other commenters recommended that the current aggregate UPLs based on Medicare payment principles for all categories of health care providers be maintained. Another commenter recommended that CMS could achieve its goals by revising the institutional and acute care Medicaid UPL calculations to no more than allowable Medicare cost for each of the three classes cited in § 447.272.

95R. Response: The provider-specific cost-based upper payment limit for governmentally-operated health care providers does not necessarily mean that governmentally-operated health care providers will receive lower rates than private health care providers. Governmentally-operated health care providers not receiving Medicaid payments in excess of costs, would not be adversely impacted by the Medicaid cost limit and would actually be eligible to receive greater Medicaid revenues, up to the cost limit. Non-governmentally-operated health care providers are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. While the provisions of the regulation do not impose a Medicaid cost limit on private health care providers, we have found during recent reviews of Medicaid reimbursement methodologies, States typically reimburse private health care providers at rates less than the cost of serving Medicaid eligible individuals.

In other words, governmentally-operated health care providers that need additional Medicaid funds to serve their Medicaid individuals will continue to have access to those funds. By requiring that Medicaid payments align with Medicaid costs, we are ensuring that governmentally-operated health providers use resources available through Medicaid payment rates to serve Medicaid individuals. It is true that the provider-specific payment limits would prevent health care providers from diverting Medicaid funds for other purposes since, in that circumstance, Medicaid payments would not align with Medicaid costs. Thus, the provider-specific limits protect Medicaid individuals by ensuring that Medicaid resources are available for their care. We anticipate that, because Medicaid revenues are an element in setting budgets, the provider-specific limit will actually result in the expansion of resources available to serve Medicaid individuals.

96C. Comment: Other commenters pointed out that in the past CMS has

expressly recognized the potential financial implications of limiting reimbursement to an individual health care provider's cost and the importance of the aggregate UPL system for preserving access to Medicaid services, particularly with regard to safety-net providers. In fact, commenters noted that CMS, in response to comments within the 2002 final UPL rule, reasoned that a State could increase payments for particular hospitals and decrease payment levels at other county and local hospitals where the low-income patient load was less heavy to ensure that funding to more intensively utilized public hospitals was not jeopardized.

96R. Response: We do not believe that the new upper payment limit will jeopardize access to Medicaid services. Indeed, the new limit will ensure that Medicaid revenues are used to support Medicaid services and are not diverted for other purposes. Consistent with the new upper payment limit, States could increase payments for particular hospitals and decrease payment levels at other county and local hospitals where the low-income patient load was less heavy to ensure that funding to more intensively utilized public hospitals was not jeopardized. Medicaid payments can continue to effectively reimburse governmentally-operated health care providers that serve high low-income patient loads, both through payment of the full cost of Medicaid services, and through disproportionate share hospital payments for uncompensated care costs. Non-governmentally-operated health care providers are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. While the provisions of the regulation do not impose a Medicaid cost limit on private health care providers, we have found during recent reviews of Medicaid reimbursement methodologies, States typically reimburse private health care providers at rates less than the cost of serving Medicaid eligible individuals.

97C. Comment: Several commenters commented that CMS has failed to explain why it is changing its position regarding the flexibility afforded to states under the current UPL program. These commenters asserted that CMS, through court documents and its 2002 UPL final rule reinforced this concept of State flexibility. They believe that is disregarding without explanation its prior approach to give States flexibility under the UPL system to address the

special needs, including the financial distress, of health care providers through supplemental payments. The commenters also stated that while CMS says that it has examined State Medicaid financing arrangements and found that "many" States are making supplemental payments to government-operated health care providers in excess of cost and that this excess payment is then used to subsidize health care operations unrelated to Medicaid, or is returned to the State as a source of revenue, CMS provides no data or factual support. Commenters noted that the proposed regulation lacked information on how many States are making such "excess payments" or any specific information regarding how health care providers are using these excess payments.

97R. Response: The preamble to the proposed regulation contained a detailed description of the concerns that led to this issuance. Specifically, we found that many States make supplemental payments to governmentally-operated health care providers that are in excess of cost. These health care providers, in turn, use that excess of Medicaid revenue over cost to subsidize health care (or other) operations that are unrelated to Medicaid, or they may return a portion of the supplemental payments in excess of cost to the States as a source of revenue. These practices effectively divert Medicaid funds to non-Medicaid purposes, or overstate the total computable expenditure that is being made. We do not think it is necessary to identify specific States which may have proposed or may have implemented such arrangements described in this regulation. We have worked with those States to eliminate such arrangements whenever we discover them. This process can be politically delicate. Listing States and questionable arrangements would not serve the public interest. The States themselves sought to protect their financing methodologies from scrutiny and kept these matters from the public eye. Since 2003, we have worked successfully with 30 States in a consistent manner to terminate certain payment arrangements that did not meet statutory requirements and worked with States to develop alternative methods of financing.

98C. Comment: A few commenters asserted that the current practice of following Medicare payment principles would not result in excessive payments to providers. Their first point is that CMS is the agency that sets Medicare payment rates. Second, the commenters pointed to CMS' 2002 final rule

implementing UPL requirements and the position that at the time Medicare payment principles resulted in reasonable payment rates and that States should retain flexibility to make enhanced payments to selected public hospitals under the aggregate limit. They noted that CMS indicated in the 2002 final rule that the UPL as implemented would assure that payments were consistent with efficiency, economy and quality of care. The commenters stated that CMS has offered no logical basis for changing these determinations or offered any explanation as to why Medicare payments are not reasonable for government health care providers.

98R. Response: Medicare rates do not distinguish between governmentally-operated and non-governmentally-operated health care providers. Furthermore, because Medicare is not a federal-state program, but is federal-only, the incentive structure for governmentally-operated health care providers is different. The Medicaid program is jointly funded by Federal, State, and local governments. We do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

The new upper payment limit for governmentally-operated health care providers will more accurately ensure efficient and effective payment levels for the full cost of Medicaid services, and will ensure that higher Medicaid payments result in improved quality of care for Medicaid individuals. Governmentally-operated health care providers would be able to receive full payment for Medicaid costs, and those with particularly high costs to provide Medicaid services would be able to receive Medicaid payments to support those costs. The provider-specific payment limits would limit health care providers from diverting excess Medicaid funds for other purposes since, in that circumstance, Medicaid payments would not align with Medicaid costs. In doing so, the provider-specific limits protect Medicaid individuals by ensuring that Medicaid resources are available for their care. We anticipate that, because Medicaid revenues are an element in setting budgets, the provider-specific limit will actually result in the expansion of resources available to serve Medicaid individuals.

99C. Comment: Several commenters stated that the provisions of the regulation violates section 705(a) of the Medicare, Medicaid and SCHIP Benefits

Improvement and Protection Act of 2000 (BIPA). The commenters specify that through BIPA, Congress provided CMS explicit instruction to adopt an aggregate Medicare-related upper payment limit (UPL). The commenters argued that the proposed cost limit deviates significantly from Congress' clear mandate that UPLs: (1) Be aggregate limits and (2) include a category of facilities that are "not State-owned or operated." Congress explicitly endorsed the establishment of a UPL based on Medicare payment principles, not costs.

99R. Response: The conditions set forth in section 705(a) of BIPA, to publish a final regulation based on the proposed regulation announced on October 5, 2000, were met by the publication of a final regulation on January 12, 2001, at 66 FR 3148. Section 705 of BIPA did not purport to remove the Secretary's authority to revise such regulation as necessary to interpret and implement the underlying statutory authority. However payments specifically permitted by section 705 of BIPA are not subject to the upper payment limits provision of the regulation.

100C. Comment: Numerous commenters disagreed with CMS' assertion that Medicaid payment in excess of cost to governmentally-operated health care providers is not consistent with the statutory principles of economy and efficiency as required by section 1902(a)(30)(A) of the Act. They asserted that if CMS' goal is to assure that Medicaid payments are consistent with economy and efficiency there is no basis for imposing a cost-based reimbursement system for government-operated health care providers. Other commenters stated that the provisions of the regulation will directly harm the ability of States to meet their statutory obligation to ensure access to care for Medicaid individuals. By prohibiting States from reimbursing a health care provider for more than costs, and restricting States from making enhanced payment to health care providers in financial need, CMS is imposing a funding restriction that will be passed on from the States to government health care providers. States, not CMS, as a result will be faced with the concerns from beneficiary advocates when access to care is compromised.

100R. Response: We disagree with the premise that it could be consistent with efficiency and economy and quality of care to provide for payment to government providers in excess of cost for Medicaid services. Under the Medicaid program, the federal

government shares with State and local governments in expenditures for medical assistance; it is not consistent with that relationship for the federal government to share in amounts in excess of the actual cost of medical assistance to State and local governments. Payment above the actual cost of medical assistance effectively diverts funding from the purposes authorized by the federal statute to be used for other, unauthorized purposes.

We also disagree with the premise that the new upper payment limit will jeopardize access to Medicaid services. Payment to government providers may cover the full cost of Medicaid services. Indeed, the new limit will ensure that Medicaid revenues are used to support Medicaid services and are not diverted for other purposes.

Under the new upper payment limit, States may continue to make increased Medicaid payments for particular governmentally-operated health care providers that have higher cost structures because of high low-income patient loads and decreased payment levels for other governmentally-operated health care providers with lower cost structures because they serve fewer low-income patient loads. These payments may provide full payment for the costs of serving Medicaid individuals. Governmentally-operated health care providers not receiving Medicaid payments in excess of costs would not be adversely impacted by the cost limit and would actually be eligible to receive greater Medicaid revenues up to the cost limit.

We recognize that some States have made excessive payments in an attempt to address burdens providers may face in furnishing non-Medicaid uncompensated care. While that goal is laudable, Medicaid funding is limited to authorized purposes. In general, those purposes are limited under section 1905(a) of the Act to covering costs of covered services for eligible individuals. The Medicaid statute expressly permits States to make disproportionate share hospital payments up to specified limits, which can address certain non-Medicaid costs. If Congress had wished to provide other mechanisms to address non-Medicaid costs, it could have done so.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

101C. Comment: One commenter stated that creating a new payment system through the rule making process instead of the legislative process does not allow for provider or public assistance. The commenter further stated that the ability to only provide comment on the rule by its nature sets up antagonistic positions instead of collaborative and creative programs.

101R. Response: The provisions of this regulation do not create a new payment system for governmentally-operated health care providers. States still have flexibility to determine the appropriate payment system. This regulation is part of the Secretary's Federal oversight responsibility to ensure that Medicaid payments are consistent with statutory requirements. The Secretary is exercising that authority through the rule making process, as required under the Administrative Procedure Act. We do not believe that process is antagonistic and we regret that the commenter sees it as such. We value the comments received and have considered them carefully. Moreover, the development of this regulation has been strongly influenced by ongoing Medicaid State plan processes, in which States have the opportunity to explain and justify their practices. In those processes, CMS tries to work collaboratively with States to develop the framework for State Medicaid programs that should embody the statutory goals of the Medicaid program. This regulation addresses payment practices that do not appear to embody the statutory goals of the program but are, instead, designed to divert Medicaid funding for use for other purposes, and that do not directly benefit Medicaid eligible individuals.

102C. Comment: A few commenters questioned how the proposed cost limit interrelates with existing UPL transition provisions. Some commenters were confused since the UPLs as modified by the proposed regulation would be individual limits, as opposed to aggregate, yet the UPL transition amounts to be phased out are still an aggregate amount. They questioned whether the excess amount to be phased out supposed to be now an individual provider-specific amount. The commenters were particularly concerned since proposed § 447.206 provides for no exception to reflect transition payments. Other commenters specifically requested that the proposed regulation incorporate these statutorily-mandated transition provisions, similar to how they are handled in the current regulations at §§ 447.272 and 447.321. Another commenter expressed dissatisfaction that those States that are

still out of compliance with the last round of changes to the UPL rules due to the transition period they received will also not have to conform to the new cost limit provisions by the September 1, 2007 effective date. The commenter was upset that those that had previous occurrences of Medicaid financing abuses will be allowed to continue transitioning out of their abusive systems, while States who have not abused Medicaid financing will have to come into immediate compliance. The commenter implored CMS to develop a fair implementation process and standardized implementation date that does not continue to reward those that are not currently in compliance.

102R. Response: The provisions of the regulation did not make any changes to existing UPL transition periods in the regulations at §§ 447.272 and 447.321, which means that any remaining UPL transition payments can continue to be made through the end of previously established transition periods. Only States that qualified for 8-year transition periods continue to make UPL transition payments. These UPL transition periods are experiencing a significant phase-down (that is, affected States have phased down to 10 percent of the excess in 2008) and all transition periods expire at the end of Federal fiscal year 2008.

States with remaining UPL transition periods will be permitted to make their UPL transition payments to health care providers as they deem appropriate. Such UPL transition payments, payment levels of which have been previously determined, should not be factored into a specific health care provider's cost limit to demonstrate compliance with the new provisions at § 447.206. We have modified the regulation at §§ 447.272(c)(3) and 447.321(c)(3) to recognize that such transition payments, as expressly authorized by section 705 of BIPA, are not subject to the Medicaid cost limit.

103C. Comment: One commenter questioned whether the new hospital-specific test is performed separately for outpatient and inpatient hospital services or in the aggregate.

103R. Response: For purposes of compliance with the cost limit on Medicaid payments, each type of service reimbursed under the authority of the Medicaid State plan must be evaluated separately, irrespective of whether a governmentally-operated health care provider delivers more than one service eligible under the Medicaid State plan. Therefore, the inpatient and outpatient hospital-specific Medicaid cost limits must be calculated separately.

104C. Comment: One commenter requested clarification of whether the cost limit applies solely to non-state government hospitals and not to private hospitals.

104R. Response: The Medicaid cost limit provision of the regulation applies to all health care providers that are operated by a unit of government as defined in § 433.50, including hospitals. Private hospitals and other private health care providers are not subject to the cost limit provision at § 447.206.

105C. Comment: Several commenters stated that the proposed regulation is in direct conflict with advances that many States have made in recent years related to health care provider reimbursements. For example, some commenters noted that many States have developed DRG reimbursement systems consistent with the Medicare so that hospitals are reimbursed by the same methodology. Because of the proposed regulation's requirements for cost reconciliation and recoupment of any payments above cost, there is the potential that significant funds would have to be recouped annually if the DRG system is maintained. In fact, States will be forced to abandon the DRG system for government operated hospitals and return to the antiquated and inefficient cost-based system. Several other commenters stated that hospital reimbursement systems have evolved following the model of the Medicare program and its use of prospective payment systems. These reimbursement systems are intended to improve efficiency by rewarding hospitals that can keep costs below the amount paid. One commenter also noted that their PPS rates should not be equated to reasonable cost, due to the cumulative difference between medical inflation and the Medicare Economic Index.

105R. Response: The Medicaid program is jointly funded by Federal, State, and local governments. We do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals. Nevertheless, as we have examined Medicaid financing arrangements across the country, we have found that many States make payments to governmentally-operated providers that are in excess of cost. These health care providers, in turn, use the excess of Medicaid revenue over cost to subsidize health care operations that are unrelated to Medicaid, or they may return a portion of such payments to the State as a source of revenue. In either case, we do not find that Medicaid payments in excess of cost to

governmentally-operated health care providers are consistent with the statutory principles of economy and efficiency as required by section 1902(a)(30)(A) of the Act, nor do we find such excessive payments to be consistent with the statutory structure requiring that the Federal government match a percentage of State or local government expenditures for the provision of services to Medicaid individuals.

In addition, the proposed regulation does not require States to abandon existing DRG based payment systems or any other existing Medicaid reimbursement rate methodologies currently utilized to pay governmentally-operated health care providers. Under the Medicaid cost limit, States may continue to use existing Medicaid reimbursement rate methodologies, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a particular governmentally-operated health care provider. States may find such cost reconciliations to be useful inasmuch as they will permit States to better analyze the reasonableness of their Medicaid reimbursement rates.

106C. Comment: Many commenters stated that Medicare rates and the ability to calculate payments in the aggregate are reasonable because Medicare rates are reasonable and are not excessive and afford States the flexibility necessary to target resources to needy areas. One commenter questioned why CMS believed Medicare rates to be excessive. Medicare's prospective payment system recognizes that some health care providers will incur costs above Medicare rates and others will incur costs that are below payment rates and achieve a level of Medicare profit. It is the opportunity for this profit incentive that helps health care providers focus on costs and pursue efficiency. Prospective payment rates are set at a rate that in the aggregate ensure a savings to the Medicare program. States should be allowed to utilize payment rate differentials to incentivize desired provider behaviors.

106R. Response: Current upper payment limits are based on aggregate estimates of Medicare payments and are therefore calculated on a hypothetical basis, since the services at issue are not actually Medicare services. Under the current UPL, many States provide supplemental UPL payments (up to the aggregate UPL, based on the aggregate estimate of Medicare payments) to fund

the non-Medicaid costs of governmentally-operated health care providers. The current limit based on a hypothetical measure is difficult to administer because the actual services at issue are Medicaid services, and yet aggregate hypothetical estimates of payments by another program create the ceiling for Medicaid payments. The Medicaid cost limit at § 447.206 is directly based on Medicaid services provided by a specific governmentally-operated health care provider; therefore, it is auditable and tangible, and it would substantially align Medicaid payments to the costs of serving Medicaid individuals.

The Medicaid program is jointly funded by Federal, State, and local governments. We do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

107C. Comment: Several commenters stated that the cost limit would prevent states from adopting payment methodologies that are economic and efficient and that promote quality and access. Therefore, the cost limit is in conflict with section 1902(a)(30)(A) of the Social Security Act. Under the proposed cost limit, States will no longer be able to meet the requirements of this statutory provision.

107R. Response: We disagree with the premise that it could be consistent with efficiency and economy and quality of care to routinely provide for payment in excess of cost for Medicaid services. The new limit will ensure that Medicaid revenues are used to support Medicaid services and are not diverted for other purposes. Under the new upper payment limit, States may continue to have increased Medicaid payments for particular governmentally-operated health care providers with high low-income patient loads and decreased payment levels at other governmentally-operated health care providers where the low-income patient load is less. These payments may provide full payment for the costs of serving Medicaid individuals. Governmentally-operated health care providers not receiving Medicaid payments in excess of costs would not be adversely impacted by the cost limit and would actually be eligible to receive greater Medicaid revenues up to the cost limit. The Medicaid cost limit provision should not force cuts to the Medicaid program, nor affect access to services. This will ensure that funding to governmentally-operated health care providers intensively used by Medicaid

individuals is not jeopardized. In addition, to address the burden of non-Medicaid uncompensated care incurred by hospitals, Congress has specifically provided for States to make disproportionate share hospital payments. To the extent that more flexibility is desired, States are not precluded from developing demonstration projects to test new payment methodologies.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. It is unclear how a limit that does not apply to non-governmentally-operated health care providers would reduce services or limit access to Medicaid individuals or to the uninsured.

108C. Comment: Several commenters stated that the proposed cost limit defies simplicity of administration and ignores the best interest of Medicaid individuals as required by section 1902(a)(19) of the Act. The proposed cost limit would not enable States to meet the requirements of this statutory provision.

108R. Response: We clearly understand that the provisions of this regulation will impose an administrative burden on governmentally-operated health care providers and States to document the allowability of Medicaid claims through cost reporting. This burden is reasonable, however, because most such health care providers are already reporting costs in other contexts. The relevant cost data would have been fully or partially developed for a Medicare hospital cost report, for a Single Audit Act financial statement, or for other audited financial statements. While some adjustment may be necessary for data developed for other purposes, this is not an unreasonable burden. Moreover, this regulation would protect the best interests of Medicaid individuals because it prevents States or health care providers from diverting Medicaid funds for other purposes than Medicaid, and ensures that Medicaid resources are available for care to Medicaid individuals. We anticipate that, because Medicaid revenues are an element in setting budgets, the provider-specific limit will actually result in the expansion of resources available to serve Medicaid individuals.

109C. Comment: A few commenters specified that CMS cites the statutory restrictions on matching only Medicaid

expenditures as the basis of limiting payments to cost for public providers. The commenters argued that the statutory restrictions only apply to States' expenditures. Therefore when a State makes a payment for Medicaid covered services, it is that payment by the State which is recognized as the medical assistance expenditure for which Federal matching is made and not the provider's expenditures in rendering the services. The commenters further stated that Congress has never attempted to legislate what a health care provider can do with its Medicaid payments once they have been earned for services rendered. Further, the commenters stated that Congress has never precluded health care providers from using Medicaid revenues to care for the uninsured and Congress did not intend there to be exclusive sources of funding that health care providers could use for covering services to the uninsured.

109R. Response: We agree that allowable Medicaid payments made to a health care provider belong to the health care provider. Through this regulation, however, we intended to provide that a quality of an allowable Medicaid payment is that the health care provider receive and retain the payment for its own purposes, rather than returning it or diverting it for other purposes. Because this may not have been clear, we have revised § 447.207 to make that distinction clear. The provision at § 447.207 was intended to address those instances in which States make claims that are based on health care provider payments that are never actually made, are based on amounts paid with such conditions that the health care provider never actually becomes the beneficial owner of the funding (for example, when the health care provider is required to return the funding to a State agency or State directed purpose), or are otherwise diverted from use for Medicaid services by operation of law, contract or other mechanism. When the health care provider is not permitted to receive and retain the funds, the regulation would reflect the fact that the provider is not the beneficial owner of the funds. It should be noted that the Federal Medicaid statute does not include a term nor discussion that references a "public" health care provider for purposes of State Medicaid financing.

110C. Comment: A few commenters expressed concern that the cost limit could affect current DSH calculations and requested clarification. Several other commenters stated that the proposed cost limit would not appear to impact the manner in which several

States currently calculate Medicaid DSH payments. Many States' DSH payments are prospectively established using a prior year base period trended forward to the DSH payment period and represent the unreimbursed costs of the uninsured and Medicaid HMO enrollees. The commenters questioned whether the proposed cost limit will require States to annually review the actual unreimbursed costs of the uninsured and Medicaid HMO enrollees of DSH hospitals operated by units of government to ensure that the Medicaid DSH payments did not exceed the actual costs of providing inpatient and outpatient hospital services during the DSH payment period. If so, then the proposed regulation should be modified to allow for the consistent application of a prospective DSH payment methodology.

110R. Response: The provisions of the regulation would require an examination of Medicaid HMO revenues to determine compliance with the Medicaid cost limit, but would not require an examination of the uninsured costs for purposes of the Medicaid cost limit.

The Medicaid cost limit provision is consistent with the statutory establishment of the hospital specific DSH limit, enacted under the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). DSH payments are limited to each qualifying hospital's uncompensated care costs of providing inpatient and outpatient hospital services to Medicaid individuals and to individuals with no source of third party coverage for the inpatient and outpatient hospital services they received. Under the Medicare Modernization Act of 2005 (MMA), Congress enacted DSH audit and reporting requirements to ensure compliance with the OBRA '93 hospital-specific DSH limits. For purposes of DSH payments, States may utilize a prospective DSH payment methodology, but need to ensure actual DSH payments do not exceed actual eligible DSH costs under the hospital-specific limit consistent with OBRA '93 and the MMA. It should be noted that HMO revenues must be considered in the calculation of the hospital-specific DSH limit.

111C. Comment: Several commenters requested that CMS clarify that the cost limit based on the "cost of providing covered Medicaid services to eligible Medicaid recipients" does not exclude costs for disproportionate share hospital payments. The commenters were concerned that proposed § 447.206(c)(1) specifies that "all health care providers that are operated by units of government

are limited to reimbursement not in excess of the individual provider's cost of providing covered Medicaid services to eligible Medicaid recipients." The commenters believed this would preclude any Medicaid reimbursement to governmental providers for costs of care for patients who are not eligible Medicaid individuals.

The commenters questioned whether it is CMS' intent to either (1) apply the cost limit only to fee-for-service payments by the state agency for services provided to Medicaid individuals while relying on separate statutory or waiver-based authority to impose cost limits on DSH, or (2) to apply the cost limit more broadly than the language of the proposed regulation would suggest. If the limit is to apply only to fee-for-service rates, then DSH should be explicitly exempted. If the limit is to be more broadly applied, then costs for the uninsured or non-covered Medicaid services for purposes of DSH payments must be included. CMS should also clarify that the limitation to cost of Medicaid services for Medicaid individuals is not intended to limit Medicaid DSH payments.

111R. Response: We have modified the regulation to clarify that the Medicaid cost limit provision does not directly apply to DSH payments. Non-Medicaid costs should not be included in the calculation of the Medicaid cost limit. The Medicaid cost limit provision is consistent with the statutory establishment of the hospital specific DSH limit, enacted under the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). DSH payments are limited to each qualifying hospital's uncompensated care costs of providing inpatient and outpatient hospital services to Medicaid individuals and to individuals with no source of third party coverage for the inpatient and outpatient hospital services they received. Under the Medicare Modernization Act of 2005 (MMA), Congress enacted DSH audit and reporting requirements to ensure compliance with the OBRA '93 hospital-specific DSH limits. For purposes of DSH payments, States may utilize a prospective DSH payment methodology, but need to ensure actual DSH payments do not exceed actual eligible DSH costs under the hospital-specific limit consistent with OBRA '93 and MMA.

112C. Comment: A few commenters stated that the cost limit would have a devastating effect on hospitals in low DSH States. The commenters indicated that the adequacy of DSH allotments is declining as costs climb and insurance coverage drops. As DSH has fallen behind, other types of supplemental

payments have become an even more important source of support for these safety net hospitals in low DSH States. If these non-DSH supplemental payments are eliminated, the ability of governmental hospitals to continue to provide high volumes of care to the uninsured will be undermined. Still other commenters stated that the proposed cost limit would cause DSH funds to be distributed away from private hospitals to cover increased losses in public hospitals.

112R. Response: Under the cost limit of the regulation, Medicaid will continue to be permitted to pay for its share of costs associated with a governmentally-operated health care provider's services that benefit Medicaid individuals in accordance with applicable statutory and regulatory requirements. However, when Medicaid is viewed as a primary source of revenue for a government's non-Medicaid activities, no matter how noble such activities may be, the statutory purpose of the Medicaid program has been undermined.

We note that the Congress has expressly provided for certain kinds of limited Federal participation in the costs of providing services to non-Medicaid individuals and public health activities. Examples of limited Congressional authorization of Federal financing for non-Medicaid individuals and public health activities include the following. The Congress authorized disproportionate share hospital (DSH) payments to assist hospitals that serve a disproportionate share of low income individuals which may include hospitals that furnish significant amounts of inpatient hospital services and outpatient hospital services to individuals with no source of third party coverage (that is, the uninsured). Under section 4723 of the Balanced Budget Act of 1997, the Congress also provided direct funding to the States to offset expenditures on behalf of aliens. Additional funding for payments to eligible health care providers for emergency health services to undocumented aliens was also provided by Congress under Section 1011 of the Medicare Modernization Act. The Congress has periodically, and as recently as the Deficit Reduction Act of 2005 (DRA, Pub. L. 109–171, enacted on February 8, 2006), adjusted FMAPs for certain States and certain activities such as an enhanced FMAP to create incentives for States to assist individuals in institutions return to their homes. These examples are provided to illustrate that the Congress has previously authorized limited Federal financing of non-Medicaid

individuals and public health activities, but has not to date authorized wider use of Federal Medicaid funding for these purposes. Indeed, the Congress indicated that Medicaid funding was not to be used for non-Medicaid purposes when in the Balanced Budget Act of 1997 (BBA, Pub.L.105–33, enacted on August 5, 1997), it added section 1903(i)(17) to the Act to prohibit the use of FFP “with respect to any amount expended for roads, bridges, stadiums, or any other item or service not covered under a State plan under this title.” Non-Medicaid individuals and non-Medicaid services simply are not eligible for Federal reimbursements except where expressly provided for by the Congress.

The Medicaid cost limit provision of the regulation will ensure that governmentally-operated health care providers may receive up to 100 percent of the cost of serving Medicaid individuals, while non-Medicaid costs to the governmentally-operated health care provider will be more appropriately borne by those who are obligated to finance non-Medicaid costs.

113C. Comment: Several other commenters are concerned that since proposed § 447.206 is applicable to DSH payments, DSH payments could then not exceed the cost of services to Medicaid individuals. The commenters argued that then DSH payments could not reflect a hospital's uncompensated costs of care rendered to uninsured individuals and this would be in direct conflict with sections 1902(a)(13)(A) and 1923(g) of the Act. The commenters requested that DSH payments be expressly excluded from the proposed cost limit. In addition, other commenters stated that any willing government entity should have the ability to pay for the non-federal share of DSH payments through either IGTs or CPEs.

113R. Response: We have modified the regulation text to clarify that the Medicaid cost limit provision does not directly apply to DSH payments. The Medicaid cost limit provision is consistent with the statutory establishment of the hospital specific DSH limit, enacted under the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). DSH payments are limited to each qualifying hospital's uncompensated care costs of providing inpatient and outpatient hospital services to Medicaid individuals and to individuals with no source of third party coverage for the inpatient and outpatient hospital services they received. Under the Medicare Modernization Act of 2005 (MMA), Congress enacted DSH audit and

reporting requirements to ensure compliance with the OBRA '93 hospital-specific DSH limits. Finally, governmentally-operated health care providers are eligible to participate in IGTs and/or CPEs consistent with section 1903(w)(6)(A) of the Act.

Although there is already an exception for DSH payments in § 447.272(c)(2), we have made other conforming changes. Sections 447.206(c) and 447.321(c) have been modified to include express exceptions to exclude DSH payments from the determination of the individual health care provider's cost of providing covered Medicaid services to eligible Medicaid individuals.

114C. Comment: One commenter noted that if a governmentally operated health care provider is reimbursed its full Medicaid costs, only the unreimbursed costs associated with the uninsured will be used to calculate its allowable DSH payment. The commenter urged CMS to maintain the current method of determining DSH payments.

114R. Response: The Medicaid cost limit provision is consistent with the statutory establishment of the hospital specific DSH limit, enacted under the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). DSH payments are limited to each qualifying hospital's uncompensated care costs of providing inpatient and outpatient hospital services to Medicaid individuals and to individuals with no source of third party coverage for the inpatient and outpatient hospital services they received. Under the Medicare Modernization Act of 2005 (MMA), Congress enacted DSH audit and reporting requirements to ensure compliance with the OBRA '93 hospital-specific DSH limits.

115C. Comment: One commenter requested clarification on how this proposed cost limit impacts health care providers who provide services at no charge, but are allowed to bill Medicaid for such services. The commenter specifically asked whether the provisions of the regulation prevent a health care provider from billing Medicaid for those services the health care provider generally provides at no charge or generally provides to low-income individuals at no charge.

115R. Response: The provisions of this regulation do not impact those policies.

116C. Comment: A few commenters expressed concern with the impact the proposed cost limit would have on payments to federally qualified health centers (FQHCs) and rural health clinics (RHCs). Section 1902(bb) of the Act

requires States to pay for services provided by FQHCs and RHCs through rates that are prospectively determined (based on historical costs).

Reimbursement to these types of entities has evolved over the years away from cost reimbursement and towards a prospective payment system that encourages efficiency. This was Congress's explicit direction. The proposed cost limit is in direct conflict with section 1902(bb) of the Act. Other commenters requested clarification that FQHCs are entitled to receive reimbursement through their prospective payment rates in accordance with the statute. Other commenters recommended that the final regulation clarify that FQHCs and RHCs be exempt from the cost settlement requirements.

116R. Response: The commenters correctly noted that section 1902(bb) of the Act requires States to pay for services provided by FQHCs and RHCs through rates that are prospectively determined, based on a base year trended forward according to the Medicare Economic Index. Most FQHCs and RHCs are not governmentally operated. However, based on the statutory provision cited above, in order to address limited instances where the FQHC or RHC may be governmentally operated, we are amending the "exceptions" paragraph of the proposed Medicaid cost limit at § 447.206(b) to exempt FQHCs and RHCs from the cost limit.

117C. Comment: Several commenters requested that the proposed cost limit only apply to institutional governmental health care providers and not professional health care providers that may be employed by or affiliated with governmental entities. The commenters state that while the proposed regulation is clear that the limit applies not just to hospital and nursing facility providers, but also to "non-hospital and non-nursing facility services", it is unclear beyond this the scope of the term "provider." The commenter asked whether the cost limit extends to professionals employed by governmental entities. These commenters request that the proposed regulation not be extended this far, as cost-based methodologies are particularly inappropriate for professional services. Another commenter stated that if the cost limit does apply to professional providers, it is unclear how to determine whether such providers are an "integral part" of a unit of government or are "operated by" a unit of government. A cost limit would be inappropriate for professional services, and the commenter urges CMS

not to apply the cost limit provisions to professionals. One commenter requested additional clarification that CPEs can be made for physicians, which are not subject to cost based reimbursement methodologies.

117R. Response: The proposed cost limit applies to all governmentally-operated Medicaid health care providers, including governmentally-operated entities that are paid by the State as health care providers for professional services. Whether or not a specific health care provider is subject to the Medicaid cost limit will depend on whether or not the health care provider is considered a unit of government under § 433.50. CMS recognizes that legal and financial arrangements between health care providers and units of government vary on a case by case basis. Therefore, CMS has developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State to make initial determinations of governmental status. Finally, we note that individual physicians can be involved in CPE practices only indirectly; if they are paid by a unit of government able to participate in Medicaid financing, that unit of government can claim a CPE for actual payments that are consistent with the payment methods under the approved Medicaid State plan.

118C. Comment: One commenter stated that they have an approved Medicaid supplemental payment for ambulance services, and the commenter specifically requested that the cost limit should not be applied to ambulance services. The commenter stipulated that Medicare would not include ambulance services for purposes of cost-based reimbursement, as ambulance services are reimbursed by Medicare through a fee schedule.

118R. Response: The proposed cost limit applies to all governmentally-operated Medicaid health care providers, including ambulance providers. Whether or not a specific health care provider is subject to the Medicaid cost limit will depend on whether or not the health care provider is considered a unit of government under § 433.50. There is no statutory or regulatory basis to require Medicaid reimbursement policy for the provision of ambulance services to follow Medicare reimbursement policy for such services.

119C. Comment: Several commenters were concerned that by limiting payments to providers, including physical therapists, trauma care, neonatal intensive care, emergency

physicians and departments, burn units, many of these health care providers will be forced to significantly reduce the number of Medicaid individuals that they treat and may in fact choose to withdraw their enrollment from the Medicaid program completely. Other commenters stated that Medicaid reimbursement rates in a majority of the States are already very low in comparison to Medicare and private insurers. Another commenter stated that as fewer physicians accept Medicaid, more and more Medicaid individuals will end up in Emergency Room Departments, leading to what the recent Institute of Medicine report on the future of emergency care predicts is an over crossed emergency care system staggering under growing levels of uncompensated physician and hospital care. One commenter stated that such a policy would endanger the ability of public hospitals to ensure quality and patient safety and maintain vital and irreplaceable community services. Other commenters were concerned that the proposed cost limit will be harmful to the continuing viability of the range of services available to seriously mentally ill adults and children living in our communities. Another commenter noted that because States with public hospitals will likely favor their public hospitals in the distribution of available resources, the commenter believed that reducing the overall pool of resources available to States would end up hurting private, non-profit safety-net hospitals. Other commenters indicated that the proposed regulation will prohibit the ability of States to sufficiently fund their portion of Medicaid matching funds, effectively limiting the delivery of necessary healthcare services to low-income Americans. Finally, one commenter recommended that the proposed regulation be modified to limit all Medicaid reimbursements to a hospital's cost of care serving Medicaid and uninsured individuals, regardless of whether the facility is deemed to be a unit of government.

119R. Response: CMS agrees that Medicaid is a vitally important program that serves very vulnerable individuals, and the Federal government remains committed to funding its share of the cost of providing Medicaid services to eligible individuals. Many of the expressed concerns about the potential impact of the cost limit are overstated. Under the provisions of the regulation, governmentally-operated health care providers will be permitted to receive up to 100 percent of the cost of serving Medicaid individuals. It does not appear that limiting Medicaid reimbursement

to the full cost or providing services to Medicaid individuals would adversely affect a governmentally-operated health care provider, unless the health care provider had been historically receiving Medicaid payments above cost and using excess Medicaid revenues to subsidize other costs outside of the Medicaid program. In such a situation, the proposed cost limit could cause a net reduction in Medicaid revenue to the health care provider, but the amount of the reduction would directly correspond with the amount of Medicaid revenues that had been used for non-Medicaid purposes.

Governmentally-operated health care providers not receiving Medicaid payments in excess of costs, would not be adversely impacted by the Medicaid cost limit and would actually be eligible to receive greater Medicaid revenues, up to the cost limit. In either case, the cost limit provision should not force health care providers to reduce the number of Medicaid individuals they treat or withdraw from the Medicaid program.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are *not* affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. It remains unclear how a limit that does not apply to public hospitals could adversely impact quality and patient safety and vital community services.

Moreover, the provisions of the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

120C. Comment: Numerous commenters argued that governmental health care providers, who disproportionately serve the uninsured, should not be subject to a more restrictive limit than private health care

providers. Imposing such a limit would undermine important policy goals, including quality, patient safety, emergency preparedness, enhancing access to primary and preventive care, reducing costly and inappropriate use of hospital emergency rooms, adoption of electronic medical records and reducing health disparities, shared by the Administration and health care providers. Further, the commenters noted that in the heightened security-conscious post-9/11 world, public hospitals play a critical role in local emergency preparedness efforts, enhancing their readiness to combat both manmade and natural disasters and epidemics. The commenters do not believe that CMS considered the impact of the cost limit on shared policy initiatives that HHS itself has established as key goals of America's complex health care system.

120R. Response: We understand that governmentally-operated health care providers have numerous goals and objectives that extend beyond the Medicaid program and that Medicaid individuals may ultimately benefit from the governmentally-operated health care provider's broader activities. Under the cost limit of the regulation, Medicaid will continue to be permitted to pay for its share of costs associated with a governmentally-operated health care provider's services that benefit Medicaid individuals in accordance with applicable statutory and regulatory requirements. However, when Medicaid is viewed as a primary source of revenue for a government's non-Medicaid activities, no matter how noble such activities may be, the statutory purpose of the Medicaid program has been undermined.

We note that the Congress has expressly provided for certain kinds of limited Federal participation in the costs of providing services to non-Medicaid individuals and public health activities. Examples of limited Congressional authorization of Federal financing for non-Medicaid individuals and public health activities include the following. The Congress authorized disproportionate share hospital (DSH) payments to assist hospitals that serve a disproportionate share of low income individuals which may include hospitals that furnish significant amounts of inpatient hospital services and outpatient hospital services to individuals with no source of third party coverage (that is, the uninsured). Under section 4723 of the Balanced Budget Act of 1997, the Congress also provided direct funding to the States to offset expenditures on behalf of aliens. Additional funding for payments to

eligible health care providers for emergency health services to undocumented aliens was also provided by Congress under Section 1011 of the Medicare Modernization Act. The Congress has periodically, and as recently as the Deficit Reduction Act of 2005 (DRA, Pub. L. 109-171, enacted on February 8, 2006), adjusted FMAPs for certain States and certain activities such as an enhanced FMAP to create incentives for States to assist individuals in institutions return to their homes. These examples are provided to illustrate that the Congress has previously authorized limited Federal financing of non-Medicaid individuals and public health activities, but has not to date authorized wider use of Federal Medicaid funding for these purposes. Indeed, the Congress indicated that Medicaid funding was not to be used for non-Medicaid purposes when in the Balanced Budget Act of 1997 (BBA, Pub.L.105-33, enacted on August 5, 1997), it added section 1903(i)(17) to the Act to prohibit the use of FFP "with respect to any amount expended for roads, bridges, stadiums, or any other item or service not covered under a State plan under this title." Non-Medicaid individuals and non-Medicaid services simply are not eligible for Federal reimbursements except where expressly provided for by the Congress.

The Medicaid cost limit provision of the regulation will ensure that governmentally-operated health care providers may receive up to 100 percent of the cost of serving Medicaid individuals, while non-Medicaid costs to the governmentally-operated health care provider will be more appropriately borne by those who are obliged to finance non-Medicaid costs.

121C. Comment: A few commenters stated their concern that the proposed regulation could adversely affect inpatient capacity and community access to vital services, such as trauma centers, at a time when the Nation is faced with significant threats to the public. One commenter stated that if this proposed regulation is allowed to be implemented many individuals, including children, the working poor, and the elderly will no longer be able to obtain needed health care services. Several commenters indicated that they will be forced to make cuts to the Medicaid program that would affect participant eligibility and a reduction in benefits and services provided. Another commenter was concerned that as health care providers cut back on the number of uninsured they can treat, these individuals will go to health centers, which have already realized a

128 percent increase in number of uninsured treated over the past fifteen years, thus overwhelming their critical safety net.

121R. Response: CMS agrees that Medicaid is a vitally important program that serves very vulnerable individuals, and the Federal government remains committed to funding its share of the cost of providing Medicaid services to eligible individuals. Many of the expressed concerns about the potential impact of the cost limit are overstated. Under the provisions of the regulation, governmentally-operated health care providers will be permitted to receive up to 100 percent of the cost of serving Medicaid individuals. It does not appear that limiting Medicaid reimbursement to the full cost of providing services to Medicaid individuals would adversely impact a governmentally-operated health care provider, unless the health care provider had been historically receiving Medicaid payments above cost and using excess Medicaid revenues to subsidize costs outside of the Medicaid program. In such a situation, the proposed cost limit could cause a net reduction in Medicaid revenue to the health care provider, but the amount of the reduction would directly correspond with the amount of Medicaid revenues that had been used for non-Medicaid purposes. Governmentally-operated health care providers not receiving Medicaid payments in excess of costs would not be adversely impacted by the cost limit and would actually be eligible to receive greater Medicaid revenues up to the cost limit. In either case, the cost limit provision should not force cuts to the Medicaid program, nor affect eligibility, benefits and services.

Non-governmentally-operated health care providers, including many of the "public" safety net hospitals, are *not* affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. It is unclear how a limit that does not apply to public hospitals would reduce services or limit access to Medicaid individuals or to the uninsured.

Moreover, the provision of the regulation that requires that health care providers be allowed to fully retain their Medicaid payments demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. This ensures that the full amount of Medicaid payment is available to support services to this vulnerable

population. Moreover, health care providers that become ineligible to participate in financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

122C. Comment: A couple of commenters were concerned that as the Medicaid program is streamlined to become more efficient and cost-effective, optional services, such as physical therapy will be marginalized. The commenters stated that elimination of such services could lead to more institutionalized care and the development of more severe health conditions.

122R. Response: Optional services, like physical therapy, which tend to reduce institutionalized care and prevent more severe health conditions, should not be at risk of being eliminated as the Medicaid program becomes more efficient and cost effective. On the contrary, optional services that are preventative in nature would be increasingly desirable in an efficient and cost-effective health care delivery system. Nevertheless, decisions about coverage of optional services are made by the States, and the Federal government will continue to match State expenditures for such services as long as they are an approved part of the State's Medicaid program consistent with all applicable Federal statutory and regulatory requirements.

123C. Comment: Numerous commenters pointed out that by prohibiting payments of costs other than the marginal expenses associated with treating Medicaid individuals, public providers will be uncompensated for the range of costs that underlie the delivery of healthcare to this vulnerable population. Other commenters stipulated that the Medicaid statute does not equate cost with efficiency, economy and quality of care and there are a number of points to indicate that payments in excess of an individual provider's cost may still be appropriate for a State's Medicaid program overall. Section 1902(a)(30)(A) of the Act requires that Medicaid payment be sufficient to enlist enough health care providers so that care and services are available to Medicaid individuals. The commenters specified that health care providers who rely most on Medicaid payments are typically those who also have high Medicare and charity care patient use. Therefore the proposed cost

limit would severely limit their ability to generate the margins necessary to operate effectively, replace or add to capital assets, and plan for growth, thus resulting in a reduction in the amount of services offered. In addition, the commenters stated that DSH payments are inadequate in covering the cost of charity care and providing for any margin on Medicaid services.

Other commenters stated that health care providers cannot survive without positive operating margins. Any well-run business needs to achieve some margin in order to invest in the future, establish a prudent reserve fund, and achieve the stability which will allow it access to needed capital. Particularly in public hospitals, margins on Medicare and commercial insurance alone are not sufficient to keep public hospitals solvent. Various commenters stated examples of levels of Medicaid and uninsured in public health care providers. One commenter noted that Medicare and commercial insurance amount to less than 45 percent of public hospitals' average net revenues, while self-pay individuals comprise 24 percent of the population served in those hospitals. Therefore the commenters believed it is unfair to expect these health care providers, with their disproportionate share of uninsured populations to survive and thrive.

Many commenters stated that States traditionally pay limited numbers of health care providers more than their Medicaid costs. Those health care providers that do receive payments above cost are located in areas where, in addition to caring for large numbers of Medicaid individuals, they also care for large numbers of uninsured individuals and without such payments the financial viability of these providers would be in jeopardy. These providers would be unable to serve all of their patients. These commenters believe it is entirely appropriate for Medicaid programs to pay some health care providers more than their costs. Hospitals that care for large numbers of Medicaid individuals inevitably care for larger numbers of uninsured individuals as well. Several health care providers also commented on the amount of supplemental Medicaid funding they receive and the fact that those payments are critical to their ability to serve as a health care safety net provider in their respective communities.

Numerous other commenters pointed out all of the activities that health care providers use supplemental Medicaid payments to support are in fact integrally related to Medicaid. The commenters were disturbed that CMS

made allegations that these payments were not in fact used for Medicaid purposes. For example, one health care provider indicated that ensuring a strong emergency response capability is critical to ensuring that Medicaid individuals can receive care when needed. Another commenter indicated that their Medicaid payments above cost help offset other uncompensated costs, including physician staffing, costs of serving indigent patients, bad debt, etc. All of these commenters stated that these payments are critical to ensure adequate access. Other commenters noted these supplemental Medicaid payments above cost were approved by CMS through State plan amendments.

123R. Response: CMS agrees that Medicaid is a vitally important program that serves very vulnerable populations, and the Federal government remains committed to funding its share of the cost of providing Medicaid services to eligible individuals. By providing for the ability to pay government providers the full cost of Medicaid services, we are recognizing that States may contribute a fair share of all costs necessary to operate the provider, including the costs of capital assets, strategic planning for growth, and other necessary administrative activities.

Further, we understand that governmentally-operated health care providers have numerous goals and objectives that extend beyond the Medicaid program and that Medicaid individuals may ultimately benefit from the governmentally-operated health care provider's broader activities. Under the cost limit of the regulation, Medicaid will continue to be permitted to pay for its share of costs associated with a governmentally-operated health care provider's services that benefit Medicaid individuals in accordance with applicable statutory and regulatory requirements. However, when Medicaid is viewed as a primary source of revenue for a government's non-Medicaid activities, no matter how noble such activities may be, the statutory purpose of the Medicaid program has been undermined. We note that the Congress has expressly provided for certain kinds of limited Federal participation in the costs of providing services to non-Medicaid individuals and public health activities. Examples of limited Congressional authorization of Federal financing for non-Medicaid individuals and public health activities include the following. The Congress authorized disproportionate share hospital (DSH) payments to assist hospitals that serve a disproportionate share of low income individuals which may include

hospitals that furnish significant amounts of inpatient hospital services and outpatient hospital services to individuals with no source of third party coverage (that is, the uninsured). Under section 4723 of the Balanced Budget Act of 1997, the Congress also provided direct funding to the States to offset expenditures on behalf of aliens. Additional funding for payments to eligible health care providers for emergency health services to undocumented aliens was also provided by Congress under Section 1011 of the Medicare Modernization Act. The Congress has periodically, and as recently as the Deficit Reduction Act of 2005 (DRA, Pub. L. 109-171, enacted on February 8, 2006), adjusted FMAPs for certain States and certain activities such as an enhanced FMAP to create incentives for States to assist individuals in institutions return to their homes. These examples are provided to illustrate that the Congress has previously authorized limited Federal financing of non-Medicaid individuals and public health activities, but has not to date authorized wider use of Federal Medicaid funding for these purposes. Indeed, the Congress indicated that Medicaid funding was not to be used for non-Medicaid purposes when in the Balanced Budget Act of 1997 (BBA, Pub. L. 105-33, enacted on August 5, 1997), it added section 1903(i)(17) to the Act to prohibit the use of FFP "with respect to any amount expended for roads, bridges, stadiums, or any other item or service not covered under a State plan under this title." Non-Medicaid individuals and non-Medicaid services simply are not eligible for Federal reimbursements except where expressly provided for by the Congress.

Additionally, many of the expressed concerns about the potential impact of the cost limit are overstated. Under the provisions of the regulation, governmentally-operated health care providers will be permitted to receive up to 100 percent of the cost of serving Medicaid individuals. We do not agree that an allowance for payments up to cost would violate the provision of section 1902(a)(30)(A) of the Act which requires that Medicaid payment be sufficient to enlist enough health care providers so that care and services are available to Medicaid individuals because all of the health care provider's Medicaid costs can be satisfied. We are unclear how limiting Medicaid reimbursement to the full cost of providing services to Medicaid individuals would adversely affect a governmentally-operated health care

provider, unless as some commenters note, the health care provider had been historically receiving Medicaid payments above cost and using excess Medicaid revenues to subsidize costs outside of the Medicaid program. In such a situation, the proposed cost limit could cause a net reduction in Medicaid revenue to the health care provider, but the amount of the reduction would directly correspond with the amount of Medicaid revenues that had been used for non-Medicaid purposes. We do not believe Medicaid is responsible to the profit margins of governmentally-operated health care providers and question the appropriateness of such a suggestion.

Non-governmentally-operated health care providers, including many of the "public" safety net hospitals referenced by the commenters, are *not* affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. It is unclear how a limit that does not apply to non-governmentally-operated "public" health care providers could adversely impact the financial viability of safety net health care providers or access to care for Medicaid and uninsured individuals.

Moreover, one provision of the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

124C. Comment: Many commenters stated that cost-based payments and limits are inherently inefficient by rewarding providers with high costs. Commenters pointed out that prospective payment systems are structured to encourage health care providers to eliminate excess costs by allowing them to keep payments above costs as a reward for efficiency. A payment limit based on costs represents a sharp departure from CMS' efforts to

bring cost-effective market principles into federal health programs. Rather, this proposed cost limit would incentivize health care providers to increase costs and eschew efficiencies in order to preserve revenues.

A few other commenters noted that a return to cost-based reimbursement for public providers will permit them to break even at best, while permitting costs to spiral upwards. These commenters urged CMS to proceed with the development of innovative ways to reimburse providers as opposed to reverting solely to cost based methodologies.

124R. Response: This rule does not require cost based payment methodologies; States have flexibility to use any payment methodology that results in payment levels that do not exceed provider cost. To the extent that a State elects a cost based payment methodology, that method would be limited to government providers that, by their nature, are not seeking profit and have a high degree of public accountability. As a result, we do not believe the Medicaid cost limit will give incentives to health care providers to increase costs. Moreover, because we are strengthening the integrity of the funding of the non-federal share of expenditures, our State and local partners will play a role in controlling excessive costs at government providers.

The Medicare cost allocation process utilized for institutional health care providers is considered a key component in determining Medicaid cost under the provisions of the regulation. Institutional governmentally-operated health care providers (*i.e.*, hospitals (encompassing both inpatient and outpatient hospital services, nursing facilities, and intermediate care facilities for the mentally retarded (ICFs/MR)) will be required to provide the State with data extracted from primary source documents as well as copies of the source documents. These documents would include the governmentally-operated health care provider's Medicare cost report (or Medicaid cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting principles), and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information Systems (MMIS).

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not currently exist. Because of this, we intend to publish a standardized cost reporting form to document the cost of such

services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has developed a general Medicaid Cost Reporting Protocol that will be on the CMS website that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with Federal requirements.

Finally, it is important to note that non-governmentally-operated health care providers, including many of the "public" safety net health care providers referenced by the commenters, are not affected by the Medicaid cost limit provision of the regulation and may, therefore, continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

125C. Comment: Numerous commenters stated that the proposed cost limit would impose enormous new administrative burdens on States and health care providers, since cost reconciliation processes could last for years beyond when services are provided. These commenters argued since this will have no impact on the quality or effectiveness of care provided to individuals, these requirements should be eliminated. Further, the precision gained by reconciling payments to actual costs for the payment year as determined by a finalized cost report is not worth the massive diversion of resources. The commenters recommended that CMS revise the proposed regulation to allow States to calculate the cost limit on a prospective basis and allow States to invest the savings in services that will benefit patients.

125R. Response: We do not believe the cost limit will impose significant administrative burden on States particularly since such limit applies only to governmentally-operated health care providers.

For purposes of institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the

source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render an determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, we note that a nationally recognized, standard cost report does not exist. Because of this, we intend to publish a standardized cost reporting form to document the cost of such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol that will be on the CMS website that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with Federal requirements.

126C. Comment: A few commenters believe this will create little real benefit to health care providers and will result in substantial administrative burden. They are also concerned these new documentation standards will also subject Medicaid providers to

unwarranted allegations of False Claims Act violations. These commenters take their obligations to report Medicaid expenditures properly and believe that because of this, CMS can ensure the accuracy of Medicaid claims without imposing burdensome certification requirement. Another commenter questioned how the administrative burden would be minimized. Another commenter stated that CMS is requiring States to implement interim rate methodologies with retrospective determination of whether the payments exceeded the provider's cost to provide the services. Development and implementation of these processes for providers, States and units of government will result in significantly increased administrative and auditing workloads.

126R. Response: We agree with the commenters that most Medicaid health care providers take seriously their obligations to report Medicaid expenditures properly. While we recognize that increased efforts in cost reporting will increase fiscal accountability among units of government involved in the delivery of Medicaid services, we do not believe that this will produce a disproportionate number of meritless claims alleging violations of the False Claims Act. Moreover, we do not believe the Medicaid cost limit will impose significant administrative burden on States particularly since such limit applies only to governmentally-operated health care providers.

For purposes of institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing cost reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render an determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, we note that a nationally recognized, standard cost report does not exist. Because of this, we are publishing a standardized cost reporting form to document the costs of such

services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol that will be on the CMS website that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined.

127C. Comment: One commenter indicated that cost reconciliation will be a "big win" for consulting companies that specialize in Medicaid and health care data. States short on resources will be forced to pay their high administrative fees to comply with these new requirements.

127R. Response: CMS has developed a general Medicaid Cost Reporting Protocol that will be on the CMS website that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements and should not necessarily require the input from entities independent of the State and governmentally-operated health care providers. It is important to note that States must follow the instructional protocol and cannot deviate from such instructions. Determinations made by States that are inconsistent with the Federal requirements could result in disallowance action.

128C. Comment: A few commenters stated that even when cost limits are applied, CMS should reconsider the requirement for interim and final payment rates for all public providers. The commenters indicated that prospective payment rates such as DRG-based payments or case-mix adjusted per diem rates are often below costs. Requiring States to use interim and settle-up payment methodologies adds a costly level of administrative burden and produces no cost savings at all. Further, the commenters noted that savings generated by subjecting cost-based prospective payment rates that are periodically updated for inflation to retrospective reconciliation would not be sufficient to justify the added administrative costs of the reconciliation process.

128R. Response: It is important to note that "public" providers are not subject to the Medicaid cost limit. Only governmentally-operated health care providers will be subject to the Medicaid cost limit. Non-governmentally-operated health care providers, including many of the "public" safety net hospitals, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

The Medicaid cost limit provision neither requires nor precludes interim and final Medicaid payment rates for governmentally-operated health care providers. The Medicaid cost limit provision also does not require States to abandon existing DRG based payment systems or any other existing Medicaid reimbursement rate methodologies currently utilized to pay governmentally-operated health care providers. Under the Medicaid cost limit, States may continue to use existing Medicaid reimbursement rate methodologies, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a governmentally-operated health care provider. The Medicaid cost limit provision does not require Medicaid payments to be equal to a governmentally-operated health care provider's cost of providing services to Medicaid individuals. The Medicaid cost limit provision instead stipulates that Medicaid payments must be no more than a governmentally-operated health care provider's cost of such services.

129C. Comment: Many commenters stated that because the proposed cost

limit makes all payments received by public providers interim and subject to retrospective reconciliation to costs, this will cause severe financial hardships for public providers. Finally, the commenters indicated that States do not have the necessary administrative procedures and mechanisms in place to conduct the audits and appeals necessary to implement the proposed cost limit.

129R. Response: It is important to note that “public” providers are not subject to the Medicaid cost limit. Only governmentally-operated health care providers will be subject to the Medicaid cost limit. Non-governmentally-operated health care providers, including many of the “public” safety net health care providers, are *not* affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

The Medicaid cost limit provision does not make all payments received by governmentally operated health providers “interim” in nature. The Medicaid cost limit provision also does not require States to replace existing Medicaid reimbursement rate methodologies currently utilized to pay governmentally-operated health care providers. Under the Medicaid cost limit, States may continue to use existing Medicaid reimbursement rate methodologies, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a governmentally operated provider.

The Medicaid cost limit provision does not require Medicaid payments to be equal to a governmentally-operated health care provider's cost of providing services to Medicaid individuals. The Medicaid cost limit provision instead stipulates that Medicaid payments must be no more than a governmentally-operated health care provider's cost for such services.

We do not believe the cost limit will impose significant administrative burden on States particularly since such limit applies only to governmentally-operated health care providers. These providers are governmental partners in providing health care and anticipate that there will be a degree of cooperation in complying with State implementation of these Medicaid requirements.

For purposes of institutional governmentally-operated health care

providers, the Medicaid cost limit determination will rely on existing cost reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render a determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

130C. Comment: One commenter noted that the proposed requirement to develop a cost-based rate for each public provider with cost settlement after the fact is a tremendous financial and administrative burden. The commenter explained that CMS allows States to develop statewide reimbursement methodologies for specific services delivered by public providers and that States often do this through statewide time study methodologies. The commenter indicated that the proposed cost limit would require each provider to develop a cost-based rate for each service which would require individual time studies, necessitating much larger sample sizes and much more extensive data analysis.

130R. Response: It is important to note that “public” providers are not subject to the Medicaid cost limit. Only governmentally-operated health care providers will be subject to the cost limit. Non-governmentally-operated health care providers, including many of the “public” safety net health care providers referenced by the commenters, are *not* affected by the Medicaid cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

The Medicaid cost limit provision also does not require the development of a cost-based rate for governmentally-operated health care providers, nor does it require States to abandon existing Medicaid reimbursement rate methodologies currently utilized to pay governmentally-operated health care providers. Under the Medicaid cost limit provision, States may continue to use existing Medicaid reimbursement rate methodologies, but will need to compare such rates to the individual health care provider's actual cost of providing services to Medicaid

individuals and make reconciling adjustments in the event of overpayments to a governmentally operated provider.

As important, the cost upper payment limit is provider-specific but it does not require reconciliation of every individual service to cost. Moreover, this regulation would not require time studies or sampling. These methods are used to determine the cost of Medicaid when the provider does not have other methods of establishing the proportion of costs attributable to the Medicaid program. In some circumstances, these methods may be less expensive and more efficient than maintaining detailed records of individual service encounters and patient eligibility.

131C. Comment: One commenter discussed the unique nature of frontier States and the need to purchase a broad range and volume of Medicaid services out-of-state and the increased new workload associated by the provisions of this regulation. This commenter noted that this will require the State to make the cost limit determination through an audit of the unit of government or governmental health provider or monitor and accept the servicing State's cost limit determination and make the retrospectively calculated refund of any overpayment to CMS.

131R. Response: We recognize that certain health care providers deliver services to Medicaid individuals that reside in another State and are reimbursed for those services from other States. Under the Medicaid cost limit provision of the regulation, a governmentally-operated health care provider will not be required to differentiate Medicaid payments received and the Medicaid costs incurred based upon Medicaid individuals' State of residence. For purposes of the Medicaid cost limit, States must consider a governmentally-operated health care provider's total Medicaid revenues received and the total Medicaid costs incurred for providing services to Medicaid individuals, regardless of the State of residence of a specific Medicaid eligible individual. A State is only responsible to ensure compliance with the Medicaid cost limit for the governmentally-operated health care providers located in the State, and not for governmentally-operated health care providers in another State. This approach simplifies the implementation and demonstration of the Medicaid cost limit for States and governmentally-operated providers.

132C. Comment: Many commenters asserted that the proposed cost limit will create an administrative burden on

States and health care providers that will be inefficient, time consuming and redundant. The proposed changes impose onerous reporting and accounting processes to government systems, including schools, which would likely not be beneficial to the end result of a Medicaid payment for the effort required. These commenters urge CMS to eliminate the individual provider cost limit and consider a reasonable measurement to ensure a proper and efficient reimbursement limitation without the unnecessary administrative burden.

132R. Response: We do not believe the Medicaid cost limit will impose significant administrative burden on States particularly since such limit applies only to governmentally-operated health care providers.

For purposes of institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render a determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not currently exist. Because of this, we are publishing a standardized cost reporting form to document the costs of such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and

audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol that will be on the CMS Web site that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined.

133C. Comment: Many commenters believe that it is unreasonable to impose a lower limit on Medicaid reimbursements to governmental providers than private providers. Most commenters stated it was unclear why CMS believes that rates we would continue to allow states to pay private providers are excessive with respect to government providers. Another commenter mentioned that public hospitals do not have access to the kind of non-patient care revenues (investment income) that other private hospital systems do.

Other commenters stated that if the proposed cost limit is consistent with section 1902(a)(30)(A) of the Act, then there is no rational basis for distinguishing between public and private providers. Requiring differential treatment of public and private Medicaid providers is inconsistent with the equal protection clause of the Constitution as well as CMS' own repeated statements regarding the importance of payment equality for all categories of Medicaid providers. In fact, in its 2002 final UPL rule CMS agreed that "one group of providers should not have a financial benefit over another group of providers who provide the same type of services." CMS went on to explain that its intent was "to treat all facilities equally, and apply the same aggregate UPL for each group of facilities, regardless of who owns or operates the facilities."

133R. Response: Although these commenters assume that this regulation would impose a lower limit on government providers than on private providers, this is not necessarily true. This rule would permit payment of the full cost of Medicaid services to government providers, which could exceed the payments available under limits based on Medicare payment

methodologies (for example the Medicare inpatient prospective payment system).

As we discussed in the preamble to the provisions of the regulation, there are different incentives at work in setting Medicaid payment rates to governmentally-operated health care providers that are not relevant for private health care providers. There is the potential for an inherent conflict of interest in setting Medicaid payment rates to governmentally-operated health care providers, arising from the ability of governmental providers to contribute the non-federal share of Medicaid expenditures and from the interrelated nature of governmental units within a State. Limits based on documented costs results in an objective basis to assess whether a rate is consistent with efficiency, economy and quality of care, because it provides for full payment for the costs of furnishing covered services to eligible individuals.

The rational basis for distinguishing between governmentally-operated and private health care providers is shown by the preponderance of States that have separate payment methodologies for governmentally-operated and private health care providers.

In our 2002 issuance, this was not an issue upon which we focused; this regulation reflects additional consideration and analysis obtained through oversight reviews of Medicaid State plans and programs.

134C. Comment: One commenter stated that given the limited definition of "unit of government", there are providers who today receive payments in excess of cost. Since CMS does not limit payment to those providers to cost, it should not apply a cost limit to public providers either.

Another commenter provided an example of how States design their reimbursement systems to differentiate payments between an acute care hospital and a psychiatric care facility. The commenter stated that public and private entities in the acute care hospital category would be paid the same rate based on the services they provide and the State would develop a separate rate for a psychiatric care facility and apply it to both the public and private entities. The commenter stated that the proposed cost limit would force States to dismantle this reasonable payment methodology.

134R. Response: The Federal Medicaid statute does not reference "public" health care providers for purposes of State Medicaid financing, but only health care providers operated by units of government. The regulation limits governmentally-operated health

care providers to reimbursements that do not exceed the individual provider's cost of serving Medicaid eligible individuals. This regulation does not preclude States from using the same payment methods for governmental and private providers, as long as governmental providers are not paid in excess of cost. To the extent that private providers are paid less than their full cost, this rule would give States flexibility to pay governmental providers at a higher rate than private providers. This rule allows governmentally-operated Medicaid providers to be reimbursed for their full cost of providing services to Medicaid individuals. While the regulation does not impose a Medicaid cost limit on private health care providers, our reviews of Medicaid reimbursement methodologies indicate that some States reimburse private health care providers at rates that are less than the cost of serving Medicaid eligible individuals.

The limit on reimbursement not to exceed cost for individual health care providers operated by units of government is consistent with statutory construction that the Federal government pays only its proportional cost for the delivery of Medicaid services. Because the Medicaid program is jointly funded by Federal, State, and local governments, we do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

In addition, the provisions of the regulation do not force States to dismantle any of the existing Medicaid reimbursement rate methodologies they are currently utilizing to reimburse health care providers. Under the Medicaid cost limit, States may continue to use Medicaid reimbursement rate methodologies, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a particular governmentally-operated health care provider. States may find such cost reconciliations to be useful inasmuch as they will permit States to better analyze the reasonableness of their Medicaid reimbursement rates.

We considered imposing cost limits on Medicaid payments to governmentally-operated health care providers only when those health care providers were paid differently than private health care providers. This approach, however, would have required considerably more oversight

resources and would be subject to abuse. We foresaw that States could evade the intended limits by segmenting generally applicable payment rates in ways that effectively distinguished between governmentally-operated and private health care providers (for example, by developing a generally applicable payment rate that included a special payment for providers operating in a city with a population between 300,000 and 350,000 that has no less than 1350 beds and no more than 1360 beds). This outcome would not be consistent with the overall principle to end excessive payments to government providers.

135C. Comment: One commenter stated that since CMS has noted on numerous occasions that States have no incentive to overpay providers if the providers cannot transfer funds back to the State, CMS should consider limiting the application of provider specific cost limits to only those instances in which payment methodologies for government providers differ from the payment methodologies for non-government providers. If payments to government and non-government providers are the same, the expense of cost reporting is not offset by any savings.

135R. Response: We considered imposing cost limits on Medicaid payments to governmentally-operated health care providers only when those health care providers were paid differently than private health care providers. This approach, however, would have required considerably more oversight resources and would be subject to abuse. We foresaw that States could evade the intended limits by segmenting generally applicable payment rates in ways that effectively distinguished between governmentally-operated and private health care providers (for example, by developing a payment rate that included a special payment for health care providers operating in a city with a population between 300,000 and 350,000 that has no less than 1,350 beds and no more than 1,360 beds). This outcome would not be consistent with the overall principle to end excessive payments to governmentally-operated health care providers.

An upper payment limit based on documented cost provides a clear, objective test of the reasonableness of a payment methodology for government providers regardless of whether the provider participates in financing the Medicaid program. The cost limit on Medicaid reimbursement is consistent with the overall Federal, State and local partnership under which the Federal government pays only its proportional

cost for the delivery of Medicaid services. It is not appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

As important, a separate test for governmental providers that participate in financing the Medicaid program could be viewed as contrary to the statutory protection of such financing arrangements. State governments may share their fiscal obligation to the Medicaid program with local governments according to the instruction of Congress. Under Public Law 102-234, the Congress made clear that States may allow governmentally-operated health care providers to participate in a State's fiscal obligation to the Medicaid program through the use of intergovernmental transfers and certified public expenditures.

Under this regulation, States may continue to pay governmentally-operated and non-governmentally-operated health care providers under the same Medicaid reimbursement rate, as long as the applicable upper payment limits are met for each category of provider. The provisions of the regulation do not require States to dismantle any of the existing Medicaid reimbursement rate methodologies they are currently utilizing to reimburse providers. Under the Medicaid cost limit, States may continue to use existing Medicaid reimbursement rate methodologies, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a particular governmentally-operated health care provider.

136C. Comment: Several commenters specified how the proposed cost limit and other provisions of the regulation will create difficult financing situations for the hospitals operating within their State. For example, the commenters noted that either a hospital will be considered private and therefore unable to share in the funding of the non-federal share of Medicaid payments or it will be considered governmental and able to fund the non-federal share, but subject to the cost limit. The commenters argued that either way, these facilities will be faced with significant financial losses; even in some States that CMS has indicated employ appropriate IGTs.

136R. Response: This rule restores some measure of fiscal integrity to Medicaid financing and payment for governmental providers. We agree that

governmental providers (or non-governmental providers erroneously treated as such) that were paid in excess of their actual costs of providing Medicaid services may be adversely affected. Section 1901 of the Medicaid statute, however, makes clear that the intended beneficiaries of under the Medicaid statute are eligible individuals, not providers. By providing that Medicaid payments may be sufficient to cover the full cost of covered services at government providers, we are protecting the interest of those eligible individuals. Moreover, by providing that providers are entitled to retain Medicaid payments, we are ensuring that Medicaid payments are, in fact, available to pay for covered services and are not diverted for other purposes.

The Medicaid program is jointly funded by Federal, State, and local governments. We do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals. As we have examined Medicaid financing arrangements across the country, we have found that many States make payments to governmentally operated providers that are in excess of cost. These providers, in turn, use the excess of Medicaid revenue over cost to subsidize health care operations that are unrelated to Medicaid, or they may return a portion of such payments to the State as a source of revenue. In either case, we do not find that Medicaid payments in excess of cost to governmentally-operated health care providers are consistent with the statutory principles of economy and efficiency as required by section 1902(a)(30)(A) of the Act, nor do we find such excessive payments to be consistent with the statutory structure requiring that the Federal government match a percentage of State or local government expenditures for the provision of services to Medicaid individuals.

Non-governmentally-operated health care providers, including many of the "public" safety net hospitals, are *not* affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. Moreover, one provision of the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates

the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

137C. Comment: One commenter requested clarification of whether States that do not use CPEs to pay providers are required to review annual cost reports to verify that actual payments to each governmentally operated provider did not exceed the provider's costs. The commenter questioned whether this provision applies to Medicaid payments that are not developed using IGTs or CPEs.

137R. Response: Yes, the provisions of the regulation require States to review cost reports on an annual basis for all governmentally-operated health care providers to verify compliance with the Medicaid cost limit, even if the governmentally-operated health care provider was not involved in IGTs or CPEs.

138C. Comment: A few commenters indicated that while proposed § 447.206 requires the use of the applicable Medicare cost report to document the costs incurred by hospitals and nursing homes operated by units of government, many States have developed their own State specific cost reports. These commenters have found the Medicare cost report did not provide the detailed information needed for rate setting processes and that the State specific cost report provided much more detailed information by cost center. These commenters recommend that the proposed rule be modified to allow States to use their own cost report form if the form meets or exceeds the amount of information included in the Medicare cost report. Other commenters recommended that the final rule also be clarified to allow State cost reports to be used as the basis for the cost settlement of government providers in lieu of the Medicare cost report. In addition, the commenter recommended that State cost principles may be used in the settlement determination. Another commenter stated that is not clear that there is a consistent use, review or audit of the Medicare cost reports and that there is an increasing probability for these cost reports to contain errors and/

or omissions. This commenter recommended that CMS allow for other means to document provider costs in the event alternative sources prove more accurate and reliable.

138R. Response: The Medicare cost allocation process utilized for institutional health care providers is considered a key component in determining Medicaid cost under the provisions of the regulation. Use of a nationally recognized, standardized cost report allows all States to document institutional Medicaid service costs in a nationally consistent manner. Institutional governmentally-operated health care providers (that is, hospitals (encompassing both inpatient and outpatient hospital services), nursing facilities, and intermediate care facilities for the mentally retarded (ICFs/MR)) will be required to provide the State with data extracted from primary source documents as well as copies of the source documents. These documents would include the governmentally-operated health care provider's Medicare cost report (or Medicaid cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting principles), and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information Systems (MMIS).

States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render a determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not exist. Because of this, we intend to publish a standardized cost reporting form to document the costs of such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has developed a general Medicaid Cost Reporting Protocol that

will be available on the CMS Web site that specifically addresses the information utilized from each source document and the methods under which institutional (and non-institutional) Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements.

139C. Comment: Several commenters questioned when the cost report form for non-hospital and non-nursing facility services that is mentioned, would be available. One commenter inquired as to whether the Secretary will prospectively provide the form or will States have to develop the form and hope that their form meets the Secretary's retrospective approval. These commenters also questioned what happens in cases where rates have been established and approved by CMS, but do not potentially meet the cost test provided by the form. These commenters are particularly concerned since many of these providers (i.e., school-based service providers, health department clinics, community mental health clinics, physician services provided by State employees) have never been required to produce cost report information.

Another commenter was concerned about the impact on home and community based waiver programs and the imposition of these requirements threatens to undermine the viability of these very important programs. The commenters stated that it is difficult to gauge the impact since cost data for non-institutional services has never been captured. But regardless, this will encompass many providers and will require great effort by States and providers to collect, report, analyze and reconcile these costs annually. Other commenters noted that many of these non-institutional providers are generally paid on a fee-based system, which is relatively inexpensive and easy to administer. These commenters believe that imposing cost reporting requirements on these providers will be difficult and in many cases impossible for them to manage. They further believe that these providers may then find it no longer worthwhile to continue providing Medicaid services.

139R. Response: We do not believe the Medicaid cost limit will impose significant administrative burden on States particularly since such limit applies only to governmentally-operated health care providers. Moreover, the benefit of clear and transparent accounting for the costs of medical assistance furnished by governmental providers will be significant. Accurate

data on Medicaid costs will be available to guide Medicaid payment determinations by the State.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not currently exist. Because of this, we intend to publish a standardized cost reporting form to document the costs of such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

140C. Comment: One commenter indicated that the requirement that providers of non-institutional/non-acute care Medicaid services operated by units of government must submit annual cost reports to ensure Medicaid reimbursements do not exceed the allowable Medicaid costs of the provider, is in direct conflict with the current direction provided by CMS' Non-Institutional Payment Team (NIPT). The commenter stated that the NIPT has advised that if Medicaid rates are established using Medicare or commercial rates as the basis, cost reports would no longer be required from these providers unless certified public expenditures are used. This commenter recommends the use of market-based rates. By moving to market-based rates, States have the same incentive as private providers to control their costs to stay within the market based rates and that by allowing providers to be reimbursed up to cost, it is usually interpreted by providers as an entitlement for these providers to be able to recover their full cost. There is no incentive to control costs. With guidance from the NIPT, the commenter was advised to eliminate the cost report requirement as an incentive for State agencies to voluntarily move to market-based rates. The commenter urges CMS to modify the proposed rule to remove the requirement for cost reports for non-institutional services when a CMS-approved market based reimbursement methodology is used and the services are not funded through a CPE.

Another commenter stated that Medicare rates used by States as payments for their Medicaid programs should be exempt from the cost settlement process. This commenter explained that if this proposed cost limit extends to programs that currently do not have a cost report, but some of these programs may use Medicare rates, the State may need to develop a new cost report that applies only to

government providers solely to determine their cost for cost settlement.

140R. Response: There are no Medicaid reimbursement rate methodologies for governmentally-operated health care providers that would be "exempt" from the Medicaid cost limit provision of this regulation. The regulation does not require States to modify any of the existing Medicaid reimbursement rate methodologies they are currently utilizing to reimburse governmentally-operated health care providers. Under the Medicaid cost limit, States will be able to continue to use existing reimbursement rate methodologies, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a particular governmentally-operated health care provider. Prior agency guidance is superseded by this regulation.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not exist. Because of this, we intend to publish a standardized cost reporting form to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.). States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol that will be available on the CMS website

that specifically addresses the methods under which non-institutional (and institutional) Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements.

141C. Comment: One commenter stated that they identified several providers which may be governmental providing other than hospital or nursing services in the less populated areas of the State. The commenter suggested that CMS should acknowledge the true impact on smaller units of government or governmentally-operated health care providers and provide some floor criteria below which the regulations would not apply. The commenter offered some examples of potential floor criteria: The number of facility beds; Medicaid eligible population in some mile radius; number of Medicaid individuals served by the unit of government or governmental health provider and population base in the unit of government's area. Another commenter suggested other bases for exemption: The extent to which public providers are a significant percentage of the total providers using the same reimbursement methodology; a dollar reimbursement threshold; or a demonstration that reimbursement in the aggregate does not exceed cost.

141R. Response: Although we note the unique circumstances of providers in less populated areas, the provisions of the regulation are intended to apply uniformly across the country, regardless of a provider's particular size, location, or reimbursement characteristics unique to certain governmentally-operated health care providers.

It is important to note that "public" providers are not subject to the Medicaid cost limit. Only governmentally-operated health care providers will be subject to the Medicaid cost limit. Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are *not* affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

142C. Comment: One commenter was concerned about the impact of Medicare cost reports on physician services. The commenter stated that Medicare separates out the professional services component that is covered under Part B, leaving only the cost of physician services to the hospital on the hospital cost report. In this circumstance, there

is no similar rationale under Medicaid for public hospitals since they directly employ or contract for physicians to serve their patients. Other commenters recommended that physician services be excluded from the cost limit.

142R. Response: The Federal Medicaid statute does not include a term nor discussion that references a "public" health care provider for purposes of State Medicaid financing. The regulation limits governmentally-operated health care providers to reimbursements that do not exceed the individual provider's cost of serving Medicaid eligible individuals. Governmentally-operated entities that are paid by the State as providers of physician services are subject to the Medicaid cost limit. Costs to governmentally-operated entities paid by the State as providers of physician services rendered outside the hospital will be documented using the standardized cost reporting form issued by CMS that will be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals.

The Medicaid Cost Reporting Protocol that will be available on the CMS Web site addresses the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements.

143C. Comment: One commenter requested clarification regarding discrepancies between the preamble and proposed regulatory text at § 447.206. The commenter stated that the preamble suggests the use of Medicare cost reports for hospitals and nursing facility services with exceptions to be addressed on a case-by-case basis, but the regulation text states that costs for such services "must" be supported using Medicare cost report information.

143R. Response: The Medicare cost allocation process utilized for institutional health care providers is considered a key component in determining Medicaid cost under the regulation. Institutional governmentally-operated health care providers (i.e. hospitals (encompassing both inpatient and outpatient hospital services), nursing facilities, and intermediate care facilities for the mentally retarded (ICFs/MR)) will be required to provide the State with data extracted from primary source documents as well as copies of the source documents. These documents would include the governmentally-operated health care

provider's Medicare cost report (or Medicaid cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting principles), and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information Systems (MMIS).

For purposes of institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render a determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

144C. Comment: One commenter requested that CMS specify in the regulation text the process, timeframes, and appeal rights regarding CMS' action on a State's request to approve its cost reports for non-hospital/non-nursing facility providers, and for adjusted Medicare cost reports for hospitals/nursing facilities.

144R. Response: States will not be expected to develop their own cost reports for purposes of the Medicaid cost limit under the regulation. For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not currently exist. Because of this, we intend to publish a standardized cost reporting form to document the costs of such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally-operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the

Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol that will be on the CMS website that specifically addresses the methods under which non-institutional (and institutional) Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements.

145C. Comment: Many commenters were confused by the proposed language in §§ 447.206(d) through 447.206(e). The commenters stated that CMS alternated between mandatory and permissive language regarding the State obligations during CPE reconciliations. The commenters believed that CMS' intent was to require the submission of cost reports whenever providers are paid using a cost reimbursement methodology funded by CPEs and to permissively allow States to provide interim payment rates based on the most recently filed prior year cost reports. They also believed States providing interim payment rates must undertake an interim reconciliation based on filed cost reports for the payment year in question and a final reconciliation based on finalized cost reports. The commenters also believed CMS' intent was that for providers whose payments are not funded by CPEs, the providers are required to submit cost reports and the State is required to review the cost reports and verify that payments during the year did not exceed costs. The commenters requested CMS confirm this understanding of the regulatory language.

145R. Response: Under the Medicaid cost limit provision of the regulation, States may continue to use existing Medicaid reimbursement rate methodologies, which are not funded by CPEs, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a governmentally-operated provider. The Medicaid cost limit provision does not

require Medicaid payments to be equal to a governmentally-operated health care provider's cost. The Medicaid cost limit provision instead stipulates that Medicaid payments must be no more than a governmentally-operated health care provider's cost of providing services to Medicaid individuals. Section 447.206(e) specifically addresses situations where governmentally-operated health care providers are reimbursed using Medicaid reimbursement rate methodologies not funded by CPEs.

States must utilize cost reimbursement methodologies for Medicaid payments that are funded by CPEs. Section 447.206(d)(2) indicates that States may utilize interim rates and may trend those interim rates by an applicable health care-related index. If interim rates are used, then interim reconciliations must be performed by reconciling the interim Medicaid payment rates to the "as filed" cost report for the spending year in which interim Medicaid payment rates were made. Paragraph (3) of this provision also establishes that final reconciliation must be performed annually by reconciling any Medicaid interim payments to the finalized cost report for the spending year in which all interim payments were made. As stated previously, these procedures related to interim and final reconciliations at § 447.206(d) are applicable when States utilize cost reimbursement methodologies that are funded by CPEs.

146C. Comment: A few commenters requested clarification regarding proposed § 447.206(d)(2). The commenters requested clarification that this section is applicable only in a retrospective cost reimbursement methodology and does not apply to a prospective cost reimbursement methodology. The commenters are concerned that health care providers could construe that States are required to pay full costs, rather than that payments are limited to cost, in a prospective cost reimbursement methodology. Where payments are less than cost, health care providers would argue an additional Medicaid payment would be due.

146R. Response: Under the Medicaid cost limit provision of the regulation, States may continue to use existing Medicaid reimbursement rate methodologies, which are not funded by CPEs, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a governmentally-operated provider. The Medicaid cost limit provision does not

require Medicaid payments to be equal to a governmentally-operated health care provider's cost. The Medicaid cost limit provision instead stipulates that Medicaid payments must be no more than a governmentally-operated health care provider's cost of providing services to Medicaid individuals. Section 447.206(e) specifically addresses situations where governmentally-operated health care providers are reimbursed using Medicaid reimbursement rate methodologies not funded by CPEs.

States must utilize cost reimbursement methodologies for Medicaid payments that are funded by CPEs. Section 447.206(d)(2) indicates that States may utilize interim rates and may trend those interim rates by an applicable health care-related index. If interim rates are used, then interim reconciliations must be performed by reconciling the interim Medicaid payment rates to the "as filed" cost report for the spending year in which interim Medicaid payment rates were made. Paragraph (3) of this provision also establishes that final reconciliation must be performed annually by reconciling any Medicaid interim payments to the finalized cost report for the spending year in which all interim payments were made. As stated previously, these procedures related to interim and final reconciliations at § 447.206(d) are applicable when States utilize cost reimbursement methodologies that are funded by CPEs.

147C. Comment: A few commenters requested clarification regarding proposed § 447.206(d)(3). The commenters request clarification that the finalized cost report may be prepared by the Medicaid agency rather than requiring the Medicaid agency to wait for a Medicare intermediary to finalize the cost report. The Medicaid agency shouldn't have to wait for the Intermediary's generated final or accept the Medicare intermediary's determination of Medicaid costs.

147R. Response: The Medicare cost allocation process utilized for institutional health care providers is considered a key component in determining Medicaid cost under the provisions of the regulation. Use of a nationally recognized, standardized cost report allows all States to document institutional Medicaid service costs in a nationally consistent manner. Institutional governmentally-operated health care providers (that is, hospitals (encompassing both inpatient and outpatient hospital services), nursing facilities, and intermediate care facilities for the mentally retarded (ICFs/MR)) will be required to provide

the State with data extracted from primary source documents as well as copies of the source documents. These documents would include the governmentally-operated health care provider's Medicare cost report (or Medicaid cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting principles), and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information Systems (MMIS).

States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render a determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

We understand that there may be delays with the Medicare fiscal intermediary finalizing the Medicare cost report. To ensure compliance with the Medicaid cost limit, we have modified the final regulation to provide a generous but definite timeframe for a State's review of Medicaid payments made to institutional governmentally-operated health care providers. For any cost reports that are not finalized in that timeframe, the State should use the "as filed" report and indicate such in the summary report to CMS. The State should then submit a corrected summary report to CMS within 30 days of the finalization of the Medicare cost report.

148C. Comment: A couple of commenters recommended that States be allowed the option of having a single settlement and forgo the interim settlement process when using CPEs. The commenters stated that currently only final settlements are conducted and this interim settlement would require an additional step.

148R. Response: Provisions at § 447.206(d)(2) address reconciliations of interim rates to "filed" cost reports, while provisions § 447.206(d)(3) address reconciliations of interim rates to "finalized" cost reports. Such a distinction is historically relevant to institutional health care providers (hospitals and nursing homes) which "file" cost reports with a Medicare fiscal intermediary, after which the cost report

is "finalized" following fiscal intermediary review. The provisions at §§ 447.206(d)(2) and 447.206(d)(3) require that reconciliations be performed at both steps for purposes of documenting costs for the institutional health care provider's services to Medicaid individuals.

Non-institutional governmentally-operated health care providers must use the standardized cost reporting form issued by CMS, which will be subject to a State established review and audit process that must also include interim and final reconciliations for purposes of CPE.

149C. Comment: Several commenters requested that the proposed requirement to limit payments to health care providers not funded by CPEs be eliminated.

149R. Response: The Medicaid cost limit provision applies to all health care providers operated by units of government within the State, regardless of how the non-Federal share of Medicaid payments made to the governmentally-operated health care provider are funded.

150C. Comment: One commenter requested clarification in the regulation text on the timing requirements for reconciliation and for final payments.

150R. Response: To ensure compliance with the Medicaid cost limit, CMS has modified the regulation to indicate that a State's review of Medicaid payments made to institutional governmentally-operated health care providers during Medicaid State plan rate year 2008 must be completed no later than the last day of federal fiscal year 2010. The State must submit a summary report of the findings of this review by the last day of calendar year of 2010. The basis for these deadlines is the recognition that hospitals (for both inpatient and outpatient hospital services), nursing homes and ICFs/MR may have a cost reporting period that remains open after the Medicaid State Plan rate year under review has ended. The State review and reporting deadlines allow sufficient time for the cost report period that remains open at the end of a Medicaid State Plan rate year to close and for the cost report to be submitted to the fiscal intermediary. For any cost reports that are not finalized, the State should use the "as filed" report and indicate such in the summary report to CMS. The State should then submit a corrected summary report to CMS within 30 days of the finalization of the cost report.

CMS has modified the regulation to include a transition period to allow States and governmentally-operated non-institutional health care providers

sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.). States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

151C. Comment: Many commenters stated that the proposed cost limit would impose deep cuts in safety net support without addressing the inappropriate Medicaid financing abuses CMS has been working to address. The commenters acknowledged that according to CMS it has eliminated "recycling" the cost limit is supposed to address. Yet the commenters argued that imposing the proposed cost limit will do nothing to address recycling, rather it will only result in limiting net funding to governmental providers. The commenters recommended that rather than imposing the new cost limit, CMS should continue to address issues on a case-by-case basis through State Plan amendment (SPA) review.

Several commenters disagreed with CMS' statements in the proposed rule that States operate inappropriate financing structures. The commenters stipulated the States have worked to ensure that their financing policies do not denigrate the integrity of the Medicaid program and have received approval by CMS for these systems. Further, States have been subject to significant State and federal audit reviews and the commenters argued that these audit reviews and oversight mechanisms are sufficient for identifying any future potential threats to the integrity of the Medicaid program rather than the burdensome provisions within this proposed rule.

Similarly, one commenter discussed their example of working with CMS to approve a nursing facility reimbursement methodology that authorized payments to county-operated nursing facilities at 94 percent of the Medicare payment rate with the understanding that the counties would be contributing, through IGTs, to the

State a portion of the payment in an amount not to exceed the non-federal share. The commenter stated that through the review of this SPA all of the issues raised by CMS were addressed. The commenter believed that this is a prime example of the federal-State partnership at work. The commenter noted that the ability of CMS to deal through the State plan process with what it perceived to be a financing problem and to work with the State to develop a solution demonstrates why there is no need for further regulation. Several other commenters noted that after working extensively with CMS by removing problematic IGTs, they are now characterized as using IGTs appropriately.

151R. Response: We understand that many States utilize Medicaid financing methods that are consistent with the Medicaid statute and that existing Federal oversight mechanisms have been effective in addressing a number of State Medicaid financing abuses. An upper payment limit based on documented cost is nevertheless justified to prevent excessive payments to governmental providers. Such an upper payment provides a clear, objective test of the reasonableness of a payment methodology for government providers regardless of whether the provider participates in financing the Medicaid program. This limit is also consistent with statutory construction that the Federal government pays only its proportional cost for the delivery of Medicaid services. Because the Medicaid program is jointly funded by Federal, State, and local governments, we do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

Under the provisions of the regulation, governmentally-operated health care providers will be permitted to receive up to 100 percent of the cost of serving Medicaid individuals. It does not appear that limiting Medicaid reimbursement to full cost would hurt a governmentally-operated health care provider, unless the governmentally-operated health care provider had been historically receiving Medicaid payments above cost and using excess Medicaid revenues to subsidize costs outside of the Medicaid program. In such a situation, the Medicaid cost limit could cause a net reduction in Medicaid revenue to the governmentally-operated health care provider, but the amount of the reduction would directly correspond with the amount of Medicaid revenues

that had been used to satisfy non-Medicaid activities.

152C. Comment: Many commenters were concerned that the proposed cost limit would not allow health care providers to include important elements in their cost calculation. One commenter questioned whether the Secretary would prospectively establish the reasonable methods to identify and allocate Medicaid costs. For example, several commenters cited costs for physician services, on-call availability costs, capital costs and health information technology costs. These commenters recommended that CMS allow the reasonable costs necessary for the continued operation of health care providers. Other commenters recommended that CMS provide guidance on how Medicaid costs would be determined and that at a minimum any determination of Medicaid costs would include all costs necessary to operate a governmental facility. These commenters cited many examples.

A few commenters inquired as to what cost finding principles will be used to determine which costs are associated with the provision of the Medicaid service. One commenter further questioned whether the cost finding principles would be standardized, how will they differ from existing cost finding guidance and, why. This commenter stipulated that a more comprehensive definition of costs is needed since CMS has decided not to use Medicare's cost principles or the principles of OMB Circular A-87.

The commenters also noted that some costs on a hospital's cost report are allocated to cost centers judged to be unreimbursable for purposes of Medicare, but are appropriately reimbursed under Medicaid or DSH. Such costs include costs for a clinic that exclusively serves Medicaid and uninsured individuals.

152R. Response: Medicaid service costs must be documented for institutional providers through Medicare cost reporting methods. We agree some adjustments would be needed to reflect the costs of Medicaid services; for example, Medicaid only units that would be excluded from the calculation of Medicare patient care costs would be included in calculating Medicaid patient care costs (and non-Medicaid units would be excluded). But all the information necessary to calculate Medicaid cost should be found on the Medicare cost report. For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not currently exist. Because of this, we intend to publish a

standardized cost reporting form to document the costs of such services.

The Medicare cost allocation process utilized for institutional health care providers is considered a key component in determining Medicaid cost under the regulation. Institutional governmentally-operated health care providers (that is, hospitals (encompassing both inpatient and outpatient hospital services), nursing facilities, and intermediate care facilities for the mentally retarded (ICFs/MR)) will be required to provide the State with data extracted from primary source documents as well as copies of the source documents. These documents would include the governmentally-operated health care provider's Medicare cost report (or Medicaid cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting principles), and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information Systems (MMIS).

For non-institutional services provided to Medicaid eligible individuals, use of a standardized form will document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has developed a general Medicaid Cost Reporting Protocol that will be available on the CMS website that specifically addresses the information utilized from each source document and the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements.

153C. Comment: One commenter questioned whether CMS would define which provider costs and what specific Medicare/Medicaid 2552-96 worksheets and lines may be included in developing this new cost limit.

153R. Response: CMS has developed a general Medicaid Cost Reporting Protocol that will be on the CMS Web site that specifically addresses the information utilized from each source document, including the Medicare 2552-96 hospital cost report, and the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements.

154C. Comment: One commenter questioned whether CMS intends to develop case mix indices for non-institutional providers or require States to do so.

154R. Response: States utilizing Medicaid cost reimbursement methodologies may develop interim payment rates based on prior period costs or case-mix and apply a related health inflation index. However, the Medicaid cost limit provision limits Medicaid payments to the actual costs of providing services to Medicaid individuals and the State must reconcile these interim payments to actual documented cost.

155C. Comment: One commenter was concerned that costs for preventive and wellness care services would not be allowable. The commenter is also concerned that costs for physical therapists would not be allowed. The commenter states the importance of these services in helping individuals maintain their health by preventing further deterioration or future illness.

155R. Response: CMS will continue to provide Federal matching funds for State expenditures under the authority of a State's approved Medicaid State plan. Provided that preventive and wellness services and physical therapy services for Medicaid individuals are considered reimbursable costs under the approved State Plan, CMS will continue to provide Federal funds to match State expenditures for these services to the extent all such reimbursements and State financing are consistent with Federal requirements.

156C. Comment: Many commenters requested that CMS confirm that graduate medical education (GME) costs would be considered allowable costs as part of the proposed cost limit. These commenters cited that as of 2005, 47 States and the District of Columbia provided explicit GME payments to teaching hospitals and that numerous approved State plan provisions authorize such payments. These commenters stated that excluding these costs could seriously undermine the infrastructure for training new physicians across the country.

156R. Response: The allowability of graduate medical education (GME) costs or payment is not affected by this regulation. This issue is the subject of a recently issued Notice of Proposed Rulemaking, which would make unallowable payment for direct GME costs, consistent with the concept included in the President's Budget for Fiscal Year 2008.

157C. Comment: One commenter requested clarification regarding how States should identify costs for

providers operated by units of government that do not serve Medicare individuals and, therefore, do not use and have never used Medicare cost reports.

157R. Response: Nursing homes that only provide intermediate care services and therefore do not file a Medicare cost report must use State cost reports generally consistent with the Medicare cost reporting principles utilized in the Medicare 2540 cost report form to determine costs associated with skilled care services.

While Medicare does not have an equivalent cost report for the services provided in ICFs/MR, we recognize that States typically follow Medicare cost principles in determining Medicaid payment rates for ICFs/MR. We further note that the services provided in ICFs/MR are predominately delivered to Medicaid eligible individuals. Therefore, cost data should be extracted from existing State cost reports for services provided in ICFs/MR. Such cost reports must be generally consistent with Medicare cost reporting principles.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not currently exist. Because of this, we are publishing a standardized cost reporting form to document the costs of such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

158C. Comment: One commenter indicated that there are a broad array of indirect and unreimbursed costs associated with Medicaid individuals. The commenter argued that the uniqueness of Medicaid individuals' socio-economic status make them much costlier. For example, the commenter detailed that Medicaid individuals have a higher rate of missed appointments than private pay or Medicare individuals, under utilize preventive care which then leads to more costly and complex care, increased severity of medical conditions, lack of follow-through or compliance with treatment plans, and use of hospital emergency rooms as a primary care source. The commenter urged CMS to ensure that the true costs associated with Medicaid individuals are captured and the cost limit not be based on strictly patient care costs. Another commenter indicated that limiting reimbursement to costs only would be devastating to facilities operating in States that do not

adjust each year for the real costs to provide services to the frail and elderly.

158R. Response: The cost reporting mechanisms that would be used have sufficient flexibility to ensure determination of the full cost of furnishing Medicaid services. At the same time, they will provide a standardized and uniform cost determination methodology.

The Medicare cost allocation process utilized for institutional health care providers is considered a key component in determining Medicaid cost under the regulation. Institutional governmentally-operated health care providers (that is, hospitals, nursing facilities, and intermediate care facilities for the mentally retarded (ICFs/MR)) will be required to provide the State with data extracted from primary source documents as well as copies of the source documents. These documents would include the governmentally-operated health care provider's Medicare cost report (or Medicaid cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting principles), and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information Systems (MMIS).

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not currently exist. Because of this, we are publishing a standardized cost reporting form to document the costs of such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

159C. Comment: One commenter stated that since their rates for Medicaid services have not been indexed for inflation over the past fourteen years, it shouldn't be necessary for them to prove costs.

159R. Response: There are no Medicaid reimbursement rate methodologies for governmentally-operated health care providers that would be "exempt" from the Medicaid cost limit provision of the regulation. The regulation does not require States to modify existing Medicaid reimbursement rate methodologies they are currently utilizing to reimburse governmentally-operated health care providers. Under the Medicaid cost limit, States will be able to continue to use existing reimbursement rate methodologies, but will need to

compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a particular governmentally-operated health care provider.

160C. Comment: One commenter suggested that CMS give consideration to those States that have approved cost based prospective reimbursement plans. The commenter added that by doing this, the proposed cost limit requirement could be met with the most recent historical costs used in establishing the prospective rates.

160R. Response: The Medicaid cost limit provision of the regulation requires an examination of the actual costs incurred by governmentally-operated health care providers for providing services to Medicaid individuals and the actual Medicaid payments received for such services in a given Medicaid State plan rate year. Under the Medicaid cost limit, States will be able to continue to use existing reimbursement rate methodologies, but will need to compare such rates to the actual cost of providing services to Medicaid individuals and make reconciling adjustments in the event of overpayments to a particular governmentally-operated health care provider.

161C. Comment: Several commenters stated that they have no issue with the requirement to submit auditable documentation, but are concerned whether CMS considered that complicated approved methodologies exist today whereby both administrative and program costs, through cost allocation, are used to claim administrative costs by CPEs and are used to set rates for programs such as TCM. The commenters asked CMS to understand that while the requirements for reporting administrative costs and for reporting service costs are very different, they are also sometimes integrated in time studies.

The commenters preferred that documentation requirements accommodate both administrative claiming and/or collection of the cost to provide a service, avoiding a duplicative reporting process.

161R. Response: The standardized cost reporting form will be used to document non-institutional services has been designed to accommodate both administrative Medicaid costs as well as clinical Medicaid costs in a single template, thus avoiding a duplicative reporting process. CMS has developed a general Medicaid Cost Reporting Protocol that will be on the CMS Web site that specifically addresses the

methods under which non-institutional (and institutional) Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements. While the Medicaid cost limit provision does not necessarily require States to modify their existing Medicaid reimbursement rate methodologies for governmentally-operated health care providers, any Medicaid overpayments that result from such reimbursement methodologies, must be offset against future claimed expenditures reported on the CMS-64 as an overpayment in accordance with sections 1903(d)(2) and 1903(d)(3)(A) of the Act.

162C. Comment: Several commenters inquired as to what extent CMS will define how administrative claiming is documented and how would these proposed regulations might alter that process. The commenters request that these requirements not go beyond activities defined in OMB A-87 or GAAP. The commenters also expect that the allowable costs be fully inclusive of costs as defined by OMB A-87. Another commenter questioned whether the proposed cost limit will be applied to Medicaid administrative costs. Another commenter questioned if the cost identification and reporting requirements apply to administrative expenditures, will all currently approved Cost Allocation Plans still be compliant under this proposed rule.

162R. Response: OMB Circular A-87 specifies cost principles for state and local government administration costs. Cost Allocation Plans are required and approved by the Federal government in accordance with 45 CFR Part 95, Subpart E. Cost identification and reporting requirements will continue under this existing process for purposes of administrative expenditures under Medicaid.

163C. Comment: A few commenters expressed concern regarding the impact of the proposed cost limit on governmentally operated critical access hospitals (CAHs). The commenters stated that the cost limit would create a disconnect with other non-governmentally operated CAHs who would still be reimbursed at 101 percent of cost consistent with Medicare. The commenters stated that limiting the governmentally operated CAHs to 100 percent of cost would undermine their public safety net mission and could result in their inability to maintain their operations which serve a vital role in rural communities.

163R. Response: All governmentally-operated health care providers are subject to the Medicaid cost limit.

Therefore, governmentally-operated critical access hospitals will be subject to the provisions of the regulation in a manner consistent with all other types of governmentally-operated health care providers. States must apply the Federal statutory and regulatory criteria to each individual health care provider within the State to make initial determinations of governmental status.

It is important to note that non-governmentally-operated health care providers, including many of the "public" safety net health care providers referenced by the commenters, are not affected by the Medicaid cost limit provision of the regulation and may, therefore, continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

164C. Comment: A number of commenters stated that this rule is administratively burdensome because school-based providers will be challenged to document costs in a cost report, which could drain school resources and may also result in medically necessary and allowable services not being reimbursed. Concern was also expressed that the regulation's documentation requirements would strain relationships between schools and school-based providers. One commenter stated that the provisions of the regulation would cause significant hardship on school district accounting offices because they are subject to Federal, State, and local regulations for accounting that are different from procedures proposed in §§ 433, 447, and 457. This commenter did not specify which Federal, State, or local accounting provisions are in conflict with the proposed provisions of the regulation. Another commenter expressed the view that a "one size fits all" approach to cost reporting for school based services would unnecessarily burden schools in a State where cost documentation is already accessible and verifiable.

164R. Response: For school-based services in Medicaid, we recognize that a nationally recognized, standard cost report does not currently exist, leaving States and school districts to themselves to document costs however they deem appropriate. These different practices often make it difficult to (1) align claimed expenditures with specific services covered under the State plan or identifiable administrative activities; (2) properly identify the actual cost to the governmental entity of providing services to Medicaid individuals or performing administrative activities; and (3) audit and review Medicaid

claims to ensure that Medicaid payments are appropriately made. School-based services have been cited by the Office of the Inspector General as an area within Medicaid cited for problematic claims. To ensure the fiscal integrity of the Medicaid program, we believe it is important for schools to be subject to the same requirements to document Medicaid costs as other governmental providers.

We will be publishing a standardized non-institutional services cost reporting form that can be used for school-based services in order to have such services documented in a uniform manner across the country. This standardized form should minimize the burden associated with the review of expenditures for school-based services. We expect that States with currently accessible and verifiable cost documentation will find it easier to transition into use of the new school-based services cost report template.

165C. Comment: A few commenters requested clarification regarding the inapplicability of the proposed cost limit to the State Children's Health Insurance Program (SCHIP). The commenters stated that it was unclear whether CMS was creating a new definition for what will be considered an SCHIP provider. The commenters noted that for States that have designed their SCHIP program as a Medicaid expansion, there is no distinction made between those providers who provide services to the SCHIP population and those who provide services to Medicaid enrollees. Specifically the commenters questioned that if a State's Medicaid providers are considered SCHIP providers, are they exempt from the proposed cost limit. The commenters also questioned whether if a State's Medicaid providers are not considered to be SCHIP providers and have to meet the proposed cost limit, should the State for those providers exclude SCHIP costs and reimbursements when making the Medicaid cost limit and overpayment determination. The commenters stated that if the SCHIP costs and reimbursements are not excluded, then a cost shift has occurred to the States for the difference between the State's regular FMAP rate and the enhanced SCHIP FMAP.

Another commenter expressed concern that those States which opted to implement SCHIP as a Medicaid expansion are being retroactively penalized for not implementing SCHIP as a stand alone program. This commenter stated that given the SCHIP implementation options included in the statute, this proposed regulation must clearly define the criteria and

characteristics of what is; and, what is not an SCHIP provider for application of the regulation's provisions. For example, the commenter questioned whether providers are considered SCHIP providers when they provide the same service package to both Medicaid and SCHIP eligibles and are reimbursed at the same payment rates.

165R. Response: We are not creating a new definition of what is considered an SCHIP provider. We are clarifying that the provisions of this regulation are applicable to health care providers that receive payments under a separate state SCHIP, with the exception of the provisions related to the Medicaid cost limit as described below.

To the extent a State's SCHIP program is established as a Medicaid expansion program, payments to governmentally-operated health care providers for SCHIP individuals are Medicaid payments and are subject to the Medicaid cost limit. If a State operates its SCHIP program as an SCHIP stand-alone program, payments to governmentally-operated health care providers are not subject to the Medicaid cost limit. This distinction is consistent with the different nature of a separate State SCHIP and a Medicaid expansion. A Medicaid expansion is an integral part of the Medicaid program, subject to all Medicaid requirements, including beneficiary protections and payment limitations. A separate State SCHIP is not part of the Medicaid program and affords States greater flexibility, particularly in the area of provider payment and beneficiary protections. Only certain specified Medicaid requirements apply including, at section 2107(e)(1)(C), the Medicaid provider tax and donation restrictions of section 1903(w). CMS has interpreted this to include restrictions on non-governmental providers participating in the financing of the program. As a result, this rule would make applicable to separate State SCHIPs all requirements other than the Medicaid cost limits.

The regulation does not make a distinction between what is and is not an SCHIP provider. Rather the determining factor is the structure of the State's SCHIP program and what type of payments (for example, Medicaid expansion or SCHIP stand-alone) are received by governmentally-operated health care providers for individuals covered under SCHIP.

E. Retention of Payments (§ 447.207)

166C. Comment: One commenter questioned whether it is allowable for the State to retain the federal share of a supplemental Medicaid payment when

the Federal share is used to support the Medicaid reimbursement, thus eliminating the need for a reduction in the Medicaid reimbursement.

166R. Response: No. Section 447.207 requires that health care providers receive and retain the full amount of the total computable payment provided to them for services furnished under the approved Medicaid State plan. Federal financial participation (FFP) is provided only when there is a corresponding State expenditure for a covered Medicaid service provided to a Medicaid individual. FFP is based on statutorily-defined percentages of total computable State expenditures for medical assistance provided to individuals under the approved Medicaid State plan, and of State expenditures related to the cost of administering the Medicaid State plan. If the State expenditure is reduced, then the Federal share of that expenditure is also proportionately reduced.

167C. Comment: A couple of commenters stated that the proposed retention of payment provisions violate section 1903(w)(6)(A) of the Act which specifically allows intergovernmental transfers and section 5 of Pub. L. 102-234, which prohibits the Secretary from changing the treatment of public funds as a source of the State share of Medicaid expenditures. The commenters also noted that Congress prohibited the Secretary from promulgating interim regulations changing the treatment of IGTs. The commenters suggested that the term "retain" is not defined, thus leaving the final determination of its meaning to the discretion of the Secretary. One commenter stated that this proposed provision has constitutional implications under the takings clause of the U.S. Constitution that would result if private health care providers could not freely transfer their payments from Medicaid (that is, use those payments to pay the health care provider's own expenses). One of the commenters argued that there was no reason for Congress to have inserted the phrase "regardless of whether the unit of government is also a health care provider" in section 1903(w)(6)(A) of the Act if it had not intended to continue to allow governmentally-operated health care providers to refund Medicaid payments, which are derived from State taxes, to the State. The commenter acknowledged that such refunds have allowed some States to pay for costs that are outside the Medicaid program, the commenter believed this was expressly permitted by Congress.

167R. Response: We have revised the language of 447.207 to make clear that

the requirement applies to States and State payment methodologies for Medicaid services and precludes States from adopting payment methodologies that involve conditional or theoretical payments to providers.

The provision at § 447.207 requiring that health care providers actually receive and retain the full amount of the total computable payment provided for services furnished under the approved State plan is consistent with section 1903(w)(6)(A) of the Act because that provision protects only those IGTs that are "derived from State or local taxes (or funds appropriated to State university teaching hospitals)." Since this regulation addresses only the use of Medicaid revenues, not State or local taxes, there is no conflict.

This provision specifically addresses those instances in which States make claims that are based on health care provider payments that are never actually made, are based on amounts paid with such conditions that the health care provider never actually becomes the beneficial owner of the funding (for example, when the health care provider is required to return the funding to a State agency or State directed purpose), or are otherwise diverted from use for Medicaid services by operation of law, contract or other mechanism. When the health care provider is not permitted to receive and retain the funds, the regulation would reflect the fact that the health care provider is acting simply as a conduit or agent rather than a recipient of a Medicaid payment. This means that there is no actual expenditure for Medicaid purposes.

168C. Comment: One commenter detailed that funds from governmentally-operated health care providers have been essential to States for financing health care to indigent populations. The commenter further stipulated since section 1903(w)(6)(A) of the Act protects IGTs, it specifically allows governmentally-operated health care providers to return funds in order to provide access to health care for uninsured individuals. Prohibiting governmentally-operated health care providers from doing so would necessarily reduce funds available to provide health care services to these vulnerable individuals.

168R. Response: Section 1903(w)(6)(A) of the Act protects only those IGTs that are "derived from State or local taxes (or funds appropriated to State university teaching hospitals)." Since this regulation addresses only the use of Medicaid revenues, not State or local taxes, there is no conflict. This regulation would not affect the ability of

governmentally-operated health care providers to make IGTs that are "derived from State or local taxes."

169C. Comment: Numerous commenters stated that the proposed rule lacked the specificity necessary to make this provision enforceable and the commenters were unclear how a health care provider could retain the full amount of its total Medicaid payments. Most commenters questioned whether this required providers to place all Medicaid revenues in a separate account and never use Medicaid revenues to cover routine business operating expenses, such as employee salaries or purchase of supplies. These commenters felt the provision as written is unworkable and the commenters demanded clarification as to how a health care provider would comply. The commenters also stated that CMS is attempting to regulate providers' use of the Medicaid revenues that they have earned for the Medicaid services already provided. The commenters further stated that the examination of the underlying Medicaid expenditures does not provide clarity as it fails to state the standards that will be applied in such an examination. Finally, the commenters argued that this provision is especially egregious when applied to public health care providers that are now limited to cost. These providers will have already spent the full amount on services and will have nothing left to be "retained". One commenter recommended that the regulation make clear that the requirement to retain a payment does not prohibit them from spending earned revenue and that CMS should more clearly specify in the regulation what activities are prohibited.

In addition, these commenters specified that this requirement will not be an effective means of addressing State funding abuses. These commenters felt as though this provision is unnecessary and that if CMS is concerned that Medicaid expenditures are not consistent with legal requirements, then CMS should impose regulations on the calculation of those expenditures. Another commenter felt that this provision is also unnecessary since CMS has eliminated recycling and the purpose of the regulation is to formalize current practice, not to accomplish anything new.

Numerous other commenters requested that the authority claimed by CMS to review "associated transactions" be deleted. The commenters stated that this proposed requirement would prohibit providers from making expenditures with Medicaid reimbursement funds and that

any routine payments from providers to State or local governmental items for items or services unrelated to Medicaid payments would come under suspicion. The commenters pointed out that financial arrangements with State and local governments require money flows for a variety of reasons. These commenters strongly argued that CMS' review and audit authority is limited to payments made under the Medicaid program and that it does not have authority over providers' use of Medicaid payments received. A few commenters requested that CMS should clarify what it considers an associated transaction in the regulation text itself. Another commenter stated that CMS has overlooked the funding realities that face public health providers and that requiring providers to retain payments may have the unintended consequence of preventing the efficient and economical flow of funding streams within and between governmental entities. Most of these commenters specified that CMS has more effective mechanisms to limit the potential for abuse involving the re-direction of Medicaid payments by IGTs. Other commenters stated that they are also concerned that CMS may use its disallowance authority to pressure public providers to dismantle such arrangements.

Another commenter stated that this requirement would be nearly impossible to track. Once funds are deposited into operating accounts, funds cannot be traced, segregated or separately identified. The commenter indicated that the proposed facility-specific cost limits would make any tracking unnecessary. The commenter argued that where a governmentally-operated health care provider is funded fully by a State or county agency, it is entirely appropriate for the provider to return to its funding agency any revenues received from payers, regardless of payer source. The commenter went on to further state that in Medicaid the governmental expenditure is always made prior to the receipt of the reimbursement and there is no valid argument that the governmental provider should not return to the original source of its expenditures the portion of the payment that was provided in the first place.

169R. Response: The retention of payments provision was broadly written in an effort to encompass the wide variety of Medicaid financing abuses that CMS has discovered over the years. In examining Medicaid State financing arrangements across the country, we have identified numerous instances in which health care providers did not

retain the full amount of their Medicaid payments, payments for which Federal matching funds were provided as a percentage of the total Medicaid payment. Instead, these health care providers returned or redirected all or a portion of the payments received, either directly or indirectly, as part of a pre-arranged agreement (contractual or otherwise) to draw additional Federal Medicaid funds that were then diverted for other purposes.

Specifically, health care providers were required to return a significant portion of a particular Medicaid payment to State or local government either directly upon receipt of such payment or indirectly through a transfer of funds in an amount greater than the non-Federal share to generate such payment. States and local governments would then use these funds to draw additional Federal matching dollars for other Medicaid payments and/or satisfy other non-Medicaid activities. In addition, health care providers were required to redirect a particular Medicaid payment to other non-Medicaid health programs to satisfy certain non-Medicaid activities, which were otherwise State only or local government only obligations often involving health care services to a non-Medicaid individual.

These arrangements are inconsistent with statutory construction that the Federal government pays its statutorily identified share of the payments for the provision of the delivery of Medicaid services. The retention of payments provision is intended to clarify the Federal government's authority to identify and correct such abuses.

The retention of payments provision was not designed to interfere with the normal operating expenses of conducting business, such as payments related to taxes, (including health-care provider-related taxes), fees, business relationships with governments unrelated to Medicaid in which there is no connection to Medicaid payment. Such normal operating expenses would not be considered "returning/redirecting" a Medicaid payment, we have modified the regulation to clarify this point. However, when a governmentally-operated health care provider participates in a pre-arranged agreement with the State or local government to return or re-direct a particular Medicaid payment to which it is otherwise entitled, the expenditure claimed by a State is in excess of the actual payment ultimately retained by the governmentally-operated health care provider (that is, the net expenditure). The result of such an arrangement is that the Federal government provided

matching funds in excess of the net expenditure made by the State to the health care provider.

We have revised the regulation text to clarify that this requirement is not intended to burden providers, but instead is intended to be a condition for the allowability of Medicaid payment methodologies. In general, we intend to continue to focus our enforcement efforts on prospective review of proposed State payment methodologies. Indeed, this requirement should protect providers by ensuring that claimed Medicaid payments are actually available to support Medicaid services furnished by the providers.

170C. Comment: One commenter specified that CMS has indicated that an expenditure must have occurred before a unit of government can certify an expenditure to the Medicaid agency. The commenter noted that CMS has indicated that once a unit of government certifies a valid expense, the health care provider has been paid. This commenter was concerned that the proposed retention requirements make it possible for a governmental health care provider to assert it is entitled to 100 percent FFP returned to the State on the basis of its expenditure and the State's retention of any of the FFP constitutes a violation of this proposed rule. This commenter recommended that 447.207 be revised to clearly state: once a governmental health care provider certifies an expenditure, the retention of payments provisions have been satisfied; the distribution of FFP from the Medicaid agency to any certifying unit of government is not a relevant factor in measuring compliance; and the State may withhold a portion or the entire amount of FFP resulting from a CPE.

170R. Response: A certified public expenditure (CPE) means that State or local tax dollars were used to satisfy the cost of providing services to Medicaid individuals. The expenditure that is claimed for Federal matching funds based on a CPE (that is, total computable expenditure) is inherently equal to the net expenditure. The Federal matching funds, therefore, are available as a percentage of this actual certified public expenditure. Under the CPE process, a unit of government (including a governmentally-operated health care provider) has expended funds to provide services to Medicaid individuals, which means that the unit of government has satisfied both the Federal and State share of these Medicaid costs. Therefore, Federal matching funds are effectively repayment of the Federal share of the total computable expenditure initially satisfied at a State or local government

level. CMS would assume that as the entity authorized to draw Federal funds, Medicaid agencies would distribute the Federal matching funds in a manner that is proportionate to the total computable expenditure by the certifying unit of government. To the extent a State agency chooses to distribute those Federal funds in a manner that is not proportional to the costs incurred by other governmental units within the State, CMS does not plan to interfere with such decisions between States, local governments and/or governmentally-operated health care providers.

171C. Comment: One commenter noted that, while not opposed to the retention of payment provision, requiring health care providers to pay the non-federal share of the Medicaid payment prior to receiving reimbursement to the State Agency will be a change to current practice. They noted that this may cause conflict with the State's prompt payment act, which requires interest to be paid to the health care provider of goods and/or services if requests for reimbursement are not paid within 45 days of receipt. The proposed rule would be an accounting burden for tracking which entities had paid and therefore appropriate to proceed with the reimbursement process.

171R. Response: Funds may be transferred by units of government that are not health care providers to the State Medicaid agency either before or after the payment to the health care provider is made, provided that the requirements of § 447.207 are satisfied. A principal concern in evaluating compliance with § 447.207 will be the determination as to whether or not the funding obligation to the non-Federal share of Medicaid payments has been fully satisfied by the State or local government. IGTs from a local or other State Agency unit of government's general fund may be considered a permissible source of the non-Federal share of Medicaid payments when: (1) Monies from the general fund are transferred to the State Medicaid agency; (2) such monies are used to fund the non-Federal share of Medicaid payments to the governmentally-operated health care provider; (3) the health care provider deposits such Medicaid payments into its operating account (a governmentally-operated health care provider will always maintain an operating account that is separate from the general fund managed by the corresponding unit of government); and (4) no portion of Medicaid payments deposited into the operating account is sent back to the general fund to replenish the loss of funds resulting from the IGT. These

conditions would demonstrate that the burden of the non-Federal share of the Medicaid payment was satisfied by the local government or other State Agency.

Governmentally-operated health care providers may only transfer funds prior to receiving a Medicaid payment. This ensures that funds were actually available to the governmentally-operated health care provider to satisfy the non-Federal share obligation to the Medicaid payment it receives and were not derived from, and effectively a reduction in, the Medicaid payment received. To permit IGTs made by a governmentally-operated health care provider after the Medicaid payment is received would effectively allow a Medicaid Agency to "loan" the non-Federal share obligation to the governmentally-operated health care provider. (Upon receipt of the Medicaid payment, the governmentally-operated health care provider would "return" the "loan" to the Medicaid Agency through an IGT.) The end result of a post payment IGT would be that a State is able to send Federal matching funds into a governmentally-operated health care provider without any unit of government satisfying the non-Federal share obligation. The State could then use the same funds to make additional Medicaid payments and attract new Federal matching funds.

172C. Comment: Many commenters stated that this provision is an overreaction to a concern perceived by CMS, but which it has, by its own admission, been able to deal with through the State plan or waiver approval process. The commenters are concerned that the provision would cast doubt on, if not expressly prohibit, valid fund transfers that raise no issue of "recycling" and involve no abuse of Medicaid funding. One commenter described how its county nursing homes are funded. The county nursing homes are financed by the county governments, which use appropriated funds to cover the nursing homes' costs of operations. The commenter noted that similar to other States and local governments, State and county tax receipts are not received in even proportions throughout the year. In order to assure funding of the nursing homes' operation during periods of slack revenues, the counties issue debt securities of which portions of the proceeds are transferred to the State to help fund Medicaid payments. Upon receipt of payments from payers, including Medicaid, the county nursing homes return funds to the counties to enable them to repay the tax anticipation notes. The commenter indicated that the counties are paying for the operations of the nursing homes

with their tax dollars and the transfers from the nursing homes to the counties out of their revenues are part of a financing structure that assures a steady flow of county funds for all of the activities funded by the counties, including nursing homes. The commenter believed that as a result of the proposed rule, this appropriate financing method would be prohibited. The commenter strongly stated that this merely illustrates the damage that can be caused by overly broad federal regulations that impinge on State financial operations. Other commenters indicated that it is common practice for public providers to be funded by State and county appropriations which are returned to the State and counties after the public providers receive their federal reimbursements. The commenter strongly stated that CMS does not have the authority to declare funding arrangements between units of State government that are not prohibited by Congress to be illegitimate.

Other commenters stated that it is common for States or local governments to provide full funding to their health care providers, in the expectation of receiving the federal portion back from the health care provider when it has been reimbursed for providing Medicaid services. These commenters pointed out discrepancy between the proposed regulatory provision and preamble justification. The commenters noted that the preamble only specifies that when a governmental operated health care provider transfers to the State an amount more than the non-Federal share is there a situation where the net Medicaid payment is "necessarily reduced." However the provisions of the proposed rule itself would preclude any transfer to the State from the payment received by the health care provider. The commenters questioned whether the prohibition is meant to apply to any portion of the Medicaid payment or only to the federal portion and again noted that CMS lacks any statutory basis.

Many of these commenters stated that it is more appropriate to continue to use the SPA process to deal with perceived impermissible financing arrangements and to separate the benign transfers that do not present issues of concern from those that CMS believes present problems.

172R. Response: The retention of payments provision was broadly written in an effort to encompass the wide variety of Medicaid financing abuses that CMS has discovered over the years. In examining Medicaid State financing arrangements across the country, we have identified numerous instances in

which health care providers did not retain the full amount of their Medicaid payments, payments for which Federal matching funds were provided as a percentage of the total Medicaid payment. Instead, these health care providers returned or redirected all or a portion of the payments received, either directly or indirectly, as part of a pre-arranged agreement (contractual or otherwise) to inappropriately draw additional Federal Medicaid funds that are then diverted for other purposes. Other health care providers were required to return a significant portion of a particular Medicaid payment to State or local government either directly upon receipt of such payment or indirectly through a transfer of funds in an amount greater than the non-Federal share to generate such payment. States and local governments would then use these funds to draw additional Federal matching dollars for other Medicaid payments and/or satisfy other non-Medicaid activities. In addition, health care providers were required to redirect a particular Medicaid payment to other non-Medicaid health programs to help satisfy an otherwise State or local government obligation to non-Medicaid activities, often involving health care services to a non-Medicaid individual.

These arrangements are inconsistent with statutory construction that the Federal government pays its statutorily identified share of the payments for the provision of the delivery of Medicaid services. The retention of payments provision is intended to clarify the Federal government's authority to identify and correct such abuses.

The retention of payments provision was not designed to interfere with the normal operating expenses of conducting business, such as payments related to taxes, (including health-care provider-related taxes), fees, business relationships with governments unrelated to Medicaid in which there is no connection to Medicaid payment and we have modified the regulation to clarify this point. However, when a governmentally-operated health care provider participates in a pre-arranged agreement with the State or local government to return or re-direct a particular Medicaid payment to which it is otherwise entitled, the expenditure claimed by a State is in excess of the actual payment ultimately retained by the governmentally-operated health care provider (that is, the net expenditure). The result of such an arrangement is that the Federal government provided matching funds in excess of the net expenditure made by the State to the governmentally-operated health care provider.

A principal concern in evaluating compliance with § 447.207 will be the determination as to whether or not the funding obligation to the non-Federal share of Medicaid payments has been fully satisfied by the State or local government. IGTs from a local or other State Agency unit of government's general fund may be considered a permissible source of the non-Federal share of Medicaid payments when: (1) Monies from the general fund are transferred to the State Medicaid agency; (2) such monies are used to fund the non-Federal share of Medicaid payments to the governmentally-operated health care provider; (3) the health care provider deposits such Medicaid payments into its operating account (a governmentally-operated health care provider will always maintain an operating account that is separate from the general fund managed by the corresponding unit of government); and (4) no portion of Medicaid payments deposited into the operating account is sent back to the general fund to replenish the loss of funds resulting from the IGT. These conditions would demonstrate that the burden of the non-Federal share of the Medicaid payment was satisfied by the local government or other State Agency.

173C. Comment: Several commenters noted that § 447.207 is too broad. The commenters cited that the preamble to the proposed rule suggests that this retention of payments requirement only applies to IGT funded Medicaid payments, but the regulation text appears to apply to all Medicaid payments to all types of providers. The commenters requested clarification. Numerous commenters requested clarification as to whether the retention of payment provision applies to payments funded by CPEs. The commenters also stated that CMS should require States to pay all Federal funding associated with CPEs to the provider. The commenters presume that the requirement that providers "receive and retain the full amount of the total computable payment provided to them" applies to all payments, regardless of funding source. On the other hand, other commenters requested that CMS clarify in the regulation text that this proposed provision does not apply to services that are financed through CPEs. Another commenter requested that § 447.207 be clarified to indicate that the provisions are only applicable to payments funded with an IGT. One other commenter expressed confusion that this proposed provision appears to preclude CPEs by a governmental provider. The commenter specifically

mentioned that a governmentally-operated health care provider that expends funds for salaries, utilities, food, etc. in the provision of medical services and certifies an expenditure eligible for FFP will not receive a payment.

173R. Response: Section 447.207 applies to all health care providers receiving Medicaid payments, whether such payments are funded by a State's General Fund, or by local governments including governmentally-operated health care providers via IGTs. The retention of payments provision was written specifically to address abuses involving the misuse of intergovernmental transfers. CMS has noted many instances where, under the guise of the IGT process, providers refunded or returned a portion of the payments received, either directly or indirectly, as part of an intentional scheme to inappropriately draw additional Federal Medicaid funds that are then diverted for purposes unrelated to Medicaid. Such IGT abuses occur when the State's claimed expenditure, which serves as the basis for FFP, is actually more than the State's true net expenditure, resulting in an excessive draw of Federal matching funds.

A certified public expenditure (CPE) means that State or local tax dollars were used to satisfy the cost of providing services to Medicaid individuals. The expenditure that is claimed for Federal matching funds based on a CPE (that is, total computable expenditure) is inherently equal to the net expenditure. The Federal matching funds, therefore, are available as a percentage of this actual certified public expenditure. Under the CPE process, a unit of government (including a governmentally-operated health care provider) has expended funds to provide services to Medicaid individuals, which means that the unit of government has satisfied both the Federal and State share of these Medicaid costs. Therefore, Federal matching funds are effectively repayment of the Federal share of the total computable expenditure initially satisfied at State or local government level. CMS would assume that as the entity authorized to draw Federal funds, Medicaid agencies would distribute the Federal matching funds in a manner that is proportionate to the total computable expenditure by the certifying unit of government. To the extent a State agency chooses to distribute those Federal funds in a manner that is not proportional to the costs incurred by other governmental units within the State, CMS does not plan to interfere with such decisions

between States, local governments and/or governmentally-operated health care providers.

Under the provisions of the regulation, all health care providers maintain some level of ability to participate in the certified public expenditure (CPE) process. Governmentally-operated health care providers are able to certify their costs without having to demonstrate that State or local tax dollars were used to provide Medicaid services. This policy is based on the fact that governmentally-operated health care providers always have the ability to access State and/or local tax dollars as an integral component of State or local government. Governmentally-operated health care providers need only produce cost documentation via national, standardized cost reporting to receive Federal matching funds as a percentage of such allowable Medicaid (and DSH) costs.

Non-governmentally-operated health care providers may also produce cost documentation to support the costs of providing services to Medicaid individuals (and certain uninsured costs for purposes of Medicaid DSH payments). However, in order to maintain consistency with the Federal statutory instruction governing CPEs, a State or local government must actually certify that tax dollars were provided to the non-governmentally-operated health care provider. Federal matching funds will be available as a percentage of the allowable Medicaid costs incurred by the non-governmentally-operated health care provider up to the level of such State and/or local tax support.

174C. Comment: One commenter noted that CMS suggests compliance with this proposed provision may be demonstrated by showing that the funding source of an IGT is clearly separated from the Medicaid payment received by the health care provider. The commenter stated that this is an example of CMS' definition of IGT not being consistent with CMS' current practice. The commenter stated that CMS previously considered funds transferred from a State agency to the State Medicaid agency as an IGT. The commenter believed that this in fact constitutes an intragovernmental transfer within the same unit of government and therefore CMS has no authority to evaluate these transfers with the same level of scrutiny as an intergovernmental transfer. The commenter requested that CMS clarify its intent that segregation of funds does not apply to intragovernmental transfers.

The commenter also stipulated that requiring a transfer within the same unit

of government must take place prior to a Medicaid payment and that the non-federal share must originate from taxes from an account that is separate from the account that receives the Medicaid payment is too restrictive. The commenter detailed that government accounting principles, established by GASB, encourage States to use the least number of funds that are necessary to comply with legal operating requirements. Another commenter noted that consolidated accounts facilitates good internal accounting controls, while also lowering overall banking costs and assisting with managing various automated transactions. The commenter also noted that any requirement to maintain separate banking accounts for tax and non-tax funds adds a burden and cost to providers without adding any benefit. The commenter suggested that a State's compliance with GASB standards in accordance with generally accepted accounting principles and a State agency's compliance with all applicable laws, rules and regulations with respect to fund accounting and budgeting should provide sufficient accountability.

174R. Response: Neither the Medicaid statute nor Federal regulation uses the term "intragovernmental transfer." For purposes of the Medicaid statute, a transfer of funding between any governmental entity within a State to the State Medicaid Agency is considered an intergovernmental transfer, regardless of whether or not those entities are operated by the same unit of government (for example, a State Department of Mental Health transferring funds to a State Medicaid agency). This interpretation is consistent with the interpretation that an expenditure can be made through payment for services furnished by such an entity.

A principal concern in evaluating compliance with § 447.207 will be the determination as to whether or not the funding obligation to the non-Federal share of Medicaid payments has been fully satisfied by the State or local government. IGTs from a local or other State Agency unit of government's general fund may be considered a permissible source of the non-Federal share of Medicaid payments when: (1) Monies from the general fund are transferred to the State Medicaid agency; (2) such monies are used to fund the non-Federal share of Medicaid payments to the governmentally-operated health care provider; (3) the health care provider deposits such Medicaid payments into its operating account (a governmentally-operated

health care provider will always maintain an operating account that is separate from the general fund managed by the corresponding unit of government); and (4) no portion of Medicaid payments deposited into the operating account is sent back to the general fund to replenish the loss of funds resulting from the IGT. These conditions would demonstrate that the burden of the non-Federal share of the Medicaid payment was satisfied by the local government or other State Agency.

Governmentally-operated health care providers may only transfer prior to receiving a Medicaid payment to ensure funds were actually available to the governmentally-operated health care provider to satisfy the non-Federal share obligation to the Medicaid payment it receives. To permit non-Federal share transfer obligations made by a governmentally-operated health care provider after the Medicaid payment is received would allow a Medicaid Agency to "loan" the non-Federal share obligation to the governmentally-operated health care provider (as described previously).

175C. Comment: A couple of commenters requested that provisions of the proposed retention of payment provisions be clarified to explicitly state that an IGT from a single governmental entity can be the basis of the State match for multiple hospitals in the eligible payment group. Another commenter asked that CMS provide additional guidance on whether a group of governmental entities could provide the IGTs for other public hospitals. The commenter was concerned that this may not be allowed under the proposed rules. The commenter suggested that this clarification would be consistent with CMS' overall objective that IGTs are used to reimburse hospitals for the care of Medicaid individuals and are not "retained" by local governments. One commenter was concerned that this proposed provision would require that all government providers provide their own IGT in return for the Medicaid payment.

175R. Response: The provisions at § 447.207 were not intended to suggest that a unit of government can only transfer funding to the State for specific use in State Medicaid payments made to the unit of government itself. In fact, a unit of government may permissibly transfer funds to be used for the non-Federal share of State Medicaid payments made to other health care providers within the State, regardless of whether or not such providers are related to the unit of government transferring the funds, assuming all other financing requirements are

satisfied, including compliance with section 1902(a)(2) of the Act.

Governmentally-operated health care providers may also transfer funding for other health care providers, but each transfer must be transacted on an individual basis per each Medicaid payment to each health care provider to ensure compliance with sections 1902(a)(30)(A) and 1903(w)(6)(A) of the Act. Moreover, a governmentally-operated health care provider that is subjected to more than one non-Federal share obligation must transact each IGT obligation on an individual basis per Medicaid payment to which it is entitled in order to maintain consistency with sections 1902(a)(30)(A) and 1903(w)(6)(A) of the Act.

176C. Comment: One commenter stated that health care providers may be subject to taxation, licensing, and other fees that are generally applied to the private sector or to the health care industry at large. The commenter was concerned that the proposed rule would enable providers to assert that they should not be subject to normal operating expenses, which have no direct connection to Medicaid, in as much as they are required to retain the full amount of the total computable payment. The commenter specifically requested that proposed § 447.207 be clarified to clearly state that normal operating expenses are not affected by the retention requirements and are not included in the calculation of a State's net expenditures.

176R. Response: The retention of payments provision was written to address instances where health care providers did not retain the full amount of their Medicaid payments, payments for which Federal matching funds were provided as a percentage of the total Medicaid payment. Instead, these providers returned or redirected all or a portion of the payments received, either directly or indirectly, as part of a pre-arranged agreement (contractual or otherwise) to draw additional Federal Medicaid funds that were then diverted for other purposes. The retention of payments provision was not designed to interfere with the normal operating expenses of conducting business, such as payments related to taxes (including health-care provider-related taxes), fees, business relationships with governments unrelated to Medicaid in which there is no connection to Medicaid payment. Such normal operating business expenses would not be considered "returning/redirecting" a Medicaid payment and we have modified the regulation to clarify this point.

177C. Comment: A few commenters stated the proposed requirement to retain full payments conflicts with section 1903(w) of the Act. The commenters noted that section 1903(w) of the Act clearly contemplates that providers can return certain portions of payments as bona fide donations and permits certain qualifying health care taxes. The commenters requested that proposed § 447.207 be modified to clearly allow donations and taxes as permitted by section 1903(w) even if a Medicaid payment is the source of those donations or tax payments.

177R. Response: We concur with this comment in part and we are clarifying the provisions at § 447.207. We agree that governmentally-operated health care providers may make bona fide donations, and may be subject to qualifying health care taxes, from the amount of their total computable Medicaid payment. Qualifying health care taxes would be an allowable cost of services furnished under the approved State plan for purposes of this section and for the cost limits under § 447.206. Bona fide donations, on the other hand, would not be an allowable cost of Medicaid services under either section, but we would clarify that under § 447.207, a provider could make a bona fide donation (which by definition could not be linked to the receipt of, or amount of a Medicaid payment). While we agree to make this clarification, there does not appear to be a practical effect to this clarification since, under § 447.206, Medicaid payments to governmentally-operated health care providers must still be equal or less than the costs incurred by the governmentally-operated health care provider for covered Medicaid services.

178C. Comment: One commenter stated that CMS assumes that any requirement that a governmentally-operated health care provider transfer more than the non-federal share of a Medicaid payment means that Medicaid payments to that provider are not retained. The commenter indicated that CMS is linking two independent actions that should not be linked. The commenter specified that once a governmental unit transfers funds to the State, it is up to the State to do what it deems appropriate with the funds. The commenter argued that it is not within the authority of the governmental unit or CMS to dictate what the State can do with the funds. In fact, the commenter went on to state, once the State uses the funds to make allowable Medicaid payments, such use falls within section 1902(a)(30)(A) of the Act and FFP is appropriate. The commenter believes that it does not matter what level of

Medicaid payment the State is making or to which providers; FFP should apply in its normal proportion. The State's net expenditure is determined by the amount paid under the terms of its approved State plan, not by the sources of funds used to finance that plan.

178R. Response: The provision at § 447.206 would require that health care providers retain the full Medicaid payment, including both Federal and non-Federal shares. As discussed above, protected IGTs are limited to those "derived from State or local taxes (or funds appropriated to State university teaching hospitals)." There is no protection for IGTs derived from Medicaid payments to health care providers. But we are clarifying that § 447.207 is not intended to dictate what the health care provider may do with its own funds; it concerns solely the circumstances in which CMS will recognize a payment to the provider as an allowable expenditure. This provision specifically addresses those instances in which States make claims that are based on health care provider payments that are never actually made, are based on amounts paid with such conditions that the health care provider never actually becomes the beneficial owner of the funding (for example, when the health care provider is required to return the funding to a State agency or State directed purpose), or are otherwise diverted from use for Medicaid services by operation of law, contract or other mechanism. When the health care provider is not permitted to receive and retain the funds, the regulation would reflect the fact that the provider is acting simply as a conduit or agent rather than a recipient of a Medicaid payment. This regulation ensures that payments are made for Medicaid purposes and not obligated for other purposes. This regulation also ensures that claimed payments are not sham transactions in which the State (or other payor) has never actually ceded control of the funds to the health care provider.

179C. Comment: Several commenters stated that it is unclear how CMS will enforce proposed § 447.207.

179R. Response: In general, CMS intends to continue to focus enforcement efforts on prospective review of proposed State payment methodologies. This regulation, however, would provide a basis to pursue other enforcement measures, such as disallowance of claimed expenditures, should prospective enforcement prove inadequate. States can appeal such enforcement actions through existing appeal processes.

180C. Comment: One commenter noted language concerning IGTs in the preamble that was not included in the actual regulatory text. Specifically, the commenter observed the following preamble language: "* * * [C]laimed expenditures must be net of any redirection or assignment from a health care provider to any State or local governmental entity that makes IGTs to the Medicaid agency. Generally, for the State to receive Federal matching on a claimed Medicaid payment where a governmentally-operated health care provider has transferred the non-Federal share, the State must be able to demonstrate: (1) That the source of the transferred funds is State or local tax revenue (which must be supported by consistent treatment on the provider's financial records); and (2) that the provider retains the full Medicaid payment and is not required to repay, or in fact does not repay, all or any portion of the Medicaid payment to the State or local tax revenue account." Further, the commenter noted this language in the preamble: "Therefore, we have concluded that requirements that a governmentally-operated health care provider transfer to the State more than the non-Federal share of a Medicaid payment creates an arrangement in which the net payment to the provider is necessarily reduced; the provider cannot retain the full Medicaid payment claimed by the State." The commenter opined that this preamble language should be specifically included in the appropriate sections of the regulations.

180R. Response: We agree that the regulation should contain more specific language on prohibited arrangements, and we have modified the regulation as appropriate.

181C. Comment: One commenter inquired as to how the proposed retention of payments provision impacts "administrative fees" for operation of targeted case management programs which are offset against amounts paid for services. The commenter asked if such fees would be prohibited and, if not, whether an offset against Medicaid payments due would continue to be permissible.

181R. Response: Administrative fees are sometimes deducted by the Medicaid agency, or other agency making Medicaid payments, from the Medicaid payment to a provider. These fees represent a reduction in the allowable Medicaid expenditure that can be claimed for purposes of FFP. Moreover, while FFP is available for actual administrative costs, FFP is not available for administrative fees. The Medicaid program's share of actual administrative costs should be claimed

pursuant to an approved cost allocation plan by the agency that incurs those actual administrative costs.

Administrative costs and medical service costs are separately recognized in the Medicaid statute for purposes of Federal financial participation (FFP). Administrative costs and medical service costs must also be separately reported on the CMS 64 report for purposes of State expenditures eligible for FFP.

An arrangement in which administrative costs are offset from a medical service payment has two major problems: (i) Administrative costs are effectively matched with Federal funds at the FMAP rate instead of the 50 percent administrative matching rate; and, (ii) the governmentally-operated health care provider realizes a net reduction to its Medicaid medical service payment because it must redirect a portion of the Federal funding associated with the Medicaid medical service payment it receives to pay another agency for administrative costs.

In some instances, a mandatory assessment or "fee" imposed on a health care provider could be viewed as a health care-related tax. All health care-related taxes must meet the specified statutory criteria, including the broad based requirement to avoid penalties against a State's Medicaid expenditures. The broad based provision of the statute requires that all health care providers of the service must be subject to the tax or "fee."

F. Upper Limits Based on Customary Charges (§ 447.271)

182C. Comment: Several commenters objected to the proposed modifications at § 447.271 to delete the exception for nominal charge hospitals. Paragraph (b) of this section allowed public providers that provide services "free or at a nominal charge" to be paid to the level that would be set "if the provider's charges were equal to or greater than its costs." The commenters noted that this existing exception recognizes that there are many hospitals that primarily serve the poor and uninsured. These hospitals have set their charges at low levels for the uninsured individuals to help alleviate these individuals from exorbitant hospital bills. The commenters argued that a hospital should not be disadvantaged with respect to Medicaid reimbursement just because it was willing to keep the cost of hospital care within reason for those who do not have coverage from insurance or public programs. The commenters urged CMS to maintain this exception.

Another commenter disagreed that § 447.271(b) becomes irrelevant due to the proposed cost limit. The commenter stated that the existing regulation at § 447.271(b) is related to limitations based on provider charges not provider costs and allows Medicaid payments in excess of a provider's charges if those charges are nominal or do not exist. The commenter argued that eliminating this regulatory provision would restrict Medicaid reimbursement to nominal charge providers or require them to implement unnecessary or artificial charge structures.

Another commenter stated that with this elimination, nominal charge providers would be limited to charges as its total payment. The commenter argued the proposed cost limit does not affect the operation of the charge limit rule where charges are less than cost and should be maintained.

182R. Response: We do not read the customary charge limitation at § 447.271(a) to preclude a health care provider from offering services on a sliding scale or reduced rate basis (or even free) to poor and uninsured patients. All health care providers can or should have customary charge schedules that represent the undiscounted amount charged to third party payers and individuals with sufficient resources. We do not believe it would be consistent with efficiency or economy for Medicaid to pay more for services than other payers with sufficient resources. Thus we do not see a reason for an exception to the customary charge limit. In the unlikely event that a health care provider does not have a customary charge structure the health care provider can receive payments in an amount equal to the cost of providing services subject to applicable payment limits depending upon their governmental status. We further do not see any statutory basis to permit payment in excess of costs to support non-Medicaid uncompensated care activities. In the Medicaid statute, Congress has specifically provided for a mechanism to address uncompensated care costs for disproportionate share hospitals, but has imposed clear limits on that mechanism. It would be inconsistent with those statutory limits to continue to provide a different avenue to address the same types of costs without any statutory authorization to do so.

183C. Comment: One commenter requested that in accordance with Medicare and other Federal regulations, CMS should make it clear that the customary charge limit and existing UPL requirements do not apply to critical access hospitals. The commenter

stated that since the customary charge limit applies to hospitals and does not specify critical access hospitals, inpatient and outpatient payment limits should not be applicable to critical access hospitals. The commenter suggested that CMS make the distinction between hospitals and critical access hospitals by either including this statement as a clarification in § 447.271 or as an exemption within §§ 447.272 and 447.321. The commenter also stated that critical access hospital regulations should be amended to prohibit States from imposing an upper limit on critical access hospital Medicaid payments. The commenter specified that while many States reimburse critical access hospitals using a cost-based reimbursement methodology, certain limitations are placed on the reimbursements. The commenters do not believe this is consistent with Medicare reimbursement methodologies.

183R. Response: All governmentally-operated health care providers are subject to the Medicaid cost limit and customary charge limit. Therefore, governmentally operated critical access hospitals will be subject to the provisions of the regulation in a manner consistent with all other types of governmentally-operated health care providers. States must apply the Federal statutory and regulatory criteria to each individual health care provider within the State to make initial determinations of governmental status. In addition, §§ 447.272 and 447.321 apply to all inpatient and outpatient hospital services, including those provided in critical access hospitals.

G. Inpatient Services: Application of Upper Payment Limits (§ 447.272) and Outpatient Hospital and Clinic Services: Application of Upper Payment Limits (§ 447.321)

184C. Comment: One commenter stated that § 447.272 includes an exception for DSH payments and Indian Health Services. The commenter noted that § 447.321 likewise includes an exception for Indian Health Services, but does not list DSH as an exception. The commenter requested that CMS include a similar exception for DSH in § 447.321. The commenter is concerned that this omission could prohibit or restrict DSH payments for outpatient hospital services.

184R. Response: We agree with the commenter, and we have modified section 447.321 to include the exemption of DSH payment adjustments from the application of outpatient hospital upper payment limits. It should

be noted that clinic costs are not eligible under the hospital-specific DSH limit, so the DSH exemption is not applicable to clinic upper payment limits.

185C. Comment: A few commenters recommended that the proposed corresponding changes to §§ 447.272 and 447.321 to reflect the proposed cost limit to governmentally operated providers be withdrawn.

185R. Response: The changes to §§ 447.272 and 447.321 are necessary to maintain consistency with the provision of the regulation limiting Medicaid payments to the full cost of providing services to Medicaid individuals.

H. Conforming Changes to Other Applicable Federal Regulations (§§ 457.220 and 457.628)

186C. Comment: A few commenters recommended that the conforming changes to §§ 457.220 and 457.628 be deleted. These commenters opined that since they believe the proposed rule is inappropriate for a variety of reasons, the conforming changes proposed would also be inappropriate.

186R. Response: Title XXI and corresponding SCHIP regulations fully incorporate Medicaid statutory and regulatory provisions concerning the source of the non-Federal share. Therefore, the regulation makes changes to SCHIP rules at §§ 457.220 and 457.628 to ensure that regulations governing the source of the non-Federal share and provider retention of payments are consistent between the Medicaid program and SCHIP. The Medicaid cost limit does not apply to governmentally-operated SCHIP health care providers.

I. Collection of Information Requirements

187C. Comment: A number of commenters communicated that they believe CMS estimates on the time needed for providers to complete cost report forms and States to review cost reports are understated. Commenters also observed that the proposed rule sets out only minimum documentation requirements, that actual forms have not yet been completed, and that it is therefore unlikely that CMS has fully assessed the extent of the paperwork burden associated with this requirement. One commenter argued that CMS estimates on time are too low by outlining the steps required to implement this provision. One commenter is familiar with the experience of public hospitals in California that are implementing cost reporting under a CMS-approved 1115 demonstration and stated that hundreds of hours have been spent attempting to

implement the new CPE and cost-finding rules. Another commenter explained that providers currently spend hundreds of hours preparing and submitting Medicare cost reports.

187R. Response: In light of comments received on the estimated time required for governmentally operated providers to complete the new cost report forms and States to review the cost reports, CMS has reviewed the initial estimates for these activities. The revised estimates will accompany the publication of the cost report template in the **Federal Register**.

However, we do not believe the Medicaid cost limit will impose significant administrative burden on States particularly since the limit applies only to governmentally-operated health care providers.

For purposes of institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render a determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report currently does not exist. Because of this, we will be publishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time

studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS Web site that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with Federal requirements.

188C. Comment: One commenter identified the "unfunded workloads" for State agencies resulting from the proposed rule. The increased workload was attributed to the rule's requirements that State agencies collect, review, and audit cost reports from governmental providers; document their own costs to the extent they are providers themselves; and obtain and review information from purportedly governmental providers using the "Tool to Evaluate the Governmental Status of Providers" form. The commenter expressed concern that an unintended consequence of this additional workload could be that State and local governments have to reduce the delivery of services.

188R. Response: We do not believe the cost limit will impose significant administrative burden on States particularly since such limit applies only to governmentally-operated health care providers.

For purposes of institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render a determination on the cost limit methodology applied to the source documents but will not be required to

validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report currently does not exist. Because of this, we will be publishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS Web site that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with Federal requirements.

189C. Comment: With respect to the "Tool to Evaluate the Governmental Status of Providers" form, one commenter said that CMS failed to set out a satisfactory analysis of alternative approaches to obtaining the information that is necessary to determine compliance with the proposed regulations. The commenter raised this issue because in order to obtain OMB approval for a collection of information, CMS must show that its proposal is the least burdensome option necessary for the proper performance of the agency's functions. Moreover, the commenter questioned the practical utility of this

form because it "attempts to face a complex legal analysis into a Q&A format" and does not provide any explanation as to the consequences of answers.

189R. Response: The "Tool to Evaluate the Governmental Status of Health Care Providers" is designed to guide State decision making in applying the statutory and regulatory criteria regarding units of government. The provisions of the regulation were designed to ensure consistent application of the Federal statutory instructions regarding the definition of a unit of government for purposes of Medicaid reimbursement and State financing. CMS recognizes that States play a major role in the administration of the Medicaid program and that legal and financial arrangements between health care providers and units of government vary on a case by case basis. We have developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State.

We believe the tool is useful to States and actually reduces the State's burden by putting complex statutory and regulatory standards into a practical and user friendly format.

J. Regulatory Impact Analysis

190C. Comment: Many commenters offered opinions about the estimated financial impact the proposed rule would have on a particular State. These monetary estimates varied widely from one State to another, but the commenters consistently expressed that the loss of Federal funding that would result from this rule would create large funding gaps that would have to be addressed by State and local governments. Commenters asserted that States and local governments would not necessarily have the revenues to fill these gaps, and as a result, they may choose to cut reimbursements to providers, eliminate Medicaid individuals from their programs, or reduce the scope of covered benefits. None of these alternatives was viewed favorably by the commenters.

190R. Response: Medicaid is a shared responsibility between Federal and State government. State governments may share their fiscal obligation to the Medicaid program with local governments according to the instruction of Congress. Under Public Law 102-234, the Congress made clear that States may allow governmentally-operated health care providers to participate in a State's fiscal obligation to the Medicaid program through the use of intergovernmental transfers and

certified public expenditures. However, the Congress was also clear that States may not receive funds from non-governmentally-operated health care providers for purposes of financing Medicaid payments.

The provision of the regulation that addresses a unit of government codifies the existing statutory definitions of a unit of government. This codification of existing Federal statute was established in an effort to assist States in identifying the universe of governmentally-operated health care providers that could receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and clarifies which types of health care providers can participate in financing of the non-Federal share of Medicaid payments.

Medicaid is a vitally important program that serves very vulnerable individuals, and the Federal government remains committed to funding its share of the cost of providing Medicaid services to eligible individuals. We also note that State decisions will be the major factor in the actual financial impact this regulation will have within each State. CMS recognizes that States play a major role in the administration of the Medicaid program and that legal and financial arrangements between health care providers and units of government vary on a case by case basis. Therefore, CMS has developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State to determine whether or not the health care provider is considered a unit of government under the regulation.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this

regulation can realize greater net revenues if State or local governments choose to utilize their funding sources to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

191C. Comment: A number of commenters thought that CMS estimates that the proposed rule would result in a \$3.87 billion savings to the Federal government over the next five years was too low. The commenters asserted that the loss of Federal funds was expected to be at least \$932 million in one State, \$253 million in another State, \$350 million in another State, and \$374 million in yet another State. Commenters noted that an estimated impact over five years of \$4.7 billion in one State specifically is higher than the national CMS calculation for the same period. Commenters asked CMS to reevaluate this estimate.

191R. Response: We find many of the expressed concerns about the potential impact of the cost limit to be overstated based on a misunderstanding of certain provisions of the regulation, which have been clarified in this final regulation. We also note that State decisions will be the major factor in the actual financial impact this regulation will have within each State.

The provision of the regulation that addresses a unit of government codifies the existing statutory definitions of a unit of government. This codification of existing Federal statute was established in an effort to assist States in identifying the universe of governmentally-operated health care providers that could receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and clarifies which types of health care providers can participate in financing of the non-Federal share of Medicaid payments. CMS has developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State to determine whether or not the health care provider is considered a unit of government under the regulation.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, one provision of the regulation reaffirms State Medicaid financing policy requiring that health

care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local governments choose to utilize their funding sources to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

192C. Comment: Several commenters opined that CMS failed to adequately explain how it reached its estimate that the proposed rule would result in a \$3.87 billion savings to the Federal government over the next five years. Commenters noted that in the preamble CMS acknowledged uncertainty in the estimated impact of the rule. Some of the commenters pointed out that since publication of the proposed rule, CMS has been asked for State-specific estimates of the rule's financial impact, but CMS refused to provide such estimates and stated that no such calculations had been performed. Requests for further information about how CMS produced this estimate were made, and several commenters expressed that CMS should not proceed with implementation of the rule without knowing more about the potential impact.

192R. Response: The regulation's preamble included a detailed description of the methodology utilized by CMS to develop the estimate that the regulation would result in a \$3.87 billion savings to the Federal government over the next 5 years.

All States could be affected by the provisions of the regulation if the State currently:

- Reimburses governmentally-operated health care providers in excess of the cost to provide services to Medicaid individuals;
- Accepts funds from non-governmentally-operated health care providers to help fund the non-Federal share of Medicaid payments; and/or,
- Requires the return of Medicaid payments.

State-specific effects of the regulation can only be determined by the States as each State administers its own Medicaid program. We also note that State decisions will be the major factor in the

actual financial impact this regulation will have within each State.

The provision of the regulation that addresses a unit of government codifies the existing statutory definitions of a unit of government. This codification of existing Federal statute was established in an effort to assist States in identifying the universe of governmentally-operated health care providers that could receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and clarifies which types of health care providers can participate in financing of the non-Federal share of Medicaid payments. CMS has developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State to determine whether or not the health care provider is considered a unit of government under the regulation.

193C. Comment: A number of commenters suggested that CMS failed to account for the initial and ongoing costs of implementation and compliance with the proposed regulation to the federal government and to States. These commenters observed that the estimated impact to the Federal government does not appear to include offsets for new needs, including additional staff that States and the Federal government will hire, the information technology and infrastructure development and changes, and educational efforts among States, providers and other stakeholders that will be required of the Federal government. One commenter believes that the proposed regulation understates the administrative burden on providers and the indirect impact that additional provider mandates could have on States' ability to develop adequate provider networks. Another commenter estimated that more than 20,000 man hours will be required to initially comply with the regulation. Thus, commenters requested that CMS explain how it accounted for these additional costs or withdraw the rule due to the unwarranted burden associated with implementation.

193R. Response: We do not believe that compliance with the regulation will result in significant administrative costs for States. For institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the

source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render an determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report currently does not exist. Because of this, we will be publishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

Each State is responsible for the proper and efficient administration of its Medicaid program. Expenses incurred for administration of the Medicaid program are eligible for Federal matching funds at the at the regular 50 percent administrative matching rate.

194C. Comment: One commenter implied that based on Federal Medical Assistance Percentage (FMAP) rates, the loss of Federal funding from the rule would harm the poorest States the most, as they would have the largest funding gap to make up, dollar for dollar as a percentage of expenditures, when

compared to wealthier States with lower FMAP rates.

194R. Response: Federal Medical Assistance Percentage (FMAP) rates are calculated strictly based upon the formula required by the Medicaid statute. Such calculations are outside the scope of this regulation.

Under the provisions of the regulation, governmentally-operated health care providers will be permitted to receive up to 100 percent of the cost of serving Medicaid individuals. We are unclear how limiting Medicaid reimbursement to the full cost or providing services to Medicaid individuals would adversely affect a governmentally-operated health care provider, unless the health care provider had been historically receiving Medicaid payments above cost and using excess Medicaid revenues to subsidize other costs outside of the Medicaid program. In such a situation, the proposed cost limit could cause a net reduction in Medicaid revenue to the health care provider, but the amount of the reduction would directly correspond with the amount of Medicaid revenues that had been used for non-Medicaid purposes.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. It remains unclear how a limit that does not apply to public hospitals could adversely impact quality and patient safety and vital community services.

Moreover, the provisions of the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

195C. Comment: A number of commenters noticed that in the

preamble, CMS mentioned that it examined Medicaid financing arrangements across the country but did not provide information on which States or how many States are employing questionable financing practices. Therefore, the commenters believe that the public is unable to meaningfully review the changes proposed by this rule or the estimated impact.

195R. Response: CMS has examined numerous financing arrangements across the country; however, CMS cannot be certain that it has examined all questionable Medicaid financing arrangements among all the States in the nation. Any attempt to publish a comprehensive list of questionable Medicaid financing arrangements among States would be misleading.

196C. Comment: One commenter asked specifically for any economic and other assumptions that CMS used in arriving at its estimate that the proposed rule's effect on actual patient services will be minimal.

196R. Response: The statement referenced by the commenter was based on the fact that (1) the regulation presents no changes to coverage or eligibility requirements under Medicaid; (2) the regulation clarifies statutory financing requirements and allows governmentally operated providers to be reimbursed at levels up to cost; and (3) Federal matching funds will continue to be made available based on expenditures for appropriately covered and financed services delivered to Medicaid eligible individuals. Governmentally-operated health care providers can receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and private health care providers may continue to receive Medicaid revenue in excess of Medicaid cost. Under these circumstances we do not anticipate that the actual services delivered by governmentally-operated health care providers or private health care providers will change.

197C. Comment: One commenter expressed its intent to redistribute any funds that were paid to governmental providers in excess of cost to other providers that were paid less than cost, thereby negating any Federal savings that might be assumed from the cost limit provision of the regulation. In this regard, the commenter questioned the validity of any estimated Federal savings in the Regulatory Impact Analysis that is associated with the cost limit provision.

197R. Response: This comment illustrates the significance of State decision-making in determining the actual financial impact this regulation.

Under the provisions of the regulation, Federal matching funds will be made available to States for payments to governmentally-operated health care providers under the approved Medicaid State Plan, up to 100 percent of the cost of providing services to Medicaid individuals.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local governments choose to utilize their funding sources to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

198C. Comment: A number of commenters stated that the additional administrative workload associated with the cost limit and cost reporting for governmental providers will be excessive. One commenter believes that its State is not currently staffed to review or audit cost reports or forms of this magnitude, while another commenter stated that retrospective cost settlements of all providers considered units of government were not sufficiently accounted for in the impact analysis. One commenter, a State Medicaid agency, estimated that at least four FTEs will need to spend six months on the process of merely identifying governmental providers and making the relevant changes to the State's MMIS system. To illustrate the point on the administrative workload, one commenter listed a number of tasks that may be required to implement this provision.

198R. Response: We do not believe that compliance with the regulation will result in significant administrative costs for States. For institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the

original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render a determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report does not currently exist. Because of this, we will be publishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

Each State is responsible for the proper and efficient administration of its Medicaid program. Expenses incurred for administration of the Medicaid program are eligible for Federal matching funds at the regular 50 percent administrative matching rate.

199C. Comment: One commenter noted the \$3.87 billion savings estimate associated with the proposed rule and urged CMS and the Administration to reinvest all savings back into innovations to address the nation's problem of the uninsured and to improve care for current Medicaid individuals.

199R. Response: Spending authority related to any savings generated from the regulation primarily rests with the

Congress. Furthermore, State decisions are also a major factor in the financial impact of the regulation and the use of funds. State or local governments may choose to use their funding sources to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers and may also devote such resources to address the issues described by the commenter.

200C. Comment: One commenter commented specifically on the impact this rule would have on States with large rural populations. In rural areas, the commenter notes, local governments often serve as the only provider to ensure access to needed care, including mental health services and long term care. The payment limits and cost documentation requirements of the rule were identified as particularly challenging for rural local government providers, due to the potential loss of reimbursement and the administrative burden associated with cost documentation.

200R. Response: The Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals. Furthermore, we do not believe the Medicaid cost limit will impose a significant burden on States or governmentally-operated health care providers.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report currently does not exist. Because of this, we will be publishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-

institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

Each State is responsible for the proper and efficient administration of its Medicaid program. Expenses incurred for administration of the Medicaid program are eligible for Federal matching funds at the regular 50 percent administrative matching rate.

201C. Comment: One commenter took exception to the CMS statement in the preamble that it would be beneficial to distribute payments more evenly across all governmental providers because CMS did not provide any analysis or support showing that differential payments to select governmental providers do not serve a rational, favorable purpose, such as promoting the development and maintenance of programs key to the success of the State Medicaid program (even if such services may also be accessed by other individuals).

201R. Response: The Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals. Because the Medicaid program is jointly funded by Federal, State, and local governments, we do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

K. Effective Date of the Final Regulation

202C. Comment: Many commenters stated that the rule does not have a transition period, arguing that an effective date of September 1, 2007 is too early. Many commenters offered specific suggestions as to the length of a transition period for compliance with the provisions of the proposed rule. The suggested length of transition ranged from a full state fiscal year, to two or three years, to a frequently identified length of ten years following the publication of the final rule. Other commenters suggested a specific date (such as January 1, 2008, September 1, 2008, or January 2009) as an alternative for the rule to become effective. A number of commenters requested "phase in" processes for States, local

governments, and providers to come into compliance with the provisions of the proposed rule by the effective date.

Different reasons were proffered to argue for transitional periods or phase-in processes. Many commenters noted that the changes proposed in this rule would require action by State legislatures in order to assure compliance. However, these commenters contend that factoring the States' established legislative cycles, there would not be enough time for State legislatures to act to ensure compliance with the rule by the currently proposed effective date of September 1, 2007. In fact, many States have nearly completed or already finalized the budget and all associated Medicaid funding for State fiscal year 2008, but some of the existing funding arrangements or state statutes will need to be modified due to the rule. Some legislatures may not be in session prior to September 1, 2007. Therefore, these commenters have requested a transition period for States, local governments, and providers to adjust to the changes proposed by the rule. Other commenters stated that longstanding payment methodologies and financing arrangements, many of which were previously approved by CMS, would be disrupted by this rule. Based on the administrative and financial changes required, the commenters requested a transition period for States, local governments, and providers to adjust to the proposed rule. Several commenters noted that the proposed rule would require States to submit amendments to their Medicaid State Plan for approval by CMS before they can come into compliance, noting the length of time it takes to develop a State plan amendment, vet it with the public, and receive approval by CMS.

A number of commenters pointed out that States are not obligated to modify their programs based on the provisions of a proposed regulation; therefore, States may not have done anything thus far to comply with the proposed rule. These commenters justified a lack of action based on the possibility that the rule may be altered following the public comment period.

Some commenters opined that establishing appropriate cost reporting mechanisms, as envisioned in the proposed rule, will require months of work, based on the need to define how costs should be allocated and reported and implement any systems changes that will become necessary. Additionally, some of these commenters note that the nature and extent of documentation required to support costs by governmental providers has not been

disclosed by CMS. In addition to the cost reporting and State plan changes cited, one commenter noted that government hospitals would need to be removed from the DRG methodology, after which DRG weights would have to be recalibrated and peer groupings excluding these facilities. Therefore, the commenters have asked for a transition period for compliance following the effective date of the rule.

Some commenters observed that the cost limit provision proposed at § 447.206 would become effective on September 1, 2007, while effective dates for other provisions were not specified in the rule. These commenters asked CMS to clarify when all provisions of the proposed rule would be effective.

202R. Response: All provisions of the regulation will be effective 60 days after the publication of the final regulation. Moreover, CMS will require that the States report the universe of governmentally-operated health care providers in each State by submitting a complete list of such health care providers to the Associate Regional Administrator for Medicaid of each State's respective CMS Regional Office within 90-days of the effective date of the regulation. CMS reserves the right to disagree with a State's initial determination of governmental status if we believe the State has not consistently applied the statutory and regulatory criteria to determine the governmental status of a particular health care provider.

With respect to the new cost limit for governmentally-operated health care providers established at § 447.206, a period of transition is warranted in order to ensure that governmentally-operated health care providers document and report their Medicaid costs in a consistent manner. In order to assist States in their obligation to ensure that Medicaid reimbursements to governmentally-operated health care providers do not exceed the individual governmentally-operated health care provider's costs, CMS has developed a general Medicaid cost reporting protocol available on the CMS Web site that specifically addresses the information utilized from each source document and the methods under which costs and revenues will be determined. These protocols have been developed in an effort to address concerns regarding requirements to properly document, audit, and review the costs associated with the provision of Medicaid services in both institutional and non-institutional environments. Timelines for implementation of the cost limit are included in the protocols for both institutional and non-institutional

providers. The timelines have been designed to allow governmentally operated providers and States Medicaid agencies sufficient time to transition into the new requirements of § 447.206.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS Web site that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with Federal requirements.

For purposes of institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render an determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents. The Medicaid State plan rate year 2008 will be the first time period subject to the Medicaid cost limit for institutional governmentally-operated health care providers.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report currently does not exist. Because of this, we will be publishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally-operated non-institutional health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be

required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has modified the regulation to address transitional periods where necessary and detailed cost documentation instructions are available to States as explained above.

203C. Comment: Many commenters expressed concern about the timing of making the changes proposed by this rule in light of larger issues facing our health care system today. Such issues include the risk of terrorist attacks, the possible onslaught of avian flu, and the diversion of ambulances due to facility overcrowding. With these circumstances, the commenters questioned the wisdom in proposing a rule that would withdraw large amounts of Medicaid dollars from institutions that play a significant role in the health care systems of our nations cities.

203R. Response: The Medicaid program is a cooperative Federal-State program established in 1965 for the purpose of providing Federal financial participation (FFP) to States that choose to reimburse certain costs of medical treatment for needy individuals. The provisions of the regulation are consistent with the Medicaid statute.

Medicaid is a vitally important program that serves very vulnerable individuals, and the Federal government remains committed to funding its share of the cost of providing Medicaid services to eligible individuals. We also note that State decisions will be the major factor in the actual financial impact this regulation will have within each State. CMS recognizes that States play a major role in the administration of the Medicaid program and that legal and financial arrangements between health care providers and units of government vary on a case by case basis. Therefore, CMS has developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State to determine whether or not the health care provider is considered a unit of government under the regulation.

Non-governmentally-operated health care providers, including many of the "public" safety net health care

providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local governments choose to utilize their funding sources to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

204C. Comment: Several commenters asked CMS to delay the proposed rule until the impact of the rule can be better identified on both State and national levels.

204R. Response: The provision of the regulation that addresses a unit of government codifies the existing statutory definitions of a unit of government. This codification of existing Federal statute was established in an effort to assist States in identifying the universe of governmentally-operated health care providers that could receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and clarifies which types of health care providers can participate in financing of the non-Federal share of Medicaid payments. CMS has developed standardized and impartial regulatory criteria based upon Federal statute that States must apply on a consistent basis to each health care provider within the State to determine whether or not the health care provider is considered a unit of government under the regulation.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, one provision of the regulation reaffirms State Medicaid

financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local governments choose to utilize their funding sources to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

For the above reasons, we do not believe it is appropriate to delay the regulation.

205C. Comment: Multiple commenters asked that if the proposed rule is to become effective, that it should only be effective prospectively, not retroactively.

205R. Response: The provisions of this regulation will be effective 60 days after publication of the final regulation. While the provisions of the regulation will not be applied retroactively, total Medicaid revenues must be reconciled to actual Medicaid costs for purposes of compliance with the Medicaid cost limit. CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS Web site that specifically addresses the methods under which institutional and non-institutional Medicaid costs and revenues will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with Federal requirements.

206C. Comment: Multiple commenters expressed the belief that an effective date of September 1, 2007 would be impossible to achieve when it is not known in advance who qualifies as a unit of government under the proposed rule.

206R. Response: All provisions of the regulation will be effective 60 days after the publication of the final regulation. Moreover, CMS will require that the States report the universe of governmentally-operated health care providers in each State by submitting a complete list of such health care providers to the Associate Regional Administrator for Medicaid of each State's respective CMS Regional Office within 90-days of the effective date of the regulation.

207C. Comment: A number of commenters stated that to the extent

that CMS contends that the current regulatory change is effective at any time prior to the finalization of the formal rulemaking process, it is in violation of not only the Administrative Procedures Act but also the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, which contained an uncodified provision to prevent the Secretary from issuing any interim final regulation to change the treatment of public funds as a source of the non-Federal share (see 5 U.S.C. 553).

207R. Response: Section 5(c) of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, Public Law 102-234, required the Secretary to "consult with the State before issuing any regulations under this Act." CMS interprets this provision as a check on the authorization to use interim final rulemaking procedures in section 5(a). We thus read the reference to "any regulations" to refer to the regulations specifically authorized under section 5(a) to be issued "on an interim final or other basis" to initially implement the Act. We do not read the condition as a permanent limitation on Secretarial rulemaking authority. We believe the condition was fully satisfied by the process the Secretary undertook when the regulations implementing that Act were issued in 1992 and 1993. Even if the condition were read to extend in perpetuity, however, we believe it has been met with respect to these regulations. Over the years, in the course of reviewing State plan amendments, CMS is in constant dialogue with States over issues relating to the financing of the Medicaid program. The general principles contained in this regulation have been explored with States over the years. Moreover, this Administration has announced its intentions with respect to this regulation in the President's Budget, and we have undertaken full notice and comment rulemaking procedures. In this process, we have received and considered numerous comments from States and other interested parties.

L. Miscellaneous Comments

1. Tribal Comments

208C. Comment: Several commenters observed that under the proposed rule, Indian Tribes would only be able to participate in the non-Federal share if it has "generally applicable taxing authority." The commenters noted that the Indian tax law is complex, fraught with exceptions, and often the subject of litigation between Indian Tribes and States, but the proposed rule would

require each State to analyze specific aspects of taxing structures of every tribe within the State. Therefore, it was noted that the taxing authority requirement to determine that a tribe is a unit of government will negatively affect the willingness of States to enter into cost sharing agreements with Indian Tribes, especially since an error in the determination could potentially have a negative financial consequence for the State.

In a related comment, one commenter expressed an opinion that the criteria of the proposed rule to require Indian Tribes to have generally applicable taxing authority to be considered a unit of government or a governmental health provider contradicts over 100 years of treaties, statutes, executive orders, and court decisions recognizing and cementing the unique government-to-government relationship the United States has with Tribal governments. The commenter noted that some tribal governments have taxing authority but do not exercise their taxing authority. The commenter indicated that since many tribal organizations do not have taxing authority, they would not qualify as a unit of government under the proposed rule. The commenter therefore believed that this criteria for purposes of the Medicaid program is both morally wrong and possibly illegal.

In light of the above, commenters suggested amending proposed § 433.50(a)(1)(i) to specifically address this issue.

208R. Response: CMS has modified the regulation at § 433.50(a)(1)(i) to include Indian tribes as units of government without regard to taxing authority, in light of their unique status and government-to-government relationship to the Federal government.

209C. Comment: A number of commenters stated that the proposed rule appeared to reverse the policy provided in the October 18, 2005 and June 9, 2006 State Medicaid Director (SMD) letters. The commenters are concerned that the proposed rule appears to further restrict Tribes and tribal organizations from participation in financing the non-Federal share by requiring the entity to have general applicable taxing authority.

209R. Response: The provisions of the regulation were not intended to reverse policies articulated in the October 18, 2005 and June 9, 2006 SMD letters concerning the ability of tribes and tribal organizations to use certified public expenditures as a method of participating in the financing of the non-Federal share of Medicaid administrative expenses.

CMS has modified the regulation at § 433.50(a)(1)(i) to address Indian tribes as units of government irrespective of their taxing authority.

In addition, CMS is not requiring States to complete the "Tool to Evaluate the Governmental Status of Health care Providers" form for each Indian tribe and tribal organization within the State, because the unique criteria for determining the governmental status of tribes and tribal organizations makes the tool inapplicable to these entities. However, CMS does require each State to specify the qualifying tribes and tribal organizations (per the criteria at § 433.50) in the list of all governmentally-operated health care providers that will be submitted to the CMS Regional Office within 90-days of the effective date of this regulation. Although tribal facilities are exempt from the Medicaid cost limit, the inclusion of tribes and tribal organizations in this list will clarify which entities have been determined by the State as eligible to participate in financing the non-Federal share of Medicaid payments.

210C. Comment: Several commenters asserted that the proposed rule should include language to indicate that other funds of the Indian Tribe, including funds transferred to the Tribe under a contract or compact pursuant to the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended, should be permissible sources of funding without regard to whether they were derived from general applicable taxing authority. In addition, the commenters requested the inclusion of language in the proposed rule to make clear that irrespective of the form of Medicaid reimbursement, the Tribe or Tribal organization will not be disqualified from participating in the non-Federal share. The commenters specifically suggested amending proposed § 433.50(a)(1)(ii) by adding a new section (C) and provided suggested language.

210R. Response: CMS has modified the regulation at § 433.50(a)(1)(i) to address Indian tribes as units of government regardless of their taxing authority.

We note that currently § 433.51(c) already indicates that "Federal funds authorized by Federal law to be used to match other Federal funds" are permissible sources of financing the non-Federal share of Medicaid expenditures. We further recognize that Federally-granted ISDEAA funds continue to be permissible sources of funding for the non-Federal share of Medicaid expenses.

211C. Comment: One commenter opined that CMS "purposefully and willfully misdirected the States and Indian Tribes" by consulting with tribes relative to the October 18, 2005 and the June 9, 2006 SMD letters while failing to consult with tribes with respect to provisions of the proposed rule that seem to contradict the two SMD letters. The commenter questioned the timing of the tribal consultation in relation to the development of these regulations, and the commenter requested the outcome of such consultations. Further, the commenter questioned if CMS violated its own tribal consultation policy by not consulting with the Tribe or the Tribal Technical Advisory Group (TTAG) until after a month after these proposed regulations were published.

211R. Response: CMS has worked collaboratively with tribes and States to address unique tribal health care issues and will continue these efforts in the future. The provisions of the regulation were not intended to reverse policies articulated in the October 18, 2005 and June 9, 2006 SMD letters concerning the ability of tribes and tribal organizations to use certified public expenditures as a method of participating in the financing of the non-Federal share of Medicaid administrative expenses. CMS has modified the regulation at § 433.50(a)(1)(i) to address Indian tribes as units of government irrespective of their taxing authority.

212C. Comment: One observation was made that the proposed regulations would appear to negate some of the benefits that would be gained through the recently proposed bill (SB 578) protecting the Medicaid to Schools program.

212R. Response: The requirements proposed in §§ 433, 447, and 457 are consistent with the Medicaid statute.

2. Section 1115 Demonstrations/ Managed Care Comments

213C. Comment: Numerous commenters were confused and requested further clarification regarding the applicability of the proposed provisions of the regulation to section 1115 demonstration waivers. The commenters were particularly confused since the preamble to the proposed provisions specifically mentions that the regulations will apply to demonstration waivers, but on several occasions CMS has provided assurances to individual States that the proposed provisions of the regulation would not affect their current 1115 waiver program. The commenters also mentioned that not only are these assurances inconsistent with the preamble language, they are also

inconsistent with the terms and conditions of the waivers, which specify that the waiver program will need to be modified to conform to changes in applicable law and regulations.

213R. Response: All Medicaid payments made under Medicaid waiver and demonstration authorities are subject to all provisions of this regulation. The impact on individual waiver programs will have to be determined on a waiver by waiver basis to ascertain what, if any, changes will need to be made to address the final provisions of the regulation. Under recent 1115 waiver demonstration approvals and renewals, CMS provided States with guidance and parameters consistent with the provisions of the regulation. In fact, we have demonstrated through recent 1115 demonstration approvals that we have been able to successfully work with States to design programs that meet both Federal Medicaid statutory financing requirements as well as the States' need to develop programs to effectively deliver health care to safety net populations.

214C. Comment: Multiple commenters stipulated that if the proposed provisions of the regulation are finalized as is, they would be extremely disruptive and harmful to existing waiver programs. These commenters cited specific concerns such as, use of CPEs by public entities that may not satisfy restrictive definitions of the proposed provisions of the regulation, utilization of payment methodologies that are not limited to cost and reliance on sources other than State or local taxes to provide the non-Federal share of expenditures. The commenters were also concerned that impacted waivers in States would not be able to obtain renewal of their program, without complying with the proposed provisions of the regulation, which could undermine the entire rationale for the waiver program. The commenters opined that these demonstration waivers are an important part of the Medicaid program and imposing these restrictive provisions would only stifle initiative, innovation and improvements to the delivery of health care. The commenters strongly recommended that if adopted, 1115 demonstration programs should be expressly exempted for as long as the program remains in effect, including through subsequent renewal periods. A few commenters stated that if their special funding pool under their 1115 waiver is exempt, then their DSH program and supplemental physician payments should be as well.

Other commenters requested that CMS clarify that the provisions of the

regulation would not result in reduced funding below the levels that were already agreed upon in the terms and conditions of waivers. The commenters also urged CMS to apply criteria used to approve waivers and establish their terms and conditions in a consistent and transparent manner across all States.

214R. Response: We agree that demonstration programs are an important part of the Medicaid program, however, we disagree that the provisions of the regulation will stifle innovation and improvement in the delivery of health care. The provisions of the regulation reaffirm State Medicaid financing policy and clearly demonstrate the Federal government's intent to protect the nation's health care safety net to continue to delivery critical health care services to Medicaid individuals and the uninsured. The impact on individual waiver programs will have to be determined on a waiver by waiver basis to ascertain what, if any, changes will need to be made to address the provisions of the regulation once finalized. Our intent is not to prevent renewal of any demonstration program as long as it is consistent with Federal Medicaid statutory requirements governing the financing of the Medicaid program. In fact, we have demonstrated through recent 1115 demonstration approvals that we have been able to successfully work with States to design programs that meet both Federal Medicaid statutory financing requirements as well as the States' need to develop programs to effectively deliver health care to safety net populations. Therefore, we disagree that 1115 demonstration programs be exempted. There are also existing established waiver approval criteria that are used to promote consistency and transparency.

215C. Comment: Numerous commenters requested CMS to explicitly state in the final provisions of the regulation that the funding for specific State 1115 waivers would not be reduced or eliminated as a result of the provisions within the regulation. Several commenters discussed Florida's establishment, after complex and lengthy negotiations with CMS, of its Low Income Pool authorized through the authority under section 1115(a)(2) of the Act. Other commenters referenced California's Hospital Waiver that includes a Safety Net Care Pool designed to provide Federal match to State, public hospitals and other public entities' expenditures on services to the uninsured. These commenters mentioned that under the authority of section 1115(a)(2) of the Act, CMS allows these expenditures to be matched

even though expenditures for the uninsured would not normally be eligible for Federal matching under Medicaid. The commenters are concerned that the provisions of the regulation would lower payments to hospitals under the Hospital waiver, resulting in reduced access to services for vulnerable populations, including children. At a minimum these commenters requested CMS specifically address their waiver programs, but overall recommend that the entire regulation be withdrawn.

215R. Response: We have already articulated clearly to the cited States that based upon the premises and design of their demonstration programs, they should not be impacted by the final regulation's provisions. For Florida, while we are still working with the State to define expenditures that can be made through the Low Income Pool, approved expenditures will be eligible for Medicaid matching consistent with the authority under section 1115(a)(2) of the Act for the Secretary to provide federal matching for costs not otherwise matchable under Medicaid. In the case of California, the new MediCal reimbursement system pays certain government providers 100 percent of costs incurred for services furnished to Medicaid individuals and up to 100 percent of their DSH eligible costs (which would include costs of services provided to the uninsured) subject to allotment limitations. One of the fundamental tenets of the demonstration and their reimbursement and funding methodologies is the payment of providers up to their full cost of providing hospital services to Medicaid individuals and to uninsured individuals. Under the demonstration, the uninsured costs are considered eligible under Medicaid and would be part of each government hospital's Medicaid cost base for purposes of the regulation. The Medicaid financing reforms adopted under California's 1115 demonstration are largely consistent with policies addressed in the provisions of the regulation therefore, to the extent these reforms continue to be met, it is unlikely that the demonstration's budget neutrality agreement would be adversely affected by the regulation. We do not believe that any additional statements are needed in the final regulation.

216C. Comment: One commenter specified that it was unfair to force them to eliminate payments above cost when other States have been afforded the opportunity to retain such payments and funds through the waiver process. The commenter referenced the fact that CMS has allowed several States to

receive above cost payments for governmental providers and use those funds, through a demonstration waiver, for low-income or safety net care pools in order to facilitate payments to health care providers who serve uninsured or low-income individuals.

216R. Response: Each State with the type of approved 1115 demonstration program referenced by the commenter has demonstrated permissible sources for the non-Federal share of Medicaid payments. One of the fundamental tenets of this type of demonstration and reimbursement and funding methodologies is the payment of providers up to their full cost of providing hospital services to Medicaid individuals and to uninsured individuals. Under such a demonstration, the uninsured costs are considered eligible under Medicaid and would be part of each government hospital's Medicaid cost base for purposes of the regulation.

217C. Comment: A few commenters asked that CMS specify that adjustments to any budget neutrality calculations will not be necessary as a result of the proposed rule's provisions. A few commenters mentioned that the terms and conditions within 1115 demonstration programs specifically require that CMS must adjust the budget neutrality cap to take into account reduced spending that would be anticipated under new regulations. The commenters asked if CMS would enforce this requirement and renegotiate budget neutrality agreements. Another commenter requested that CMS specifically explain how the proposed rule will affect States' existing waiver budget neutrality calculations and if States have to recalculate, which States will be adversely affected.

217R. Response: Budget neutrality, except for funds associated with DSH conversions, is based on payments for medical services provided to Medicaid eligible individuals. These payments, including supplemental payments, are paid to health care providers based on services delivered to Medicaid eligible individuals. The provisions of this regulation would affect spending under the State plan only to the extent that payments associated with individuals receiving services from governmentally-operated health care providers are limited. The regulation would not limit the States' ability to make Medicaid payments, including supplemental payments, but would limit the amount of FFP available to States making Medicaid payments to governmentally-operated health care providers for any Medicaid payment that was above that provider's cost.

Adjustments to budget neutrality are made generally to address the effects on FFP of Federal Medicaid changes (limits or expansions) to benefits, coverage or eligibility under a Medicaid State Plan. For instance, if there was a change in federal law that required a new Medicaid service to be offered to all Medicaid eligible individuals, a State with a comprehensive section 1115 demonstration may request to open their budget neutrality agreements to include the cost of this new service within the agreement because they are required to provide it under the demonstration. This regulation only affects FFP available for Medicaid payments to select providers and not the services and eligibility categories that defined the budget neutrality calculation. Therefore, CMS would not consider this regulation a change that would require the recalculation of existing budget neutrality agreements.

218C. Comment: A few commenters stated that the current UPL policy discourages the expansion of Medicaid managed care. The commenters noted under current regulations, States may only count the services utilized by Medicaid individuals that are paid on a fee-for-service basis. Services provided to Medicaid individuals enrolled in managed care on a capitated contracting basis are not counted towards the calculation of the UPL. Therefore, as managed care enrollment increases, the UPL decreases and the opportunity to obtain supplemental payments for safety net providers is drastically reduced. The commenters argued that because of this flawed methodology, many types of providers and local governments oppose managed care expansions. The commenters expressed their belief that expanded Medicaid managed care can slow the growth of Medicaid costs, lead to more efficient service delivery and promote high quality integrated systems of care. One commenter stated this policy prevents States from moving from a costly, unmanaged system of care to a model that provides coordinated care for individuals. Another commenter cited a recent Lewin Group report that highlighted the difficulties States face and how the current UPL policy detracts from savings that could be achieved through more efficient and effective delivery systems. The commenters recommended that managed care days be included in the calculation of UPLs. The commenters opined that this will prevent large decreases in payments to safety net providers, while also resulting in significant savings to the Federal and State governments. They also indicated

that this would be consistent with the treatment of managed care days in DSH, as the formula used to calculate the maximum allowable DSH payment to hospitals does not distinguish between fee-for-service and managed care days.

218R. Response: We disagree with the commenters' suggestions, since this regulation is actually designed to protect health care providers, including safety net providers. Under the provisions of the regulation, governmentally-operated health care providers are assured the opportunity to receive full cost reimbursement for serving Medicaid individuals. Non-governmentally operated health care providers, including many of the "public" safety net hospitals, are not affected by the cost limit provision of the regulation and therefore, may continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. While we understand the circumstance raised by the commenters, as stated above, the provisions of this regulation would allow governmentally-operated health care providers to receive the full cost of providing services to Medicaid individuals and non-governmentally-operated health care providers would still be able to receive Medicaid payments above cost that could help offset any managed care shortfalls perceived by providers.

Governmentally-operated health care hospitals that realize a Medicaid managed care "shortfall" may continue to receive Medicaid DSH payments to satisfy such unreimbursed Medicaid costs. The "UPL" referenced by the commenters is a ceiling on Medicaid fee-for-service reimbursement systems and is calculated based on the Medicaid populations covered under such fee-for-service reimbursement system. The inclusion of managed care days in a fee-for-service payment limit demonstration is inconsistent with the purpose of such a demonstration.

The regulations governing payment under the fee for service program are separate from the authority located in § 438 for rates paid under capitated arrangements. Federal regulation requires that rates established for services under capitation arrangements be considered as payment in full. Further, Medicaid capitation payments are rooted in actuarial principles and practices and are appropriate for the individuals covered, and the services to be furnished under the contract. All of these provisions taken together should ensure that every Medicaid provider is paid appropriately for the services they deliver and has the ability to ensure

continued access to services delivered on either a fee-for-service or capitated basis.

219C. Comment: A couple of commenters expressed concern regarding the proposed unit of government definition and its impact on local managed care organizations (MCOs). The commenters articulated that because many State and local governments were instrumental in the development, launch and operation of local MCOs, the local administrators of these plans are often considered public entities under State statute. The commenters are concerned that these MCOs will fall under the new unit of government definition which would create unequal treatment between commercial and public MCOs. The commenters argued that this may create incentives to qualify quasi-governmental MCOs as units of government in order to allow eligible IGTs or CPEs to flow from these entities, while commercial MCOs would be left to compete under inequitable rules of competition. The commenters requested that CMS strictly enforce the unit of government definition as they apply to MCOs and should clarify that States may not consider an MCO's public status in procurement decisions and auto-assignment algorithms.

219R. Response: The Federal Medicaid statute does not include a term or discussion that references a "public" health care provider for purposes of State Medicaid financing. The Federal Medicaid statute at section 1903(w) places severe statutory restriction on States' receipt of funds from health care providers to fund Medicaid payments. This section of the statute includes an exception to the general prohibition on the receipt of voluntary contributions from health care providers by allowing units of government, including governmentally-operated health care providers, to participate in the certified public expenditure process. The notion that quasi-governmental MCOs can "qualify" as a unit of government is misleading since any entity that can be determined to be a unit of government must meet the strict Federal statutory and regulatory criteria.

If a managed care organization were determined to be governmental, we find it illogical that such an entity would utilize CPEs for the financing of its capitation payments. Such participation would not appear to create any benefit over private MCOs as suggested by the commenters. This seems to be counter intuitive to the very nature of managed care. First, a CPE would require reconciliation to actual costs of

delivering health care services to Medicaid individuals and would remove any possibilities of profit. Second, it is not clear how an entity's governmental status will create inequitable rules of competition considering the use of a CPE requires such governmental entity to expend funds to receive Federal matching funds and the MCO effectively would only receive the Federal share of the capitation payments.

220C. Comment: One commenter stated that the proposed cost limit appeared to apply to payments made by Medicaid MCOs to public providers. The commenter stipulated that the application of a retrospective cost limit to managed care services will preclude providers from negotiating for and receiving capitation payments, and would contradict the principles of managed care. The commenter requested that CMS clarify that these payments are excluded from the proposed cost limit.

A few commenters requested that CMS clarify the proposed rule's applicability to MCOs. The commenters specifically inquired as to how the cost limit applies to government providers participating in an MCO network. Other commenters stated that the proposed rule be clarified to indicate that MCOs, including prepaid inpatient health plans, are not subject to the proposed rule's cost limitation requirements with respect to both a State's payment to a MCO and to a MCO's payment to governmental providers. The commenters recommended that this be specifically articulated within the regulation text itself at §§ 447.206, 447.272(b)(4) and 447.321(b)(4).

One commenter stated that Pre-Paid Inpatient Health Plans (PIHPs) bear risk and must retain the ability to have risk reserves and carry forward funds for services and supports to Medicaid individuals that are specifically approved as part of reinvestment planning. Therefore, limiting these entities to actual cost will cause harm to the Medicaid individuals served.

220R. Response: We partially agree with the commenters that additional clarity is necessary regarding the applicability of the Medicaid cost limit and have modified the regulation to include an exception in § 447.206(b) for MCOs, PIHPs and PAHPs. Ultimately, payments to MCOs, PIHPs and PAHPs are rooted in actuarial principles and practices and are appropriate for the individuals covered and the services furnished under the contract, under § 438.6(c). An MCO, PIHP or PAHP's Medicaid payments to a governmentally-operated health care

provider would be subject to the Medicaid cost limit for that governmentally-operated health care provider. The Medicaid payment received by the governmentally-operated health care provider from an MCO, PIHP or PAHP would be treated as a Medicaid revenue of the governmentally-operated health care provider and would have to be reconciled against the governmentally-operated health care provider's actual costs of delivering health care services to all Medicaid individuals.

221C. Comment: A few commenters stated that if the proposed rule is not withdrawn States should be given ample time to make necessary changes. Further, CMS should clarify that the changes will be prospective and not retroactive. The commenters were most concerned about the timing as it relates to States operating CMS approved section 1115 waivers. The commenters noted that the terms and conditions of many of these waivers would have to be changed and, if applicable, the use of IGTs and/or CPEs and the overall amount of spending allowed under the waiver. Other commenters noted that changes to government physician rates would need to occur after cost report data has been established for such services, but actuaries would need time to reestablish payment ranges based on cost because these rates currently include a primary care case management capitation component. Finally, States would need time to amend 1115 demonstrations for certain payments provided to government operated providers that may be in excess of cost.

221R. Response: The provisions within this regulation will not be applied retroactively. The regulation is effective 60 days after publication in the **Federal Register**.

222C. Comment: A couple of commenters requested that CMS clarify whether it will allow other States to adopt similar waivers which may incorporate savings realized from the proposed rule's cost limit into their own safety net care pools or coverage expansion initiatives. The commenters also requested that if CMS does not plan to allow other States to make sure of cost limit savings, what would be its legal basis for its decision.

222R. Response: The opportunity for future demonstration programs is always available to States. Any such proposal must, in part, demonstrate permissible sources of the non-Federal share funding and compliance with all other Federal statutory and regulatory provisions governing Medicaid payments. Section 1115 demonstrations

were only approved after each State documented an accountable and transparent financing and health care delivery system. Our legal basis for determining the allowability of any demonstration program is based in any such demonstration's compliance with all applicable Federal statutory and regulatory provisions.

223C. Comment: Numerous commenters requested that the proposed cost limit be revised to include, as an allowable cost, an actuarially sound provision for risk reserves when a unit of government has entered into a risk-based contract with an MCO or PIHP. The commenters stipulated that the proposed cost limit requirements would render all sub-capitation arrangements with counties financially unsustainable since there would be no mechanism for building a risk reserve and managing the mismatch of revenue and expense across fiscal years. The commenters noted that this would have particular impact for health plans operating in small rural areas. The commenters expressed their belief that the proposed rule restricts units of government from entering into Medicaid risk-based contracts and creating a disadvantage for local governments that would desire to provide services where the market is not likely to do so.

223R. Response: We do not believe that the suggested changes are necessary since the cost limit provisions do not apply to MCOs, PIHPs or PAHPs.

224C. Comment: Several commenters stated that CMS should allow States to make direct payments to governmental providers for unreimbursed costs of serving Medicaid managed care enrollees. Current Medicaid managed care regulations prohibit States from making direct payments to providers for services available under a contract with a managed care organization and Prepaid Inpatient Health Plan or a Prepaid Ambulatory Health Plan. There is an exception to this prohibition on direct provider payments for payments for graduate medical education, provided capitation rates have been adjusted accordingly. Since this proposed rule will result in extreme funding cuts, CMS should reconsider the scope of the exception to the direct payment provision. If reimbursement to governmental providers is going to be restricted to cost, it should include costs for all Medicaid individuals, not just those in the declining fee-for-service population. Other commenters stated that because these payments would now be based on costs, there would not be the danger of "excessive payments" that has concerned CMS in the past. The commenters specifically requested that

CMS amend §§ 438.6(c)(5)(v) and 438.60 to allow for direct payments to governmental providers for unreimbursed costs of Medicaid managed care patients.

224R. Response: Under the regulations governing payments under risk contracts in § 438.6(c), States are expected to make actuarially sound payments to MCOs, PIPs, and PAHPs that include amounts for all services covered under the contract. We do not believe there should be a need for payments directly from the States to providers who are delivering their services to Medicaid MCO enrollees. Sections 438.6(c)(5)(v) and 438.60 were designed to prevent duplicate and inappropriate supplemental payments for services for which the State had contracted with an MCO to provide. Under a managed care capitation payment systems, a State has in effect already paid for services that are included in an MCO's contract, and does not have an obligation to pay for them a second time.

225C. Comment: Several commenters requested that CMS clarify that the cost limit based on the "cost of providing covered Medicaid services to eligible Medicaid recipients" does not exclude costs for payments authorized under Section 1115 demonstration programs that expressly allow payment for individuals or services not covered under the State Medicaid plan. The commenters were concerned that proposed § 447.206(c)(1) specifies that "all health care providers that are operated by units of government are limited to reimbursement not in excess of the individual provider's cost of providing covered Medicaid services to eligible Medicaid recipients." The commenters believed this would preclude any Medicaid reimbursement to governmental providers for costs of care for patients who are not eligible Medicaid individuals or for services that are not covered under the State Medicaid plan.

The commenters questioned whether it is CMS' intent to either (1) apply the cost limit only to fee-for-service payments by the state agency for services provided to Medicaid individuals while relying on separate statutory or waiver-based authority to impose cost limits or demonstration program expenditures, or (2) to apply the cost limit more broadly than the language of the proposed rule would suggest. The commenters stated that preamble guidance regarding the ongoing validity of expenditure authority granted through existing demonstration projects would help reduce confusion about the intended

scope. CMS should also clarify that the limitation to cost of Medicaid services for Medicaid individuals is not intended to limit CMS approved payments under demonstration programs that expressly allow payment for individuals or services not covered under the State Medicaid plan.

225R. Response: Costs and populations that are otherwise not considered eligible for Medicaid matching purposes can be determined allowable under a section 1115 demonstration through the authority under section 1115(a)(2) of the Act which allows the Secretary to provide federal matching for costs not otherwise matchable under Medicaid. Such expenditures are eligible for Medicaid matching and would be recognized under the Medicaid cost limit provisions.

3. Other Miscellaneous Comments

226C. Comment: One commenter opined that the provisions of the regulation would be a barrier to the provision of federal Medicaid funding for Medicaid services delivered as part of an Individual Education Plan or Individualized Family Service Plan under IDEA.

226R. Response: The Individuals with Disabilities Education Act (IDEA) is a law ensuring services to children with disabilities. IDEA governs how States and public agencies provide early intervention, special education and related services to eligible children with disabilities. Section 1903(c) of the Act permits Medicaid reimbursement for Medicaid covered services provided to Medicaid eligible children under IDEA. The regulation does not require States to dismantle any of the existing Medicaid reimbursement rate methodologies they are currently using to reimburse providers of IDEA services.

The provision of the regulation that addresses a unit of government codifies the existing statutory definitions of a unit of government. This codification of existing Federal statute was established in an effort to assist States in identifying the universe of governmentally-operated health care providers that could receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and clarifies which types of health care providers can participate in financing of the non-Federal share of Medicaid payments.

227C. Comment: One commenter stated that the No Child Left Behind Act increased paperwork requirements for schools and that the provisions of the regulation would add to the extensive paperwork burden already in place.

227R. Response: The paperwork requirements of the No Child Left Behind Act are outside of the purview of CMS and the Medicaid program. With respect to the burden of the provisions of this regulation, we have modified the regulation to include a transition period to allow States and governmentally-operated non-institutional health care providers, such as schools, sufficient time to develop and implement Medicaid cost documentation and reporting processes. States will not be required to document and report cost information associated with non-institutional services such as those provided in schools until the State's Medicaid State plan rate year 2009.

228C. Comment: Some commenters were severely disturbed that CMS is limiting the extent to which Medicaid funds can be used to pay for uninsured care. The commenters disagreed with CMS and stated that Congress has never precluded providers from using their Medicaid revenues to care for the uninsured. One commenter argued that Congress has expressly provided for this through the passage of laws, including the Medicaid disproportionate share program (DSH) and the Benefits Improvement Act of 2000 (BIPA). The commenter noted that section 701(d) of BIPA provided direct funds to a governmentally-operated hospital with a 65 percent low income utilization rate that was not receiving DSH payments.

Another commenter requested that CMS include specific language in the regulatory text at §§ 447.207 and 447.272 to exempt payments authorized by sections 701(d) and 705 of BIPA. These payments allow the State to contribute to its entire safety net for needy individuals.

228R. Response: The fact that Congress has specifically provided for funding to pay for uninsured care in certain specified circumstances supports the general rule that, absent such specific authorization, Medicaid payments should be limited to supporting covered services for eligible individuals. We agree that the regulation should reference the specific statutory exceptions, and we are revising the regulation accordingly.

229C. Comment: A few commenters expressed concern that the new limitations on allowable services under the rehabilitation option would be harmful to persons with mental retardation and currently receiving health-related specialty services that allow them to participate meaningfully and in a more mainstreamed manner in the public education system.

229R. Response: The commenters' concerns are outside the scope of this

regulation. The regulation does not contemplate limitations on services under the rehabilitation option.

230C. Comment: A couple of commenters questioned how this proposed rule interacts and impacts Pay for Performance (P4P) models. The commenters indicated that States have been encouraged by CMS to consider innovative payment strategies to pay providers a higher rate for adhering to certain quality indicators to achieve better individual health outcomes. The commenters stated that a governmentally operated provider will not be incentivized to meet quality goals or performance standards if they will be reimbursed according to cost.

Further, the commenters questioned how any State can move forward with reimbursement policies incorporating quality measures if they won't apply to all providers of a service.

230R. Response: We do not believe the provisions of this regulation will have any negative impact on Pay for Performance (P4P) models. This regulation does not preclude States from using innovative payment strategies to pay providers a higher rate for adhering to certain quality indicators to achieve better individual health outcomes. The method by which a State may choose to accomplish its quality-based purchasing program can vary greatly because of the variety of approaches available to a State to administer its Medicaid program. States maintain flexibility, within established Federal statute and regulations, to decide on medically necessary services that will be covered and rates that will be paid to providers.

Under this regulation, governmentally-operated health care providers are assured the opportunity to receive full reimbursement for the cost of serving Medicaid individuals and except when a CPE is utilized as the non-Federal share of Medicaid payments, a cost reimbursement methodology within the Medicaid State plan is not required. States have the flexibility to pay the rate they choose as long as it does not result in Medicaid payments being greater than Medicaid costs in the governmentally-operated health care provider. Non-governmentally-operated health care providers may continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

231C. Comment: A couple of commenters expressed their disappointment that CMS chose to issue this proposed rule so soon after passage and in the midst of implementation of the Deficit Reduction Act of 2005

(DRA). The commenters stated that having to implement this rule on top of the burdens placed on States as a result of the DRA (that is, documenting citizenship and identity), imposes extreme financial burden. The commenters stipulated that such a cost shift to States will hamper efforts to expand access to care to all children qualifying for Medicaid and SCHIP and to reach those children not currently eligible. The commenters recommended that CMS allow States to implement the DRA changes before making such a drastic change to Medicaid financing policies and practices.

231R. Response: We do not believe the burden associated with the provisions of the regulation will impede States' ability to address any of the provisions within the DRA. Many of the provisions within this regulation codify existing Federal Medicaid law and do not represent policy change. Medicaid is a shared responsibility between Federal and State government. States are responsible for ensuring that their administration of their Medicaid program is in compliance with all Federal statutory and regulatory requirements.

232C. Comment: One commenter noted that in response to the DRA, CMS outlined several new flexibilities available to States to help people served by Medicaid programs maintain access to affordable health care and allow States to use innovative approaches to providing health insurance and long-term care services. The commenter indicated that one such initiative is "Roadmaps to Medicaid Reform". The commenter stated that the proposed rule would erode the intent of the DRA and CMS' on-going Medicaid reform efforts. The commenter strongly urged CMS to consider the effect this proposed rule will have on initiatives and the conflicting message sent to the States that have begun taking advantage of these reform measures.

Another commenter stated that the proposed rule could derail their efforts to cover more uninsured through their State's health care improvement act, which follows the President's proposal of shifting Federal funding to help the uninsured buy private insurance and take ownership of their healthcare.

232R. Response: We believe that nothing in this regulation prevents a State from implementing any flexibilities or innovations within their Medicaid programs. This regulation is merely designed to ensure the fiscal integrity of the Medicaid program.

States maintain flexibility, within established Federal statute and regulations, to decide on medically

necessary services that will be covered, populations that will be covered and rates that will be paid to health care providers. We will continue to work with States to determine the proper methods to implement such initiatives. There continue to be a variety of mechanisms States can use to achieve its specific goals for its Medicaid program including, but not limited to State plan changes, a Medicaid 1115 demonstration project application or amendment, or through a section 1915(b) or 1915(c) waiver.

233C. Comment: Several commenters strongly opposed the President's fiscal year 2008 budget proposal to eliminate Medicaid graduate medical education (GME) funding. The commenters first questioned whether the Administration could even implement such a proposal without explicit statutory direction and if so, they presume CMS would pursue this change through the notice of proposed rulemaking process. Other commenters urged CMS not to move forward with any proposal that would implement the President's budget proposal.

233R. Response: Any changes related to Medicaid reimbursement for GME costs contained in the President's fiscal year 2008 would be published in the **Federal Register** and afford interested parties the opportunity to provide comment.

234C. Comment: One commenter requested that CMS instruct States that outpatient drugs provided by governmentally-operated health care providers are excluded from Medicaid rebates under section 1927(j)(2) of the Act. The commenter believes the proposed rule will exclude outpatient drug utilization by providers from the Medicaid rebate program because the government will get the full benefit of any price reductions these providers obtain. The commenter further stipulated that under current Medicaid rebate law, hospitals that bill Medicaid no more than the hospitals' purchasing costs for covered outpatient drugs are not subject to the Medicaid rebate program. Because governmentally operated hospitals will receive no more than the purchasing costs for covered outpatient prescription drugs, they must be excluded from the Medicaid rebate program. The commenter reasoned that the Medicaid program will enjoy the benefit of whatever price reductions the hospitals negotiate with manufacturers.

234R. Response: The treatment of outpatient drugs furnished by governmentally-operated health care providers for purposes of drug rebate is outside of the scope of this regulation.

235C. Comment: One commenter suggested where fee-for-service payments to governmental providers constitutes a small percentage of a State's total medical assistance (the commenter suggested less than 5 percent) due to either widespread use of managed care or lack of governmental providers, the entire Medicaid program should be exempt from the proposed rule provisions. The commenter recommended including this exemption in the following proposed regulatory provisions §§ 433.51(b)(3), 447.206, 447.272 and 447.321.

235R. Response: The purpose of this regulation is to address a number of key Medicaid financing issues and strengthen accountability to ensure compliance with statutory requirements. A State with very few governmentally-operated health care providers that otherwise finances its Medicaid program in a manner consistent with the Federal statute should realize minimal impact from the provisions of this regulation.

236C. Comment: One commenter expressed their extreme dissatisfaction with their perceived disingenuous actions on the part of CMS. The commenter stipulated that they recently worked extensively with CMS to restructure their Medicaid financing and IGTs and were assured by CMS that as restructured they were in compliance with Federal law. However, the commenter pointed out, at the same time that CMS was assuring the commenter that it was in compliance with Federal law, CMS was developing proposed rules that, if applied as written, make CMS' assurance false. The commenter stated that either CMS acted in good faith and it knows that its proposed rules do not accurately reflect Federal law or CMS acted in bad faith because it never intended to fulfill its promises when it restructured the commenters Medicaid financing.

236R. Response: We disagree with this characterization. We have worked extensively with many States in a manner that ensures the financing of their Medicaid programs are consistent with Federal statutory and regulatory requirements. Since August 2003, we have been examining State Medicaid financing through the Medicaid reimbursement SPA review process. During that process, we have worked with several States to identify permissible sources of State Medicaid financing. Over the past few years, many States remained interested in utilizing IGTs (and CPEs) in an effort to help finance their Medicaid programs. During that cooperative review effort, CMS has consistently reminded States

the Federal statutory instruction governing IGTs and CPEs. Also during the SPA review process, States informed CMS that they should be allowed to determine eligibility for participation in IGTs (or CPEs) and that, absent clarification in regulation, the States would deem the health care providers they believe to be eligible to IGT or CPE. CMS deferred to that approach and also accommodated States' requests to create greater clarity through regulation to ensure compliance with Federal statute. With the issuance of this regulation, CMS has codified the existing statutory definitions of a unit of government. This codification of existing Federal statute was established in an effort to assist States in identifying the universe of governmentally-operated health care providers that could receive Medicaid revenues up to the full cost of providing services to Medicaid individuals and clarifies which types of health care providers can participate in financing of the non-Federal share of Medicaid payments.

237C. Comment: One commenter took the opportunity to express their strong support for reauthorization of SCHIP and urged CMS to support funding levels that will allow States to maintain coverage for current enrollees, but also expand coverage to children who are eligible, but not yet enrolled.

237R. Response: The reauthorization of SCHIP is outside the scope of this regulation.

238C. Comment: One commenter recommended that CMS immediately consult with States on the proposed rule and modify or withdraw it based on State concerns. The commenter stated that section 5(c) of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 requires the Secretary to "consult with States before issuing any regulations under this Act." The commenter inquired as to whether CMS complied with this statutory mandate since there was no mention of consultation in the preamble to the proposed rule. The commenter was particularly concerned since the National Governors' Association sent a letter to Congress strongly opposing the proposed rule. The commenter also requested information on whether the States' concerns have been taken into consideration at all in the formulation of this proposed rule.

238R. Response: As discussed above, we believe the conditions of section 5(c) of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, Pub. L. 102-234, were fully satisfied by the process the Secretary undertook when the regulations

implementing that Act were issued in 1992 and 1993. Even if these conditions were read to extend in perpetuity, however, we believe they have been met with respect to these regulations by the longstanding dialogue with States over these issues, and the employment of notice and comment procedures. The National Governors' Association letter is an example of receipt of State views in this consultation process. Consultation with States does not, however, obligate the federal government to agree with States or cede rulemaking authority to States. This preamble sets forth our consideration of State and other comments.

239C. Comment: One commenter described their current problems involving county government practices related to reimbursement procedures under California Short/Doyle Medi-Cal program. While the issues raised were not directly related to the provisions of the proposed rule, the commenter felt it was important to point out that some counties within the State do not follow the reimbursement requirements within the existing approved Medicaid State plan. The commenter stated that if current practices continue, the proposed rule that providers are reimbursed on the approved Medicaid State plan will continue to be ignored.

239R. Response: It is a State's responsibility to ensure its Medicaid program is implemented in accordance with all Federal Medicaid statutory and regulatory provisions, including compliance with its approved Medicaid State plan. To the extent that any Medicaid payment is not consistent with the methodology in the approved Medicaid State plan, a State is at risk of penalty under the authority of section 1903(a) of the Act and/or section 1904 of the Act and § 430.35.

240C. Comment: Several commenters wrote to express their general concerns about health care in America and the general impact the proposed rule may have on our society. Many of these commenters stated that the financial impact of the proposed rule would cause States, providers, and low-income, elderly, and disabled people throughout the country to suffer, arguing that CMS should not implement any Medicaid rule that involves reductions in Federal Medicaid spending. The general impact of Medicaid cuts on children, in particular, was noted. Some of these commenters suggested that rather than proposing cuts in Medicaid spending, CMS should look for ways to increase Medicaid spending. A number of commenters identified health care for the uninsured, underinsured, and the indigent as a

major issue in the United States today and advocated that everyone should have health coverage. Other commenters suggested that the Federal government should stop wasting taxpayer money in other areas (for example, Federal salaries and benefits, the war in Iraq, other grants to States, etc.) as a means of saving money that could be used to maintain current Medicaid spending.

240R. Response: We agree with the commenters regarding the importance of the Medicaid program to the nation's health care system and the vulnerable individuals that it serves. The provisions of the regulation did not propose the elimination of any funding for health care providers participating in the Medicaid program, or funding for health care services to vulnerable populations including children. We believe that overall this regulation can help strengthen the health care safety net by ensuring proper financing of the Medicaid program.

The purpose of the regulation was to ensure proper State financing of their share of Medicaid program costs in accordance with Federal statutory and regulatory requirements. The regulation was actually designed to protect health care providers, including safety net providers. Under the provisions of the regulation, governmentally-operated health care providers are assured the opportunity to receive full cost reimbursement for serving Medicaid individuals.

Non-governmentally-operated health care providers are not affected by the cost limit provision of the regulation and therefore may continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. Moreover, one provision of the regulation reaffirmed State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision which clearly demonstrates the Federal government's intent to protect the nation's safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. In fact, with regard to participation in the State Medicaid financing, non-governmentally-operated health care providers can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally operated "public" health care providers.

241C. Comment: A number of commenters expressed concern that the proposed rule would have on the

continuing viability of the range of services available to adults and children who have serious mental illness. One such commenter opined that individuals who are mentally ill are subjected to low quality health care because States do not pay enough to recruit employees who care about the well being of these individuals.

241R. Response: The provisions of the regulation were not designed to reduce health care services to Medicaid individuals. Instead the Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local governments choose to utilize their funding sources to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

242C. Comment: A number of commenters wrote in to express displeasure with elected representatives.

242R. Response: This regulation pertains to the financing and fiscal integrity of the Medicaid program. The comments are outside of the scope of the Medicaid program and this regulation.

243C. Comment: A number of commenters expressed concerns about policy issues and other issues that are unrelated to the provisions of this regulation. These issues included immigration policy; inflation; homelessness; veteran's benefits; taxation; personal circumstances;

general standards of living; and the war in Iraq.

243R. Response: This regulation pertains to the financing and fiscal integrity of the Medicaid program. The comments are outside of the scope of the Medicaid program and this regulation.

244C. Comment: Some commenters singled out specific providers as being affected by the rule. One commenter opined that the only way that hospitals which treat the uninsured and underinsured can remain in business is from funding received through Disproportionate Share Hospital (DSH) payments and the Upper Payment Limit (UPL). If DSH and UPL programs are eliminated, the commenter asserts, many thousands of people will not receive needed care. Similarly, another commenter stated that many hospitals in a rural State have closed, and more will follow due to inadequate funding. A different commenter worried that nurses would be laid off, resulting in more trips to the emergency room by individuals who would otherwise be treated by nurses at home.

244R. Response: The provisions of the regulation did not propose the elimination of any funding for health care providers participating in the Medicaid program, including DSH funding. Rather the purpose of the regulation is to ensure proper State financing of their share of Medicaid program costs in accordance with Federal statutory and regulatory requirements. The regulation was actually designed to protect health care providers, including safety net providers.

Under the provisions of the regulation, governmentally-operated health care providers are assured the opportunity to receive full cost reimbursement for serving Medicaid individuals. Non-governmentally-operated health care providers are not affected by the cost limit provision of the regulation and therefore may continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, one provision of the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision which clearly demonstrates the Federal government's intent to protect the nation's safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. In fact, with regard to participation in the State Medicaid financing, non-

governmentally-operated health care providers can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally operated "public" health care providers.

245C. Comment: Many commenters strongly urged CMS to withdraw the proposed rule in its entirety. Most of these commenters believe that CMS should meet with impacted stakeholders to develop more meaningful and manageable rules and policy alternatives that would strengthen the nation's health safety net. Other commenters stated that if CMS does not withdraw the proposed rules, States' health care safety nets will unravel and health care services to the nation's most vulnerable individuals will be jeopardized.

245R. Response: The regulation was issued in the **Federal Register** on January 18, 2007 as a notice of proposed rulemaking. A 60-day public comment period was provided and all comments received by CMS have been taken into consideration.

The provisions of the regulation did not propose the elimination of any funding for health care providers participating in the Medicaid program, including DSH funding. Rather the purpose of the regulation is to ensure proper State financing of their share of Medicaid program costs in accordance with Federal statutory and regulatory requirements. The regulation was actually designed to protect health care providers, including safety net providers.

Under the provisions of the regulation, governmentally-operated health care providers are assured the opportunity to receive full cost reimbursement for serving Medicaid individuals. Non-governmentally-operated health care providers are not affected by the cost limit provision of the regulation and therefore may continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, one provision of the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision which clearly demonstrates the Federal government's intent to protect the nation's safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. In fact, with regard to participation in the State Medicaid financing, non-

governmentally-operated health care providers can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally operated "public" health care providers.

246C. Comment: Several commenters recommended that CMS meet with various stakeholders to discuss challenges to the proposed rule from both State and Federal funding perspectives, and draft a new regulation that phases in some of the policy proposals.

246R. Response: The regulation was issued in the **Federal Register** on January 18, 2007 as a notice of proposed rulemaking. A 60-day public comment period was provided and all comments received by CMS have been taken into consideration. Further, many provisions of this regulation are mere codifications of Federal Medicaid statutory provisions that CMS has been applying under the examination State Medicaid financing through the Medicaid reimbursement SPA review process. During that process, CMS has worked with several States to identify permissible sources of State Medicaid financing. CMS has consistently reminded States of the Federal statutory instruction governing State financing of the Medicaid program.

247C. Comment: A couple of commenters expressed concern that the proposed rule will have a very serious affect on the ability of rural safety net providers to serve Medicaid individuals and the uninsured while also providing many essential, community-wide services. Another commenter stated that rural counties appear to be disproportionately disadvantaged by the proposed rule, since there are few if any alternative providers not subject to the proposed cost limit which could substitute services previously operated by rural county-operated clinics and the proposed limitations on funding for Medicaid transportation could be disproportionately disadvantageous by isolating seriously mentally disable clients living in rural communities. Another commenter stated that their rural hospital is already reimbursed significantly less than the cost to provide health care services and that any additional cuts will be detrimental to their ability to remain open. One commenter stated that CMS should be able to work with the remaining States to reform their systems without the proposed rule which could have large negative effects on rural government providers. Multiple commenters suggested that the cost limit provision of

the proposed rule would disproportionately disadvantage rural providers because many providers in rural communities are governmentally operated, lack medical infrastructure routinely available elsewhere, serve as the only provider in the area, and provide care to a large Medicaid population.

Some commenters expressed concern regarding the impact the substantial cuts the proposed rule will cause on other types of health care providers, including emergency physicians, nurses and physical therapists. With respect to physicians, a commenter stated that as physician practice costs grow, fewer and fewer physicians will be willing to participate in Medicaid, resulting in more and more individuals utilizing emergency room departments and further straining the health care safety net.

Other commenters expressed that the nation's health safety net is fragile and warned against the cuts in Medicaid spending that would occur under the proposed rule, saying that harm to the safety net will ultimately harm the most vulnerable people in our communities.

247R. Response: The provisions of the regulation were not designed to reduce health care services to Medicaid individuals. Instead the Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals.

Non-governmentally-operated health care providers, including many of the "public" safety net health care providers, are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local governments choose to utilize their funding sources to fund non-Federal share obligations to Medicaid payments historically

financed by non-governmentally-operated "public" health care providers.

248C. Comment: Several commenters urged CMS to reconsider the proposed rules as they will negatively impact delivery of health care services to children and children's hospitals. The commenters stated that because children make up the majority of the Medicaid population, this proposed rule will have a disproportionate impact on them. Some of the commenters also mentioned that on average children's hospitals devote more than 50 percent of their care to children on Medicaid and virtually all care for children with complex health care conditions and therefore they are reliant upon Medicaid (one commenter noted that over 80 percent of their revenues come from Medicaid); such changes to the financing of the program will threaten their financial viability. Another commenter stated that medically disenfranchised children who receive care in community health centers, and at local, regional and State hospitals will face further impediments to access by implementation of this proposed rule.

248R. Response: We do not believe the regulation will compromise the ability of health care providers participating in the Medicaid program from delivering critical health care services to children. Under the provisions of the regulation, governmentally-operated health care providers are assured opportunity to receive full cost reimbursement for serving Medicaid individuals.

Non-governmentally-operated health care providers, including many of the "public" safety net hospitals, are not affected by the cost limit provision of the regulation and therefore, may continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements. Moreover, one provision of the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured.

249C. Comment: A few commenters stated that overall CMS has usurped Congress' role with respect to Medicaid funding policy. The commenters noted that in the past, when there has been substantial change to Medicaid funding policy (that is, prohibiting provider-related taxes and donations, modifying

DSH allotments, or modifying application of UPLs), Congress has made or at least supported the changes. The commenters indicated that if such sweeping changes are to be made to Medicaid, they should be made first through legislation. Another commenter stated that CMS' response to concerns about lost funding for uninsured health care needs is that it is Congress' job to determine whether such Federal support is needed for Medicaid and uninsured individuals. The commenter pointed out that Congress has expressed no concern with the development of supplemental Medicaid payment systems in which States have used the Medicaid program as the primary source of Federal support for safety net health care. Therefore, if Congress is in fact the only entity, according to CMS, that can authorize replacement funding for the uninsured, then it should also be the entity that considers the types of sweeping payment and financing changes proposed by CMS. In general, many other commenters stated that CMS exceeded its statutory authority with all of the provisions within the proposed rule.

249R. Response: This regulation interprets and implements statutory provisions enacted by Congress. These provisions detail specifically the authority to pay a federal share of the cost of covered services furnished to eligible individuals. Congress has not, to date, provided general authority for Medicaid payment to cover the costs of uncompensated care furnished to the uninsured. Nor has Congress expressly authorized general subsidies for public or safety net providers. Instead, Congress has provided some very specific and limited authority, such as disproportionate share hospital payments, that can be used to cover such costs. The commenters have pointed to no statutory authority to support the general payment of Medicaid funds for non-statutorily authorized purposes. Nor have the commenters explained how it exceeds CMS' statutory authority to issue a regulation that ensures that Federal Medicaid funding is used for actual costs of covered Medicaid services furnished to eligible individuals.

250C. Comment: Several commenters questioned if according to CMS data there are only three remaining States with questionable Medicaid financing arrangements, why is the proposed rule even necessary. The commenters noted that clearly the steps taken to date by Congress and CMS have addressed the concerns raised by CMS about State Medicaid financing mechanisms. Further the commenters stated that CMS

has not explained how the proposed rules will further its stated goals. A few commenters supported CMS' efforts to address State financing abuses, but believe that this only demonstrates that CMS already has the legal tools and sufficient safeguards under its existing review system and SPA approval process to address these problems and protect the integrity and accountability of the Medicaid program without disturbing the delicate balance between Federal, State, local governments and public health care providers. The commenters urged CMS to continue its work on a State by State basis. Other commenters stated that the proposed rule destroys effective, efficient, and innovative programs previously approved by CMS. Likewise, another commenter stated that the provisions of the proposed rule would diminish long-standing, legitimate State funding mechanisms that CMS has previously approved. A couple of other commenters detailed that CMS and the Office of the Inspector General have aptly demonstrated instances of recycling of Federal funds and of IGTs by entities without public status or funds and the commenters agreed that these abuses should be remedied. However, the commenters do not believe that the proposed rule addresses these abuses and CMS should ensure fair and equitable Medicaid reimbursement to all providers regardless of their operating status.

250R. Response: Although CMS has achieved considerable success in its ongoing compliance monitoring programs on a State-by-State basis, States and providers have repeatedly requested formal clarification of the rules. State-by-State reviews and monitoring are costly and intrusive. This regulation ensures that States will fully understand applicable rules, and will know that the same rules apply nationwide. By setting out clear tests that States can apply and monitor, this regulation will permit States to evaluate potential financing and payment methodologies in advance. Moreover, this regulation will give CMS new enforcement and monitoring tools to ensure compliance.

251C. Comment: A number of commenters were concerned about the workload that will be required to comply with the requirement to update waivers and State plans.

251R. Response: The Medicaid cost limit provision does not require States to necessarily modify existing Medicaid reimbursement systems utilized to make Medicaid payments to governmentally-operated health care providers. Under the Medicaid cost limit States may

continue to use existing Medicaid reimbursement rate methodologies, but will need to compare such rates to the actual cost providing services to Medicaid individuals. Changes to existing Medicaid reimbursement systems deemed necessary by a State are subject to applicable Federal statutory and regulatory requirements.

252C. Comment: A couple of commenters expressed their support for some of the policy objectives associated with this rule. Commenters specifically supported CMS efforts to clarify the regulations governing the financing of the non-Federal share of Medicaid payments; eliminate abusive financing practices involving "recycling" of Federal funds; strengthen financial accountability; or limit Federal reimbursement to the reasonable costs of governmental providers for delivering Medicaid services.

252R. Response: We appreciate the support of CMS' efforts to ensure the fiscal integrity of the Medicaid program.

253C. Comment: Several commenters wrote about the impact the proposed rule could potentially have on teaching hospitals specifically. The commenters noted that teaching hospitals fill unique roles that extend beyond the normative patient care services rendered in other hospitals. For example, teaching hospitals may house level 1 trauma centers, burn centers, cancer centers, and neonatal intensive care units, or they may offer organ transplants, specialized orthopedic services, or high risk obstetrical services. Teaching hospitals are training sites for all types of health professional trainees and have a leading role in medical research, which leads to their care for the nation's sickest and most complex patients.

Teaching hospitals have the newest and most advanced treatments and technologies, and today they are also viewed as front-line responders in the event of a biological, chemical, or nuclear attack or a natural disaster. In many States, teaching hospitals are the only providers of specialized medical services for individuals with serious health conditions. Teaching hospitals also tend to be among the largest Medicaid providers in their States; in fact, one commenter observed that teaching hospitals represent only 6 percent of all hospitals nationally, but about 25 percent of Medicaid discharges are from teaching hospitals. Significant financial investments are necessary for teaching hospitals to continue to fill their critical safety net role in our health care system. The commenters noted that Medicaid is a significant source of revenue for teaching hospitals, commenting that cuts in Medicaid

spending and the provisions of the proposed rule could upset the delicate balance of resources that teaching hospitals rely upon to maintain their operations. These commenters suggested that the proposed rule may jeopardize the financial state of teaching hospitals, resulting in potential losses of critical services and reduced access to specialty care.

Another commenter argued that teaching hospitals should not be subject to the proposed cost limit by noting that in prior court filings, CMS has explicitly recognized the value of allowing flexibility for States to direct higher payments to certain hospitals having special needs. The commenter also stated that private hospitals and other hospitals should have the same upper payment limit (UPL) and that a distinct UPL for governmental providers would be unequal and unwarranted.

253R. Response: We agree that teaching hospitals are very important to our nation's ability to deliver health care to all populations, including those with the most critical needs. The regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. The provisions of the regulation were not designed to reduce health care services to Medicaid individuals. Instead the Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals. Consistent with the Medicaid cost limit on all governmentally-operated health care providers, the applicable upper payment limit is Medicaid cost. We do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

The DSH program is available to States to provide payments for uncompensated care costs associated with inpatient and outpatient hospital services provided to individuals with no source of third party coverage (that is, uninsured).

254C. Comment: One commenter argued that Section 705(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) directed CMS to apply an "aggregate upper payment

limit to payments made to government facilities that are not state-owned or operated facilities." The commenter cited this provision in an effort to demonstrate that the proposed cost limit contradicts this mandate from Congress and asked that this provision be rescinded.

254R. Response: Section 705(a) of BIPA set forth conditions for a specific final regulation. Those conditions were met. Section 705(a) did not preclude the Secretary from engaging in further rulemaking on the same subject, or otherwise amend the Social Security Act to require a particular method to implement the requirement at section 1902(a)(30)(A) of the Social Security Act to assure payment rates that were consistent with efficiency, economy and quality of care.

255C. Comment: Several commenters were particularly concerned about the impact the proposed cost limit would have on State teaching hospitals. The commenters stated that these facilities typically serve the largest number of Medicaid individuals and provide vital services to the community. Limiting Medicaid payment will eliminate funding for trauma centers and the training of physicians. Another commenter stated the proposed cost limit would foreclose additional opportunities to use UPL supplemental payments to improve reimbursement rates for physicians affiliated with State medical schools.

255R. Response: We agree that teaching hospitals are very important to our nation's ability to deliver health care to all populations, including those with the most critical needs. The regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. The provisions of the regulation were not designed to reduce health care services to Medicaid individuals. Instead the Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals. Consistent with the Medicaid cost limit on all governmentally-operated health care providers, the applicable upper payment limit is Medicaid cost. We do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the

cost of providing services to Medicaid individuals.

The DSH program is available to States to provide payments for uncompensated care costs associated with inpatient and outpatient hospital services provided to individuals with no source of third party coverage (that is, uninsured).

256C. Comment: Many commenters argued that the proposed rule ultimately represents a cost shift from the Federal government to the States. Multiple commenters noted that financing arrangements and reimbursement methodologies which the States have been using for years would now become impermissible under the proposed rule, resulting in a necessary increase of State funds to cover Medicaid program costs. Some commenters opined that States are not equipped to single-handedly shoulder the burden of uncompensated health care costs associated with the rising levels of uninsured in this country. Concern was expressed that States and local governments would be unable to fill the gap created by the loss of Federal funds from this rule, which would stress health care delivery systems across America and result in greater numbers of uninsured and reduced access to care. Therefore, these commenters urged CMS to withdraw the proposed rule.

Many other commenters expressed a belief that despite assertions by CMS, the proposed regulation is actually nothing more than an effort to cut Federal Medicaid spending.

256R. Response: The Federal government remains committed to funding its share of the cost of providing Medicaid services to eligible individuals. Further, we understand that governmentally-operated health care providers have numerous goals and objectives that extend beyond the Medicaid program. Under the Medicaid cost limit of the regulation, Medicaid will continue to be permitted to pay for its share of costs associated with a provider's services that benefit Medicaid individuals in accordance with applicable statutory and regulatory requirements. However, when Medicaid is viewed as a primary source of revenue for a government's non-Medicaid activities, no matter how noble such activities may be, the statutory purpose of the Medicaid program has been undermined. Medicaid is a shared responsibility between Federal and State government. State governments may share their fiscal obligation to the Medicaid program with local governments according to the instruction of Congress. However, States are responsible for ensuring that their

administration of their Medicaid program is in compliance with all Federal statutory and regulatory requirements. We do not find it appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

The provisions of the regulation were not designed to reduce health care services to Medicaid individuals. Instead the Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals. Non-governmentally-operated health care providers, including many of the "public" health care providers, are not affected by the Medicaid cost limit provision and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government's intent to protect the nation's public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers.

257C. Comment: Many commenters wrote about the impact that the proposed rule would have on specific States, communities, or providers throughout the country. Although it is not possible to cite every specific situation that was cited, a few examples are provided here. One commenter, a large city government, noted the high levels of Medicaid individuals within its jurisdiction but the disproportionately low level of dollars received for Medicaid services, arguing that the proposed rule will severely restrict the level and quality of care provided to city residents. A commenter estimated that within its State, 80 DSH hospitals, 65 UPL hospitals, 78 nursing homes, 12 ICF/MR facilities, 159 public

health departments, and 27 community mental health centers would be impacted by the rule, concluding that the statewide health care safety net "is anticipated to collapse" due to the rule. A State medical association asserted that public hospitals in the State's largest communities would lose \$338 million in Federal Medicaid funds as a result of this rule. Another commenter stated that the proposed rule would cut off existing Federal funding streams to its State, forcing hospitals to either raise their charges to insured individuals or reduce costs by eliminating costly but under-reimbursed services, neither of which was desirable. The commenter went on to say that the ultimate economic impact of the rule on the State, including the loss of Federal Medicaid funding and the associated loss of jobs and other economic impacts, has been estimated at over \$600 million statewide. An additional commenter conveyed statistics about the services safety net providers offer and the populations they serve within the State, urging CMS to do nothing that could lower reimbursements to such providers. The comments cited are representative generally of the opinions expressed about the impact the proposed rule would have on specific States, localities, and providers. For the most part, commenters who wrote about such specific impacts opposed the rule and asked CMS to withdraw it.

257R. Response: The Federal government remains committed to funding its share of the cost of providing Medicaid services to eligible individuals. Further, we understand that governmentally-operated health care providers have numerous goals and objectives that extend beyond the Medicaid program. Under the Medicaid cost limit of the regulation, Medicaid will continue to be permitted to pay for its share of costs associated with a provider's services that benefit Medicaid individuals in accordance with applicable statutory and regulatory requirements. However, when Medicaid is viewed as a primary source of revenue for a government's non-Medicaid activities, no matter how noble such activities may be, the statutory purpose of the Medicaid program has been undermined. Medicaid is a shared responsibility between Federal and State government. State governments may share their fiscal obligation to the Medicaid program with local governments according to the instruction of Congress. However, States are responsible for ensuring that their administration of their Medicaid program is in compliance with all

Federal statutory and regulatory requirements. We do not find it appropriate that units of State or local government would “profit” from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

The provisions of the regulation were not designed to reduce health care services to Medicaid individuals. Instead the Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals. Non-governmentally-operated health care providers, including many of the “public” health care providers, are not affected by the Medicaid cost limit provision and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government’s intent to protect the nation’s public safety net and its ability to continue delivering critical health care services to Medicaid individuals and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated “public” health care providers.

258C. Comment: A number of commenters recognized that some States, local governments, or providers have been involved in abusive Medicaid financing practices but asserted that the proposed rule, in its effort to address such abuses, actually penalizes those who did not engage in inappropriate financing practices. These commenters argued that it is unfair that States, local governments, or providers who have done nothing wrong are now paying for the misdeeds of others. Numerous other commenters argued that the proposed cost limit is overreaching and CMS is improperly imposing this restrictive limit in States that either removed or never relied on inappropriate financing arrangements. They believe the new cost limit would impose a deep cut to rectify

a non-existent problem in most instances.

258R. Response: The Federal government remains committed to funding its share of the cost of providing Medicaid services to eligible individuals. Further, we understand that governmentally-operated health care providers have numerous goals and objectives that extend beyond the Medicaid program. Under the Medicaid cost limit of the regulation, Medicaid will continue to be permitted to pay for its share of costs associated with a provider’s services that benefit Medicaid individuals in accordance with applicable statutory and regulatory requirements. However, when Medicaid is viewed as a primary source of revenue for a government’s non-Medicaid activities, no matter how noble such activities may be, the statutory purpose of the Medicaid program has been undermined. Medicaid is a shared responsibility between Federal and State government. State governments may share their fiscal obligation to the Medicaid program with local governments according to the instruction of Congress. However, States are responsible for ensuring that their administration of their Medicaid program is in compliance with all Federal statutory and regulatory requirements. We do not find it appropriate that units of State or local government would “profit” from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals.

The provisions of the regulation were not designed to reduce health care services to Medicaid individuals. Instead the Medicaid cost limit permits all governmentally-operated health care providers the opportunity to receive Medicaid revenues up to the full cost of providing services to Medicaid individuals. Non-governmentally-operated health care providers, including many of the “public” health care providers, are not affected by the Medicaid cost limit provision and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, the regulation reaffirms State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments, another provision of which clearly demonstrates the Federal government’s intent to protect the nation’s public safety net and its ability to continue delivering critical health care services to Medicaid individuals

and the uninsured. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated “public” health care providers.

259C. Comment: One commenter questioned why cost reporting is necessary for publicly-operated health care providers who do not participate in the non-federal share of Medicaid payments and who retain all of their Medicaid payments.

259R. Response: The Federal Medicaid statute does not include a term nor discussion that references a “public” health care provider for purposes of State Medicaid financing. We do not believe the cost limit will impose significant administrative burden on States particularly since such limit applies only to governmentally-operated health care providers.

For purposes of institutional governmentally-operated health care providers, the Medicaid cost limit determination will rely on existing reporting tools used by institutional health care providers. States will not be required to audit financial and cost information provided by individual institutional governmentally-operated health care providers as part of the Medicaid cost limit review. Each of the source documents is subject to reporting and auditing rules specific to the original purpose of that document and independent of the Medicaid cost limit and State review process. The State must render an determination on the cost limit methodology applied to the source documents but will not be required to validate the accuracy of the information and data within the source documents.

For non-institutional services provided to Medicaid eligible individuals, a nationally recognized, standard cost report currently does not exist. Because of this, we will be publishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. The period of time to which this cost report applies will be the Medicaid State plan rate year.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional health care providers

sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, establish periodic review and audit processes, etc.), States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to implement periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS website that specifically addresses the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with Federal requirements.

IV. Provisions of the Final Regulations

[If you choose to comment only on issues related to Unit of Government Definition (§ 433.50) in this section, please include the caption "Provisions of the Final Regulations" at the beginning of your comments.]

As a result of our review of the comments we received during the public comment period, as discussed in section III of this preamble, we are making the following revisions to the regulation published on January 18, 2007.

Section 433.50—Definition of Unit of Government

We have modified the regulation at § 433.50 to address concerns regarding taxing authority as a requirement for an entity to be considered a unit of government. The regulation has been revised to indicate that a unit of government is a State, a city, a county, a special purpose district, or other governmental unit in the State that has taxing authority or direct access to tax revenues. We have added the phrase "has direct access to tax revenues" to recognize as governmental those entities that do not have taxing authority, but do have direct access to tax revenues that are imposed by a parent or related unit of government. For example, when a tax is imposed and collected by a State but

is dedicated for use by a municipality or other entity, that entity would satisfy the criteria of direct access to tax revenues. Similarly, a county-operated hospital that is recognized in the county's budget to receive local tax subsidies via the county appropriation process, and without the need to contract for such tax revenues, would satisfy the criteria of direct access to tax revenues. We have deleted the phrase "generally applicable" because we do not believe it is necessary since the provider tax rules already require that permissible taxes be broad based and uniform. But we interpret the term "taxing authority" in this context to exclude authority to levy user fees in exchange for benefits specific to the payer, even though those fees would be considered a tax for other purposes.

We have also modified the regulation to recognize the explicit reference to State university teaching hospitals in section 1903(w)(6)(A) of the Act. We have added § 433.50(a)(1)(ii)(C) to recognize State university teaching hospitals as a unit of government eligible to participate in the financing of the non-Federals share of Medicaid payments.

We have also modified the regulation at § 433.50 to address concerns raised about the unique governance arrangements of Indian tribes and tribal organizations. Specifically, paragraph § 433.50(a)(1)(i) has been modified to consider as a unit of government "an Indian tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act, as amended." Additionally, we have amended proposed language at § 433.50(a)(1)(ii) by adding a new section (D) to define the criteria under which a health care provider operated by a tribe or tribal organization may also be considered a unit of government under this section. This criteria is consistent with policy articulated in State Medicaid Director (SMD) letters previously issued on October 18, 2005 and June 9, 2006.

Section 447.206—Cost Limit for Providers Operated by Units of Government

In the summary section of the proposed regulation, we indicated that Medicaid managed care organizations (MCOs) are not subject to the Medicaid cost limit provision of this regulation, but this was not expressly identified in § 447.206. In recognition of existing statutory and regulatory instruction applicable to Medicaid reimbursement to Medicaid MCOs, Prepaid Inpatient Health Plans (PIHPs) and Prepaid Ambulatory Health Plans (PAHPs) we have modified the regulation at

§ 447.206(b) to specifically exempt MCOs, PIHPs and PAHPs from the Medicaid cost limit.

In addition, in recognition of existing statutory instruction applicable to Medicaid reimbursement to Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs), we have modified the regulation at § 447.206(b) to also specifically exempt FQHCs and RHCs from the Medicaid cost limit.

In addition to the exceptions listed above, § 447.206(b) has also been modified to exclude disproportionate share hospital (DSH) payments from the Medicaid cost limit provision at § 447.206. DSH payment adjustments are instead subject to limitations and requirements under section 1923 of the Act.

A primary purpose of the regulation was to limit Medicaid payments to governmentally operated health care providers to the cost of providing services to Medicaid individuals. States will have an obligation to ensure that Medicaid reimbursements to governmentally operated health care providers do not exceed the individual governmentally operated health care provider's costs of serving Medicaid individuals (the newly established a "cost limit"). CMS has modified the regulation and developed protocols in an effort to address concerns regarding requirements to properly document, audit, and review the costs associated with the provision of Medicaid services in both institutional and non-institutional environments.

1. Institutional Providers

The Medicare cost allocation process utilized for institutional health care providers is considered a key component in determining Medicaid cost under the rule. Institutional governmentally-operated health care providers (i.e. hospitals, nursing facilities, and intermediate care facilities for the mentally retarded (ICFs/MR)) will be required to provide the State with data extracted from primary source documents as well as copies of the source documents. These documents would include the provider's Medicare cost report (or Medicaid cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting principles), and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information Systems (MMIS).

CMS has modified the regulation to provide that the State's review of Medicaid payments to institutional governmentally operated providers to

ensure compliance with the cost limit during Medicaid State Plan rate year 2008 must be completed no later than the last day of federal fiscal year 2010. The State must submit a summary report of the findings of this review by the last day of calendar year of 2010. The basis for these deadlines is the recognition that hospitals, nursing homes and ICFs/MR may have a cost reporting period that remains open after the Medicaid State Plan rate year under review has ended. The State review and reporting deadlines allow sufficient time for the cost report period that remains open at the end of a Medicaid State Plan rate year to close and for the cost report to be submitted to the fiscal intermediary. For any cost reports that are not finalized by the fiscal intermediary, the State should use the "as filed" report and indicate such in the summary report to CMS. The State should then submit a corrected summary report to CMS within 30 days of the finalization of the cost report.

2. Non-Institutional Providers

For all non-institutional services provided to Medicaid eligible individuals, we note that a nationally recognized, standard cost report does not exist. Because of this, we are publishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals.

CMS has modified the regulation to include a transition period to allow States and governmentally operated non-institutional providers sufficient time to develop and implement Medicaid cost documentation and reporting processes consistent with the cost report template issued by CMS (including but not limited to changes in State/provider reporting systems, changes to the Medicaid State plan, changes to time studies, etc.). States will not be required to document and report cost information associated with non-institutional Medicaid services until the State's Medicaid State plan rate year 2009. Actual submission of the State's summary report on the Medicaid cost limit for non-institutional services will not be due to CMS until December 31, 2011, which allows States an opportunity to establish periodic review and audit processes for Medicaid non-institutional costs starting in Medicaid State plan rate year 2009.

CMS has developed a general Medicaid Cost Reporting Protocol available on the CMS website that specifically addresses the information

utilized from each source document and the methods under which institutional and non-institutional Medicaid costs will be determined. The protocol was designed to provide States with detailed instructions to determine compliance with the Federal requirements.

Each subsequent State review of Medicaid payments to governmentally operated health care providers, after the Medicaid State plan rate years identified above, must be performed annually and completed by the last day of the federal fiscal year ending two years from the Medicaid State plan rate year under review. Each State must submit a summary report to CMS showing the results of the State's review of payments to ensure compliance with the Medicaid cost limit for governmentally-operated health care providers by the last day of the calendar year ending two years from the Medicaid State plan rate year under review.

Section 447.207—Retention of Payments

We have revised some of the introductory wording of this provision to make clear that the requirements of this section are applicable to State Medicaid payment methodologies and do not impose a specific mandate on providers. We have also added a paragraph (b) to § 447.207 to note that payments authorized by Sections 701(d) and 705 of the Benefits Improvement Act of 2000 (BIPA), taxes that are permissible under Section 1903(w) of the Act, and normal operating expenses of conducting business shall not be questioned for purposes of compliance with the provision.

Section 447.321—Outpatient Hospital and Clinic Services: Application of Upper Payment Limits

To address concerns that § 447.321 does not identify disproportionate share hospital payments (DSH) as an exception to the Medicaid cost limit and to maintain consistency with the purpose of the Medicaid cost limit and with the statutory provision governing DSH at section 1923 of the Act, § 447.321(c) has been modified to include an exemption for DSH payment adjustments from the application of outpatient hospital upper payment limit.

1. Payments authorized by the Benefits Improvement Act of 2000 (BIPA)

To address concerns about the impact the proposed regulation might have on payments authorized by Sections 701(d) and 705 of the Benefits Improvement Act of 2000 (BIPA), we have modified the regulation at § 447.207, § 447.272, and § 447.321 to clarify that these

unique and statutorily authorized payments are not subject to the upper payment limits or retention provisions of this regulation.

2. "Tool to Evaluate the Governmental Status of Health Care Provider"

States will be required to apply the statutory and regulatory criteria to each individual health care provider to make initial determinations of governmental status. In connection with the proposed regulation, CMS published an instrument to collect information about the governmental nature of health care providers, referenced herein as the "Tool to Evaluate the Governmental Status of Health Care Provider." Based on comments received, this tool has been modified to guide States in applying the statutory and regulatory criteria to make the initial determination of a health care provider's governmental status and to create a record supporting this determination relative to each governmentally operated health care provider in the State.

States will be required to keep copies of each completed "Tool to Evaluate the Governmental Status of Health Care Provider" form on file in order to maintain a record of the official State determination regarding the governmentally operated status of individual health care providers. States must report the universe of governmental health care providers in each State by submitting a complete list of such providers to the Associate Regional Administrator for Medicaid of each State's respective CMS Regional Office within 90 days of the effective date of the regulation. CMS reserves the right to disagree with a State's initial determination of governmental status if we believe the State has not consistently applied the statutory and regulatory criteria. In addition, States will be required to submit these forms to CMS for any Medicaid institutional and non-institutional reimbursement State plan amendments and as requested under Medicaid financial management reviews performed by CMS.

V. Collection of Information Requirements

[If you choose to comment only on issues related to Unit of Government Definition (§ 433.50) in this section, please include the caption "Collection of Information Requirements" at the beginning of your comments.]

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.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Section 433.51 Public Funds as the State Share of Financial Participation

Section 433.51 requires that a certified public expenditure (CPE) be supported by auditable documentation in a form(s) approved by the Secretary that, at a minimum, identifies the relevant category of expenditures under the Medicaid State Plan, demonstrates the cost of providing services to Medicaid recipients, and is subject to periodic State audit and review.

The burden associated with this requirement is the time and effort put forth by a provider to complete the approved form(s) to be submitted with a CPE. Depending upon provider size, we believe that it could take approximately 10–80 hours to fill out the form(s) that would be required for an annual certified public expenditure. We estimate that governmentally-operated health care providers in 50 States will be affected by this requirement. The total number of health care providers affected and the estimated total aggregate hours of paperwork burden for all health care providers (that is, both institutional and non-institutional government health care providers) will be a direct result of the number of health care providers that are determined to be governmentally-operated.

Section 447.206 Cost Limit for Providers Operated by Units of Government

Section 447.206(e) states that each governmentally-operated health care provider must submit annually a cost report to the Medicaid agency which reflects the individual governmentally-operated health care provider's cost of serving Medicaid recipients during the

year. The Medicaid Agency must review the cost report to determine that costs on the report were properly allocated to Medicaid and verify that Medicaid payments to the governmentally-operated health care provider during the year did not exceed the governmentally-operated health care provider's cost.

States will have an obligation to ensure that Medicaid reimbursements to governmentally operated health care providers do not exceed the individual governmentally operated health care provider's costs of serving Medicaid individuals (the newly established "cost limit"). CMS has modified the regulation and developed protocols in an effort to address concerns regarding requirements to properly document, audit, and review the costs associated with the provision of Medicaid services in both institutional and non-institutional environments.

The Medicare cost allocation process utilized for institutional health care providers is considered a key component in determining Medicaid cost under the rule. Institutional governmentally-operated health care providers (i.e. hospitals, nursing facilities, and intermediate care facilities for the mentally retarded (ICFs/MR)) will be required to provide the State with data extracted from primary source documents as well as copies of the source documents. These documents would include the provider's Medicare cost report (or CMS-approved cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting principles), and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information Systems (MMIS). The protocols provide guidance regarding the methodology States must utilize for determining Medicaid costs associated with these existing cost reporting documents.

For all non-institutional services provided to Medicaid eligible individuals, we note that a nationally recognized, standard cost report does not exist. Because of this, we are establishing a standardized cost reporting form that should be used to document such services. The purpose of this standardized form is to document in a uniform manner the cost of providing non-institutional services to Medicaid individuals. We will submit this information collection for the non-institutional cost documentation to OMB for its review and approval. This information collection is not effective until OMB approves it.

The burden associated with this requirement is the time and effort for the institutional governmentally-operated health care provider to report the cost information annually to the Medicaid Agency and the time and effort involved in the review and verification of the report by the Medicaid Agency. We estimate that it will take a governmentally-operated health care provider 1 hour to prepare and submit the report annually to the Medicaid Agency. We estimate it will take the Medicaid Agency 1 to 10 hours to review and verify the information provided. We are unable to identify the total number of governmentally-operated health care providers affected or the estimated total aggregate hours of paperwork burden for all governmentally-operated health care providers, as such this information will be a direct result of the number of health care providers that are determined to be governmentally operated.

The burden associated with this requirement is the time and effort for the governmentally-operated health care provider to report the cost information annually to the Medicaid Agency and the time and effort involved in the review and verification of the report by the Medicaid Agency. We estimate that it will take a governmentally-operated health care provider 2 to 90 hours to prepare and submit the report annually to the Medicaid Agency. We estimate it will take the Medicaid Agency 1 to 10 hours to review and verify the information provided. We are unable to identify the total number of governmentally-operated health care providers affected or the estimated total aggregate hours of paperwork burden for all governmentally-operated health care providers, as such this information will be a direct result of the number of health care providers that are determined to be governmentally operated.

In the preamble of this final regulation, under the section titled "*Tool to Evaluate Governmental Status of Providers*", we discuss a form questionnaire that we have developed to assist us in making a determination as to whether or not the health care provider is a unit of government. We will submit this information collection to OMB for its review and approval. This information collection is not effective until OMB approves it.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this final regulation to OMB for its review of these information collection requirements described above.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attn.: Melissa Musotto, CMS-2258-FC, Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Katherine T. Astrich, CMS Desk Officer, CMS-2258-FC, *Katherine_T._Astrich@omb.eop.gov*, Fax (202) 395-6974.

VI. Regulatory Impact Analysis

[If you choose to comment only on issues related to Unit of Government Definition (§ 433.50) in this section, please include the caption "Regulatory Impact Analysis" at the beginning of your comments.]

A. Introduction

We have examined the impacts of this regulation as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6.5 million to \$31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. For the reasons cited below, we have determined that this regulation may have a significant impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. We are not imposing any unfunded mandates on States that would rise to the \$120 million threshold level established by Section 202 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The provisions of this regulation were designed to ensure consistent application of the Federal statutory instructions regarding the definition of a unit of government for purposes of Medicaid reimbursement and State financing. States continue to maintain flexibility, within Federal statute and regulation, to decide on medically necessary services that will be covered, populations that will be covered and rates that will be paid to health care providers. This regulation merely ensures the fiscal integrity of the Medicaid program. Consistent with this analysis, for purposes of Executive Order 13132, we do not find that this regulation will have a substantial effect on State or local governments.

B. Costs and Benefits

This rule is a major rule because it is estimated to result in \$120 million in savings during the first year and \$3.87 billion in savings over five years.

As CMS has examined Medicaid State financing arrangements across the country, we have identified numerous instances in which State financing practices do not comport with the Medicaid statute. Since the summer of 2003, we have reviewed and processed

over 1,400 State plan amendments related to State payments to health care providers. Through this examination we have developed a greater understanding of how to ensure that payment and financing arrangements comply with statutory intent. We found that many States make supplemental payments to governmentally-operated health care providers that are in excess of cost. These health care providers, in turn, use that excess of Medicaid revenue over cost to subsidize health care (or other) operations that are unrelated to Medicaid, or they may return a portion of the supplemental payments in excess of cost to the States and/or local government. This regulation strengthens accountability to ensure that statutory requirements within the Medicaid program are met in accordance with sections 1902, 1903, and 1905 of the Act.

As explained in the background section of the preamble, section 1903(w) of the Act permits units of government to participate in the financing of the non-Federal share; however, in some instances States rely on funding from non-governmental entities for the non-Federal share. Because such practices are expressly prohibited by the donations and taxes amendments at section 1903(w) of the Act, we are issuing this regulation to clarify the requirements of entities and health care providers that are able to finance the non-Federal share.

Arrangements in which health care providers did not retain the full amount of their Medicaid payments is inappropriate and inconsistent with statutory construction that the Federal government pays only its proportional cost for the delivery of Medicaid services. When a State claims Federal reimbursement in excess of net payments to health care providers, the FMAP rate has effectively been increased, and federal Medicaid funds are redirected toward non-Medicaid services. When a State chooses to recycle FFP in this manner, the Federal taxpayers in other States disproportionately finance the Medicaid program in the State that is recycling FFP. This regulation is designed to eliminate such practices.

The regulation should also have a beneficial distributive impact on governmentally-operated health care providers because in many States there are a few selected governmentally-operated health care providers receiving payments in excess of cost, while other governmentally-operated health care providers receive a lower rate of reimbursement. This regulation will reduce inflated payments to those few

governmentally-operated health care providers and promote a more even distribution of funds among all governmentally-operated health care providers. This is because all governmentally-operated health providers will be limited to a level of reimbursement that does not exceed the individual governmentally-operated health care provider's cost of providing services to Medicaid individuals.

We have observed that there are a variety of practices used by State and local governments in identifying costs and submitting a CPE as the basis of matching FFP for the provision of Medicaid services. These different cost methods and CPE practices make it difficult to (1) align claimed expenditures with specific services covered under the State plan or identifiable administrative activities; (2) properly identify the actual cost to the governmental entity of providing services to Medicaid recipients or performing administrative activities; and (3) audit and review Medicaid claims to ensure that Medicaid payments are appropriately made. Such circumstances present risks of inflationary costs being certified and excessive claims of FFP. This regulation will facilitate a more consistent methodology in Medicaid cost identification and allocation across the country, thereby improving the fiscal integrity of the program.

Because the RFA includes small governmental jurisdictions in its definition of small entities, we expect this regulation to have a significant economic impact on a substantial number of small entities, specifically health care providers that are operated by units of government, including governmentally-operated small rural hospitals, as they will be subject to the new Medicaid cost limit imposed by this regulation. We have previously reviewed CMS' Online Survey and Certification and Reporting System (OSCAR) data for information about select provider types that may be impacted by this rule. According to the OSCAR data, there are:

- 1,153 hospitals that have identified themselves as operated by local governments or hospital districts/authorities;
- 822 nursing facilities that have identified themselves as operated by counties, cities, or governmental hospital districts;
- 113 intermediate care facilities for the mentally retarded (ICF/MR) that have identified themselves as operated by cities, towns, or counties.

We have not counted State operated facilities in the above numbers because

for purposes of the RFA, States are not included in the definition of a small entity. Note further that OSCAR data is self-reported, so the figures provided above do not necessarily reflect the number of governmentally-operated health care providers according to the provisions of this regulation.

Small governmental jurisdictions (population under 50,000) may be impacted by this regulation depending upon their responsibilities for participating in financing of the non-Federal share of Medicaid payments and other governmental obligations to uninsured individuals. If a governmentally-operated health care provider within the small governmental jurisdiction was receiving Medicaid payments in excess of its Medicaid costs of providing health care services to Medicaid individuals, the governmentally-operated health care provider will experience a reduction in Medicaid revenues. While this itself would not result in a direct impact on the small governmental jurisdiction there could be an indirect impact. If the small governmental jurisdiction was not responsible for financing the non-Federal share of such payments and those Medicaid payments above cost were being used to subsidize uninsured health care costs, the small governmental jurisdiction may now have to subsidize the uninsured health care costs out of its own revenues.

On the other hand, if the small governmental jurisdiction was responsible for financing the non-Federal share of Medicaid payments above the individual governmentally-operated health care provider's Medicaid costs, it will no longer have to finance Medicaid payments above costs. The small governmental jurisdiction could then use these previously obligated revenues to satisfy other costs or obligations within its jurisdiction.

This analysis is not unique to small governmental jurisdictions and would hold true for both States and larger local governmental jurisdictions.

Under the provisions of the regulation, all governmentally-operated health care providers will be permitted to receive no more than 100 percent of the cost of serving Medicaid individuals. Some of the governmentally-operated health care providers identified as small entities for RFA purposes may have been receiving Medicaid payments in excess of cost. If a health care provider operated by a small unit of government has been historically receiving Medicaid payments above cost and using excess Medicaid revenues to subsidize other costs outside of the Medicaid program,

this regulation would cause a net reduction in revenue to the health care provider.

Governmentally-operated health care providers, including those operated by small units of local government, that are not receiving Medicaid payments in excess of costs would not be adversely impacted by the Medicaid cost limit and would be eligible to receive greater Medicaid revenues, up to the cost limit.

There are health care providers that are considered under the RFA as small entities (including small rural hospitals) but are not governmentally operated; to the extent these providers have been involved in financing the non-Federal share of Medicaid payments, this regulation will clarify whether or not such practices may continue. Non-governmentally-operated health care providers are not affected by the cost limit provision of the regulation and may therefore continue to receive Medicaid payments in excess of the cost of providing services to Medicaid individuals within existing Federal requirements.

Moreover, the provisions of the regulation reaffirm State Medicaid financing policy requiring that health care providers be allowed to fully retain their Medicaid payments. Any health care providers that become ineligible to participate in the State financing of Medicaid payments following the effective date of the provisions of this regulation can realize greater net revenues if State or local government funding sources are utilized to fund non-Federal share obligations to Medicaid payments historically financed by non-governmentally-operated "public" health care providers. On the other hand, if States reduce payment rates to such governmentally-operated health care providers after this regulation is effective, such governmentally-operated health care providers may experience a decrease in net revenue.

As stated earlier, for purposes of the RFA, the small entities principally affected by this regulation are governmentally-operated health care providers. In light of the specific universe of small entities impacted by the regulation, the fact that this regulation requires States to allow governmentally-operated health care providers to receive and retain their Medicaid payments, and the allowance for governmentally-operated health care providers to receive a Medicaid rate up to cost, we have not identified a need for regulatory relief under the RFA.

Ultimately, this regulation is designed to ensure that Medicaid payments to governmentally-operated health care

providers are based on actual costs of providing services to Medicaid individuals and that the financing arrangements supporting those payments are consistent with the statute. While some health care providers may lose revenues in light of this rule, those revenues were likely in excess of Medicaid cost or may have been financed using methods that did not permit the health care provider to retain Medicaid payments received. Other health care providers that were adversely affected by questionable reimbursement and financing arrangements may now, under this regulation, benefit from a more

equitable distribution of funds. Private health care providers are generally unaffected by this rule, except for limited situations where the clarification provided by the regulation may require a change to current financing arrangements.

With respect to clinical care, we anticipate that this regulation's effect on actual patient services to be minimal. The regulation presents no changes to coverage or eligibility requirements under Medicaid. The rule clarifies statutory financing requirements and allows governmentally-operated health care providers to be reimbursed at levels up to the full cost of providing services

to Medicaid individuals. Federal matching funds will continue to be made available based on expenditures for appropriately covered and financed services. While States may need to change reimbursement or financing methods, we do not anticipate that services delivered by governmentally-operated health care providers or private health care providers will change.

C. Anticipated Effects

The following chart summarizes our estimate of the anticipated effects of this regulation.

ESTIMATED REDUCTION IN FEDERAL MEDICAID OUTLAYS RESULTING FROM THE PROVIDER PAYMENT REFORM PROPOSAL BEING IMPLEMENTED BY CMS-2258-P

[Amounts in millions]

	Fiscal year				
	2007	2008	2009	2010	2011
Payment Reform	- 120	- 530	- 840	- 1,170	- 1,210

These estimates are based on recent reviews of state Medicaid spending. Payment reform addresses both spending through intergovernmental transfers (IGT) and limiting payments to governmentally-operated health care providers to the cost or providing services to Medicaid individuals. For IGT spending, recent reports on spending on Disproportionate Share Hospitals (DSH) and Upper Payment Limit (UPL) spending were reviewed. From these reports, an estimate of the total spending that would be subject to the net expenditure policy was developed and then projected forward using assumptions consistent with the most recent President's Budget projections. The estimate of the savings in federal Medicaid spending as a result of this policy factors in the current authority and efforts of CMS and the impact of recent waivers; the estimate also accounts for the potential effectiveness of future efforts. There is uncertainty in this estimate to the extent that the projections of IGT spending may not match actual future spending and to the extent that the effectiveness of this policy is greater than or less than assumed.

Reports on UPL spending following the most recent legislation concerning UPL were reviewed to develop a projection for total enhanced payments in Medicaid spending. The estimate of savings from this policy reflects both estimates of the amount of UPL spending that exceeds cost and the effectiveness of this policy in limiting

payments to cost. The estimate also accounts for transitional UPL payments, which are unchanged under this policy, and for the impact of recent waivers. There is uncertainty in this estimate to the extent that the projections of UPL spending may not match actual future spending, to the extent that the amount of UPL spending above cost differs from the estimated amount, and to the extent that the effectiveness of this policy is greater than or less than assumed.

D. Alternatives Considered

In developing this regulation various options were considered. We considered seeking to implement policies requiring provider retention of payments, greater accountability for certified public expenditures, and clarification of the definition of a unit of government without any new regulation (using existing statutory and regulatory authority). We determined that the rulemaking process would be a more effective method of implementing these policies because the rulemaking process would better inform affected parties, allow for public input, and make clear that the standards set forth are uniform, fair and consistent with the underlying statutory intent.

We considered deferring to States and local governments to define which entities are units of government for purposes of Medicaid financing. We considered this possibility of deferring to State determinations, but we concluded that it was important for effective oversight review to receive

standardized information under a clear, uniform and enforceable standard.

Similarly, we considered allowing governmentally-operated health care providers to be reimbursed at current rates and not be limited to the cost of serving Medicaid individuals. Given the information CMS has gathered regarding the use of Medicaid payments to governmentally-operated health care providers, we find that the provision to limit governmentally-operated health care providers to Medicaid cost offers a way to reasonably reimburse governmentally-operated health care providers while ensuring that Federal matching funds are used for their intended purpose, which is to pay for a covered Medicaid service to a Medicaid beneficiary and not non-Medicaid activities.

Likewise, we considered the option of limiting only those governmentally-operated health care providers that participate in IGTs and CPEs to the cost of providing Medicaid services to Medicaid individuals. However, we believe it is not appropriate that units of State or local government would "profit" from Federal taxpayer dollars that are intended to match a percentage of the cost of providing services to Medicaid individuals. We do not find that Medicaid payments in excess of cost to governmentally-operated health care providers are consistent with the statutory principles of economy and efficiency.

With respect to the timeframe for implementation of the Medicaid cost

limit to governmentally-operated health care providers of non-institutional services, we considered requiring compliance with the effective date of the regulation. However, a nationally recognized, standard cost report does not exist for non-institutional services, we allow States and governmentally-operated health care providers sufficient time to develop and implement Medicaid cost documentation and reporting processes. Likewise, we considered providing a similar delay in

implementation for governmentally-operated institutional health care providers, but since there are existing standardized, nationally recognized cost reporting mechanisms we did not believe a delay was appropriate.

E. Accounting Statement

As required by OMB Circular A-4 (available at [MACROBUTTON HtmlResAnchor http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf)), in the table below, we have prepared an accounting statement showing the

classification of the expenditures associated with the provisions of this regulation. This table provides our best estimate of the decrease in Federal Medicaid outlays resulting from the provider payment reform requirements being implemented by CMS-2258-P (Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Financial Partnerships). The sum total of these expenditures is classified as savings in Federal Medicaid spending.

ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FISCAL YEAR 2007 TO FISCAL YEAR 2011

[In millions]

Category	Transfers
Annualized Monetized Transfers	Negative Transfer-Estimated decrease in expenditures: \$774.
From Whom To Whom?	Federal Government to States.

F. Conclusion

We expect that this regulation will promote the fiscal integrity of the Medicaid program. The regulation will enhance accountability for States to properly finance the non-Federal share of Medicaid expenditures and allow them to pay reasonable rates to governmentally-operated health care providers. To the extent prior Medicaid payments to governmentally-operated health care providers were inflated, the regulation will reduce such payments to levels that more accurately reflect the actual cost of Medicaid services and ensure that the non-Federal share of Medicaid payments has been satisfied in a manner consistent with the statute. Private health care providers are predominately unaffected by the regulation, and the effect on actual patient services should be minimal.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure Drugs, Grant programs-health, Health facilities, Health professions, Medicaid Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

■ 1. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Amend § 433.50 by revising paragraph (a)(1) to read as follows:

§ 433.50 Basis, scope, and applicability.

(a) * * *

(1) Section 1902(a)(2) and section 1903(w)(7)(G) of the Act, which require States to share in the cost of medical assistance expenditures and permit State and local units of government to participate in the financing of the non-Federal portion of medical assistance expenditures.

(i) A unit of government is a State, a city, a county, a special purpose district, or other governmental unit in the State that: has taxing authority, has direct access to tax revenues, is a State university teaching hospital with direct appropriations from the State treasury, or is an Indian tribe as defined in Section 4 of the Indian Self-Determination and Education Assistance Act, as amended [25 U.S.C. 450b].

(ii) A health care provider may be considered a unit of government only when it is operated by a unit of government as demonstrated by a showing of the following:

(A) The health care provider has generally applicable taxing authority; or

(B) The health care provider has direct access to generally applicable tax revenues. This means the health care provider is able to directly access funding as an integral part of a unit of government with taxing authority which is legally obligated to fund the health care provider's expenses, liabilities, and deficits, so that a contractual arrangement with the State or local government is not the primary or sole basis for the health care provider to receive tax revenues;

(C) The health care provider receives appropriated funding as a State university teaching hospital providing supervised teaching experiences to graduate medical school interns and residents enrolled in a State university in the State; or

(D) The health care provider is an Indian Tribe or Tribal organization (as those terms are defined in Section 4 of the Indian Self-Determination and Education Assistance Act (ISDEAA); 25 U.S.C. 450b) and meets the following criteria:

(1) If the entity is a Tribal organization, it is—

(a) Carrying out health programs of the IHS, including health services which are eligible for reimbursement by Medicaid, under a contract or compact entered into between the Tribal organization and the Indian Health Service pursuant to the Indian Self-Determination and Education

Assistance Act, Public Law 93–638, as amended, and

(b) Either the recognized governing body of an Indian tribe, or an entity which is formed solely by, wholly owned or comprised of, and exclusively controlled by Indian tribes.

* * * * *

■ 3. Section 433.51 is revised to read as follows:

§ 433.51 Funds from units of government as the State share of financial participation.

(a) Funds from units of government may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The funds from units of government are appropriated directly to the State or local Medicaid agency, or are transferred from other units of government (including Indian tribes) to the State or local agency and are under its administrative control, or are certified by the contributing unit of government as representing expenditures eligible for FFP under this section. Certified public expenditures must be expenditures within the meaning of 45 CFR 95.13 that are supported by auditable documentation in a form approved by the Secretary that, at a minimum—

(1) Identifies the relevant category of expenditures under the State plan;

(2) Explains whether the contributing unit of government is within the scope of the exception to limitations on provider-related taxes and donations;

(3) Demonstrates the actual expenditures incurred by the contributing unit of government in providing services to eligible individuals receiving medical assistance or in administration of the State plan; and

(4) Is subject to periodic State audit and review.

(c) The funds from units of government are not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 447.206 is added to read as follows:

§ 447.206 Cost limit for providers operated by units of government.

(a) *Scope.* This section applies to payments made to health care providers

that are operated by units of government as defined in § 433.50(a)(1) of this chapter.

(b) *Exceptions.* The limitation in paragraph (c) of this section does not apply to:

(1) Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638);

(2) Managed Care Organizations (MCOs), Prepaid Inpatient Health Plans (PIHPs), and Prepaid Ambulatory Health Plans (PAHPs) which are organized and operating in accordance with the provisions of 42 CFR 438;

(3) Federally Qualified Health Centers (FQHCs) and Rural

Health Clinics (RHCs) reimbursed in accordance with Section 1902(bb) of the Act; and

(4) *Disproportionate share hospital payments.* The limitation in paragraph (c) of this section does not apply to payment adjustments made under section 1923 of the Act that are made under a State plan to hospitals found to serve a disproportionate number of low-income patients with special needs as provided in section 1902(a)(13)(A)(iv) of the Act. Disproportionate share hospital (DSH) payments are subject to the following limits:

(i) The aggregate DSH limit using the Federal share of the DSH limit under section 1923(f) of the Act.

(ii) The hospital-specific DSH limit in section 1923(g) of the Act.

(iii) The aggregate DSH limit for institutions for mental disease (IMDs) under section 1923(h) of the Act.

(a) *General rules.* (1) All health care providers that are operated by units of government are limited to reimbursement not in excess of the individual health care provider's cost of providing covered Medicaid services to eligible Medicaid recipients.

(2) Reasonable methods of identifying and allocating costs to Medicaid will be determined by the Secretary in accordance with sections 1902, 1903, and 1905 of the Act, as well as 45 CFR 92.22 and Medicare cost principles when applicable.

(3) Institutional governmentally-operated health care providers (i.e., hospitals, nursing facilities, and ICFs/MR) are required to provide the State with data extracted from primary source documents as well as copies of the source documents. These source documents would include the health care provider's Medicare cost report (or Medicaid cost report for intermediate nursing facility care and ICFs/MR consistent with Medicare cost reporting

principles, and audited financial statements that will be used in conjunction with information provided by the States' Medicaid Management Information System (MMIS).

(4) Medicaid costs for non-institutional governmentally-operated health care providers must be supported by auditable documentation in a form approved by the Secretary that is consistent with § 433.51(b)(1) through (b)(4) of this chapter.

(d) *Use of certified public expenditures.* This paragraph applies when States use a cost reimbursement methodology funded by certified public expenditures.

(1) In accordance with paragraph (c) of this section, each provider must submit annually a cost report to the Medicaid agency that reflects the individual provider's cost of serving Medicaid recipients during the year.

(2) States may utilize most recently filed cost reports to develop interim rates and may trend those interim rates by an applicable health care-related index. Interim reconciliations must be performed by reconciling the interim Medicaid payment rates to the filed cost report for the spending year in which interim payment rates were made.

(3) Final reconciliation must be performed annually by reconciling any interim payments to the finalized cost report for the spending year in which any interim payment rates were made.

(4) Non-institutional governmentally-operated health care providers must utilize a cost report, approved by the Secretary, beginning in their Medicaid State plan rate year 2009. Interim rates set by States for purposes of Medicaid payments funded by certified public expenditures in Medicaid State plan rate year 2009 must be calculated based on cost data from at least one quarter of their Medicaid State plan rate year 2008 documented in accordance with the cost report approved by the Secretary. Existing certified public expenditure methodologies can be used to make Medicaid payments during Medicaid State plan rate year 2008.

(e) *Payments not funded by certified public expenditures.* This paragraph applies to payments made to providers operated by units of government that are not funded by certified public expenditures. In accordance with paragraph (c) of this section, each provider must submit annually a cost report to the Medicaid agency that reflects the individual provider's cost of serving Medicaid recipients during the year. The Medicaid agency must review the cost report to determine that costs on the report were properly allocated to Medicaid and verify that Medicaid

payments to the provider during the year did not exceed the provider's cost.

(f) *Overpayments.* If, under paragraph (d) or (e) of this section, it is determined that a governmentally-operated health care provider received an overpayment, amounts related to the overpayment will be properly credited to the Federal government, in accordance with part 433, subpart F of this chapter.

(g) *Compliance dates.* Initial compliance dates have been separately established for institutional and non-institutional Medicaid providers operated by units of government. Following initial compliance dates, ongoing compliance will be consistent for all providers operated by units of government. A State must comply with the Medicaid cost limit described in paragraph (c) of this section in accordance with the timeframes and requirements in paragraphs (g)(1) through (g)(3) of this section.

(1) *Initial Compliance for Institutional Governmentally-Operated Health Care Providers.* For each State, compliance with the Medicaid cost limit described in paragraph (c) of this section applicable to institutional governmentally-operated health care providers begins with the Medicaid State plan rate year 2008. A State's review of Medicaid payments made to institutional governmentally-operated health care providers to ensure compliance with the Medicaid cost limit during Medicaid State plan rate year 2008 must be completed no later than the last day of federal fiscal year 2010 (September 30, 2010). The State must submit to CMS a summary report of the findings of this review by the last day of calendar year of 2010 (December 31, 2010). For any cost reports that are not finalized, the State should use the "as filed" cost report and indicate such in the summary report to CMS. The State should then submit a corrected summary report to CMS within 30 days of the finalization of the cost report.

(2) *Initial Compliance for Non-Institutional Governmentally-Operated Health Care Providers.* For each State, compliance with the cost limit described in paragraph (c) of this section applicable to non-institutional governmentally-operated health care providers begins with the Medicaid State plan rate year 2009. A State's review of Medicaid payments made to non-institutional governmentally-operated health care providers to ensure compliance with the Medicaid cost limit during Medicaid State plan rate year 2009 must be completed no later than the last day of federal fiscal year 2011 (September 30, 2011). The State must submit to CMS a summary report of the

findings of this review by the last day of calendar year of 2011 (December 31, 2011).

(3) *Ongoing Compliance for Institutional and Non-Institutional Governmentally-Operated Health Care Providers.* Each subsequent State review of Medicaid payments made to governmentally-operated health care providers, after the Medicaid State plan rate years identified in paragraphs (g)(1) and (g)(2) of this section, must be performed annually and completed by the last day of the federal fiscal year ending two years from the Medicaid State plan rate year under review. Each State must submit a summary report to CMS demonstrating the results of the State's review of Medicaid payments to ensure compliance with the Medicaid cost limit applicable to governmentally-operated health care providers by the last day of the calendar year ending two years from the Medicaid State Plan rate year under review.

(i) For any cost reports that are not finalized at the time the State performs the review of Medicaid payments to institutional governmentally-operated health care providers, the State should use the "as filed" cost report and indicate such in the summary report to CMS. The State should then submit a corrected summary report to CMS within 30 days of the finalization of the cost report.

■ 3. Section 447.207 is added to read as follows:

§ 447.207 Retention of payments.

(a) Payment methodologies must permit the provider to receive and retain the full amount of the total computable payment for services furnished under the approved State plan (or the approved provisions of a waiver or demonstration if applicable). The Secretary will determine compliance with this provision by examining any associated transactions that are related to the provider's total computable payment to ensure that the State's claimed expenditure, which serves as the basis for Federal Financial Participation, is equal to the State's net expenditure, and that the full amount of the non-Federal share of the payment has been satisfied.

(b) *Exceptions.* Provisions of paragraph (a) of this section specifically do not pertain to:

(1) Use of Medicaid revenues to fund payments that are normal operating expenses of conducting business, such as payments related to taxes (including permissible health-care related taxes), fees, or business relationships with governments unrelated to Medicaid in

which there is no connection to Medicaid payment.

(2) Payments authorized by Sections 701(d) and 705 of the Benefits Improvement Act of 2000 (BIPA).

■ 4. Section § 447.271 is revised to read as follows:

§ 447.271 Upper limits based on customary charges.

(a) The agency may not pay a provider more for inpatient hospital services under Medicaid than the provider's customary charges to the general public for the services.

(b) [Reserved]

■ 5. Section 447.272 is amended by revising paragraphs (a) through (d) to read as follows:

§ 447.272 Inpatient services: Application of upper payment limits.

(a) *Scope.* This section applies to rates set by the agency to pay for inpatient services furnished by hospitals, nursing facilities, and ICFs/MR within one of the following categories:

(1) State government operated facilities (that is, all facilities that are operated by the State) as defined at § 433.50(a) of this chapter.

(2) Non-State government operated facilities (that is, all governmentally operated facilities that are not operated by the State) as defined at § 433.50(a) of this chapter.

(3) Privately operated facilities, that is, all facilities that are not operated by a unit of government as defined at § 433.50(a) of this chapter.

(b) *General rules.* (1) For privately operated facilities, upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) For State government operated facilities and for non-State government operated facilities, upper payment limit refers to the individual health care provider's Medicaid cost as defined at § 447.206.

(3) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to the group of privately operated facilities described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(4) Except as provided in paragraph (c) of this section, Medicaid payments to State government operated facilities and non-State government operated facilities must not exceed the individual health care provider's Medicaid cost as documented in accordance with § 447.206.

(c) *Exceptions—(1) Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638).

(2) *Disproportionate share hospitals.* The limitation in paragraph (b) of this section does not apply to payment adjustments made under section 1923 of the Act that are made under a State plan to hospitals found to serve a disproportionate number of low-income patients with special needs as provided in section 1902(a)(13)(A)(iv) of the Act. Disproportionate share hospital (DSH) payments are subject to the following limits:

(i) The aggregate DSH limit using the Federal share of the DSH limit under section 1923(f) of the Act.

(ii) The hospital-specific DSH limit in section 1923(g) of the Act.

(iii) The aggregate DSH limit for institutions for mental disease (IMDs) under section 1923(h) of the Act.

(3) The limitation in paragraph (b) of this section does not apply to payments authorized by Sections 701(d) and 705 of the Benefits Improvement Protection Act of 2000 (BIPA).

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b) of this section by one of the following dates:

(1) For State government operated and non-State government operated hospitals, nursing facilities and ICFs/MR “ Medicaid State plan rate year 2008.

(2) For all other facilities—March 13, 2001.

* * * * *

■ 6. Section 447.321 is amended by revising paragraphs (a) through (d) to read as follows:

§ 447.321 Outpatient hospital and clinic services: Application of upper payment limits.

(a) *Scope.* This section applies to rates set by the agency to pay for outpatient services furnished by hospitals and clinics within one of the following categories:

(1) State government operated facilities (that is, all facilities that are operated by the State) as defined at § 433.50(a) of this chapter.

(2) Non-State government operated facilities (that is, all governmentally operated facilities that are not operated by the State) as defined at § 433.50(a) of this chapter.

(3) Privately operated facilities that is, all facilities that are not operated by a unit of government as defined at § 433.50(a) of this chapter.

(b) *General rules.* (1) For privately operated facilities, upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) For State government operated facilities and for non-State government operated facilities, upper payment limit refers to the individual health care provider's Medicaid cost as defined at § 447.206.

(3) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to the group of privately operated facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(4) Except as provided in paragraph (c) of this section, Medicaid payments to State government operated facilities and non-State government operated facilities must not exceed the individual health care provider's Medicaid cost as documented in accordance with § 447.206.

(c) *Exceptions—(1) Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638).

(2) *Disproportionate share hospitals.* The limitation in paragraph (b) of this section does not apply to payment adjustments made under section 1923 of the Act that are made under a State plan to hospitals found to serve a disproportionate number of low-income patients with special needs as provided in section 1902(a)(13)(A)(iv) of the Act. Disproportionate share hospital (DSH) payments are subject to the following limits:

(i) The aggregate DSH limit using the Federal share of the DSH limit under section 1923(f) of the Act.

(ii) The hospital-specific DSH limit in section 1923(g) of the Act.

(iii) The aggregate DSH limit for institutions for mental disease (IMDs) under section 1923(h) of the Act.

(3) The limitation in paragraph (b) of this section does not apply to payments authorized by Sections 701(d) and 705 of the Benefits Improvement Protection Act of 2000 (BIPA).

(d) *Compliance dates.* Except as permitted under paragraph (e) of this

section, a State must comply with the upper payment limit described in paragraph (b) of this section by one of the following dates:

(1) For State government operated and non-State government operated hospitals—Medicaid State plan rate year 2008.

(2) For State government operated and non-State government operated clinics—Medicaid State plan rate year 2009.

(3) For all other facilities—March 13, 2001.

* * * * *

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 1. The authority for part 457 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 457.220 is revised to read as follows:

§ 457.220 Funds from units of government as the State share of financial participation.

(a) Funds from units of government may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The funds from units of government are appropriated directly to the State or local Medicaid agency, or are transferred from other units of government (including Indian tribes) to the State or local agency and are under its administrative control, or are certified by the contributing unit of government as representing expenditures eligible for FFP under this section. Certified public expenditures must be expenditures within the meaning of 45 CFR 95.13 that are supported by auditable documentation in a form approved by the Secretary that, at a minimum—

(1) Identifies the relevant category of expenditures under the State plan;

(2) Explains whether the contributing unit of government is within the scope of the exception to limitations on provider-related taxes and donations;

(3) Demonstrates the actual expenditures incurred by the contributing unit of government in providing services to eligible individuals receiving medical assistance or in administration of the State plan; and

(4) Is subject to periodic State audit and review.

(c) The funds from units of government are not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

- 3. Amend § 457.628 by—
- A. Republishing the introductory text to the section.

- B. Revising paragraph (a).

The republication and revision read as follows:

§ 457.628 Other applicable Federal regulations.

Other regulations applicable to SCHIP programs include the following:

(a) HHS regulations in § 433.50 through § 433.74 of this chapter (sources

of non-Federal share and Health Care-Related Taxes and Provider-Related Donations) and § 447.207 of this chapter (Retention of payments) apply to States' SCHIP programs in the same manner as they apply to States' Medicaid programs.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 23, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 23, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07-2657 Filed 5-25-07; 8:45 am]

BILLING CODE 4120-01-P

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Patapsco River, Northwest and Inner Harbors, Baltimore, MD; comments due by 6-8-07; published 4-9-07 [FR E7-06537]

Regattas and marine parades: Lake Michigan Captain of Port zone marine events; comments due by 6-5-07; published 4-6-07 [FR E7-06425]

SBJP-Fountain Powerboats Kilo Run and Super Boat Grand Prix; comments due by 6-4-07; published 5-4-07 [FR E7-08509]

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf Lands Act; open and nondiscriminatory access to oil and gas pipelines; comments due by 6-5-07; published 4-6-07 [FR E7-06197]

Outer Continental Shelf; oil, gas, and sulphur operations: Oil and gas production requirements; comments due by 6-4-07; published 3-6-07 [FR E7-03846]

INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia; comments due by 6-8-07; published 5-9-07 [FR E7-08868]

TRANSPORTATION DEPARTMENT Federal Aviation Administration

Airworthiness directives:

APEX Aircraft; comments due by 6-4-07; published 4-30-07 [FR E7-07980]

Boeing; comments due by 6-4-07; published 4-3-07 [FR E7-05897]

Columbia Aircraft Manufacturing; comments due by 6-4-07; published 4-3-07 [FR E7-06011]

Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 6-7-07; published 5-8-07 [FR E7-08761]

Honeywell Flight Management Systems; comments due by 6-4-07; published 4-3-07 [FR E7-05896]

Mitsubishi Heavy Industries; comments due by 6-4-07; published 4-3-07 [FR E7-06121]

Area navigation routes; comments due by 6-7-07; published 4-23-07 [FR E7-07633]

Class E airspace; comments due by 6-8-07; published 5-9-07 [FR 07-02210]

TRANSPORTATION DEPARTMENT Federal Highway Administration

Engineering and traffic operations:

Construction quality assurance procedures—Roadside safety hardware acceptance; crash test laboratory accreditation requirements; comments due by 6-8-07; published 4-9-07 [FR E7-06533]

TRANSPORTATION DEPARTMENT Federal Railroad Administration

Practice and procedure:

Emergency Relief Dockets establishment and emergency safety regulations waiver petitions handling procedures; comments due by 6-8-07; published 4-9-07 [FR 07-01667]

TRANSPORTATION DEPARTMENT National Highway Traffic Safety Administration

Insurer reporting requirements:

Insurers required to file reports; list; comments due by 6-8-07; published 4-9-07 [FR E7-06519]

TRANSPORTATION DEPARTMENT Surface Transportation Board

Carrier rates and service terms:

Contract definition and interpretation; comments due by 6-4-07; published 4-4-07 [FR E7-06215]

TREASURY DEPARTMENT Internal Revenue Service

Procedure and administration:

Agreements for tax liability installment payments; withdrawn; comments due by 6-4-07; published 3-5-07 [FR E7-03730]

VETERANS AFFAIRS DEPARTMENT

Veterans Benefits, Health Care, and Information Technology Act of 2006; implementation:

Accreditation of agents and attorneys; agent and attorney fees; comments due by 6-6-07; published 5-7-07 [FR E7-08642]

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 "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 1681 / P.L. 110-26

The American National Red Cross Governance Modernization Act of 2007 (May 11, 2007; 121 Stat. 103; 8 pages)

Last List May 10, 2007

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869-062-00001-4)	5.00	⁴ Jan. 1, 2007
2	(869-062-00002-2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869-062-00003-1)	35.00	¹ Jan. 1, 2007
4	(869-062-00004-9)	10.00	⁵ Jan. 1, 2007
5 Parts:			
1-699	(869-062-00005-7)	60.00	Jan. 1, 2007
700-1199	(869-062-00006-5)	50.00	Jan. 1, 2007
1200-End	(869-062-00007-3)	61.00	Jan. 1, 2007
6	(869-062-00008-1)	10.50	Jan. 1, 2007
7 Parts:			
1-26	(869-062-00009-0)	44.00	Jan. 1, 2007
27-52	(869-062-00010-3)	49.00	Jan. 1, 2007
53-209	(869-062-00011-1)	37.00	Jan. 1, 2007
210-299	(869-062-00012-0)	62.00	Jan. 1, 2007
300-399	(869-062-00013-8)	46.00	Jan. 1, 2007
400-699	(869-062-00014-6)	42.00	Jan. 1, 2007
700-899	(869-062-00015-4)	43.00	Jan. 1, 2007
900-999	(869-062-00016-2)	60.00	Jan. 1, 2007
1000-1199	(869-062-00017-1)	22.00	Jan. 1, 2007
1200-1599	(869-062-00018-9)	61.00	Jan. 1, 2007
1600-1899	(869-062-00019-7)	64.00	Jan. 1, 2007
1900-1939	(869-062-00020-1)	31.00	Jan. 1, 2007
1940-1949	(869-062-00021-9)	50.00	⁵ Jan. 1, 2007
1950-1999	(869-062-00022-7)	46.00	Jan. 1, 2007
2000-End	(869-062-00023-5)	50.00	Jan. 1, 2007
8	(869-062-00024-3)	63.00	Jan. 1, 2007
9 Parts:			
1-199	(869-062-00025-1)	61.00	Jan. 1, 2007
200-End	(869-062-00026-0)	58.00	Jan. 1, 2007
10 Parts:			
1-50	(869-062-00027-8)	61.00	Jan. 1, 2007
51-199	(869-062-00028-6)	58.00	Jan. 1, 2007
200-499	(869-062-00029-4)	46.00	Jan. 1, 2007
500-End	(869-066-00030-8)	62.00	Jan. 1, 2007
11	(869-062-00031-6)	41.00	Jan. 1, 2007
12 Parts:			
1-199	(869-062-00032-4)	34.00	Jan. 1, 2007
200-219	(869-062-00033-2)	37.00	Jan. 1, 2007
220-299	(869-062-00034-1)	61.00	Jan. 1, 2007
300-499	(869-062-00035-9)	47.00	Jan. 1, 2007
500-599	(869-062-00036-7)	39.00	Jan. 1, 2007
600-899	(869-062-00037-5)	56.00	Jan. 1, 2007

Title	Stock Number	Price	Revision Date
900-End	(869-062-00038-3)	50.00	Jan. 1, 2007
13	(869-062-00039-1)	55.00	Jan. 1, 2007
14 Parts:			
1-59	(869-062-00040-5)	63.00	Jan. 1, 2007
60-139	(869-062-00041-3)	61.00	Jan. 1, 2007
140-199	(869-062-00042-1)	30.00	Jan. 1, 2007
200-1199	(869-062-00043-0)	50.00	Jan. 1, 2007
1200-End	(869-062-00044-8)	45.00	Jan. 1, 2007
15 Parts:			
0-299	(869-062-00045-6)	40.00	Jan. 1, 2007
300-799	(869-062-00046-4)	60.00	Jan. 1, 2007
800-End	(869-062-00047-2)	42.00	Jan. 1, 2007
16 Parts:			
0-999	(869-062-00048-1)	50.00	Jan. 1, 2007
1000-End	(869-062-00049-9)	60.00	Jan. 1, 2007
17 Parts:			
1-199	(869-060-00051-8)	50.00	Apr. 1, 2006
200-239	(869-060-00052-6)	60.00	Apr. 1, 2006
240-End	(869-060-00053-4)	62.00	Apr. 1, 2006
18 Parts:			
1-399	(869-060-00054-2)	62.00	Apr. 1, 2006
400-End	(869-060-00055-1)	26.00	⁷ Apr. 1, 2006
19 Parts:			
1-140	(869-060-00056-9)	61.00	Apr. 1, 2006
141-199	(869-060-00057-7)	58.00	Apr. 1, 2006
200-End	(869-060-00058-5)	31.00	Apr. 1, 2006
20 Parts:			
1-399	(869-060-00059-3)	50.00	Apr. 1, 2006
400-499	(869-060-00060-7)	64.00	Apr. 1, 2006
500-End	(869-060-00061-5)	63.00	Apr. 1, 2006
21 Parts:			
1-99	(869-060-00062-3)	40.00	Apr. 1, 2006
100-169	(869-060-00063-1)	49.00	Apr. 1, 2006
170-199	(869-062-00064-2)	50.00	Apr. 1, 2007
200-299	(869-060-00065-8)	17.00	Apr. 1, 2006
300-499	(869-060-00066-6)	30.00	Apr. 1, 2006
500-599	(869-060-00067-4)	47.00	Apr. 1, 2006
600-799	(869-060-00068-2)	15.00	Apr. 1, 2006
800-1299	(869-060-00069-1)	60.00	Apr. 1, 2006
1300-End	(869-060-00070-4)	25.00	Apr. 1, 2006
22 Parts:			
1-299	(869-060-00071-2)	63.00	Apr. 1, 2006
300-End	(869-060-00072-1)	45.00	⁸ Apr. 1, 2006
*23	(869-062-00073-7)	45.00	Apr. 1, 2007
24 Parts:			
0-199	(869-060-00074-7)	60.00	Apr. 1, 2006
200-499	(869-060-00075-5)	50.00	Apr. 1, 2006
500-699	(869-060-00076-3)	30.00	Apr. 1, 2006
700-1699	(869-060-00077-1)	61.00	Apr. 1, 2006
1700-End	(869-060-00078-0)	30.00	Apr. 1, 2006
25	(869-060-00079-8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0-1.160	(869-060-00080-1)	49.00	Apr. 1, 2006
§§ 1.61-1.169	(869-060-00081-0)	63.00	Apr. 1, 2006
§§ 1.170-1.300	(869-060-00082-8)	60.00	Apr. 1, 2006
§§ 1.301-1.400	(869-060-00083-6)	47.00	Apr. 1, 2006
*§§ 1.401-1.440	(869-062-00084-7)	56.00	Apr. 1, 2007
§§ 1.441-1.500	(869-060-00085-2)	58.00	Apr. 1, 2006
§§ 1.501-1.640	(869-060-00086-1)	49.00	Apr. 1, 2006
§§ 1.641-1.850	(869-060-00087-9)	61.00	Apr. 1, 2006
§§ 1.851-1.907	(869-062-00088-0)	61.00	Apr. 1, 2007
§§ 1.908-1.1000	(869-060-00089-5)	60.00	Apr. 1, 2006
§§ 1.1001-1.1400	(869-060-00090-9)	61.00	Apr. 1, 2006
§§ 1.1401-1.1550	(869-060-00091-2)	58.00	Apr. 1, 2006
§§ 1.1551-End	(869-060-00092-5)	50.00	Apr. 1, 2006
*2-29	(869-062-00093-6)	60.00	Apr. 1, 2007
30-39	(869-060-00094-1)	41.00	Apr. 1, 2006
40-49	(869-062-00095-2)	28.00	Apr. 1, 2007
*50-299	(869-062-00096-1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
300-499	(869-060-00097-6)	61.00	Apr. 1, 2006	63 (63.6580-63.8830)	(869-060-00150-6)	32.00	July 1, 2006
500-599	(869-062-00098-7)	12.00	⁶ Apr. 1, 2007	63 (63.8980-End)	(869-060-00151-4)	35.00	July 1, 2006
600-End	(869-060-00099-2)	17.00	Apr. 1, 2006	64-71	(869-060-00152-2)	29.00	July 1, 2006
27 Parts:				72-80	(869-060-00153-1)	62.00	July 1, 2006
1-399	(869-060-00100-0)	64.00	Apr. 1, 2006	81-85	(869-060-00154-9)	60.00	July 1, 2006
*400-End	(869-062-00102-9)	18.00	Apr. 1, 2007	86 (86.1-86.599-99)	(869-060-00155-7)	58.00	July 1, 2006
28 Parts:				86 (86.600-1-End)	(869-060-00156-5)	50.00	July 1, 2006
0-42	(869-060-00102-6)	61.00	July 1, 2006	87-99	(869-060-00157-3)	60.00	July 1, 2006
43-End	(869-060-00103-4)	60.00	July 1, 2006	100-135	(869-060-00158-1)	45.00	July 1, 2006
29 Parts:				136-149	(869-060-00159-0)	61.00	July 1, 2006
0-99	(869-060-00104-2)	50.00	July 1, 2006	150-189	(869-060-00160-3)	50.00	July 1, 2006
100-499	(869-060-00105-1)	23.00	July 1, 2006	190-259	(869-060-00161-1)	39.00	July 1, 2006
500-899	(869-060-00106-9)	61.00	July 1, 2006	260-265	(869-060-00162-0)	50.00	July 1, 2006
900-1899	(869-060-00107-7)	36.00	July 1, 2006	266-299	(869-060-00163-8)	50.00	July 1, 2006
1900-1910 (§§ 1900 to				300-399	(869-060-00164-6)	42.00	July 1, 2006
1910.999)	(869-060-00108-5)	61.00	July 1, 2006	400-424	(869-060-00165-4)	56.00	July 1, 2006
1910 (§§ 1910.1000 to				425-699	(869-060-00166-2)	61.00	July 1, 2006
end)	(869-060-00109-3)	46.00	July 1, 2006	700-789	(869-060-00167-1)	61.00	July 1, 2006
1911-1925	(869-060-00110-7)	30.00	July 1, 2006	790-End	(869-060-00168-9)	61.00	July 1, 2006
1926	(869-060-00111-5)	50.00	July 1, 2006	41 Chapters:			
1927-End	(869-060-00112-3)	62.00	July 1, 2006	1, 1-1 to 1-10		13.00	³ July 1, 1984
30 Parts:				1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
1-199	(869-060-00113-1)	57.00	July 1, 2006	3-6		14.00	³ July 1, 1984
200-699	(869-060-00114-0)	50.00	July 1, 2006	7		6.00	³ July 1, 1984
700-End	(869-060-00115-8)	58.00	July 1, 2006	8		4.50	³ July 1, 1984
31 Parts:				9		13.00	³ July 1, 1984
0-199	(869-060-00116-6)	41.00	July 1, 2006	10-17		9.50	³ July 1, 1984
200-499	(869-060-00117-4)	46.00	July 1, 2006	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
500-End	(869-060-00118-2)	62.00	July 1, 2006	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
32 Parts:				18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	1-100	(869-060-00169-7)	24.00	July 1, 2006
1-39, Vol. III		18.00	² July 1, 1984	101	(869-060-00170-1)	21.00	⁹ July 1, 2006
1-190	(869-060-00119-1)	61.00	July 1, 2006	102-200	(869-060-00171-9)	56.00	July 1, 2006
191-399	(869-060-00120-4)	63.00	July 1, 2006	201-End	(869-060-00172-7)	24.00	July 1, 2006
400-629	(869-060-00121-2)	50.00	July 1, 2006	42 Parts:			
630-699	(869-060-00122-1)	37.00	July 1, 2006	1-399	(869-060-00173-5)	61.00	Oct. 1, 2006
700-799	(869-060-00123-9)	46.00	July 1, 2006	400-413	(869-060-00174-3)	32.00	Oct. 1, 2006
800-End	(869-060-00124-7)	47.00	July 1, 2006	414-429	(869-060-00175-1)	32.00	Oct. 1, 2006
33 Parts:				430-End	(869-060-00176-0)	64.00	Oct. 1, 2006
1-124	(869-060-00125-5)	57.00	July 1, 2006	43 Parts:			
125-199	(869-060-00126-3)	61.00	July 1, 2006	1-999	(869-060-00177-8)	56.00	Oct. 1, 2006
200-End	(869-060-00127-1)	57.00	July 1, 2006	1000-end	(869-060-00178-6)	62.00	Oct. 1, 2006
34 Parts:				44	(869-060-00179-4)	50.00	Oct. 1, 2006
1-299	(869-060-00128-0)	50.00	July 1, 2006	45 Parts:			
300-399	(869-060-00129-8)	40.00	July 1, 2006	1-199	(869-060-00180-8)	60.00	Oct. 1, 2006
400-End & 35	(869-060-00130-1)	61.00	⁹ July 1, 2006	200-499	(869-060-00181-6)	34.00	Oct. 1, 2006
36 Parts:				500-1199	(869-060-00182-4)	56.00	Oct. 1, 2006
1-199	(869-060-00131-0)	37.00	July 1, 2006	1200-End	(869-060-00183-2)	61.00	Oct. 1, 2006
200-299	(869-060-00132-8)	37.00	July 1, 2006	46 Parts:			
300-End	(869-060-00133-6)	61.00	July 1, 2006	1-40	(869-060-00184-1)	46.00	Oct. 1, 2006
37	(869-060-00134-4)	58.00	July 1, 2006	41-69	(869-060-00185-9)	39.00	Oct. 1, 2006
38 Parts:				70-89	(869-060-00186-7)	14.00	Oct. 1, 2006
0-17	(869-060-00135-2)	60.00	July 1, 2006	90-139	(869-060-00187-5)	44.00	Oct. 1, 2006
18-End	(869-060-00136-1)	62.00	July 1, 2006	140-155	(869-060-00188-3)	25.00	Oct. 1, 2006
39	(869-060-00137-9)	42.00	July 1, 2006	156-165	(869-060-00189-1)	34.00	Oct. 1, 2006
40 Parts:				166-199	(869-060-00190-5)	46.00	Oct. 1, 2006
1-49	(869-060-00138-7)	60.00	July 1, 2006	200-499	(869-060-00191-3)	40.00	Oct. 1, 2006
50-51	(869-060-00139-5)	45.00	July 1, 2006	500-End	(869-060-00192-1)	25.00	Oct. 1, 2006
52 (52.01-52.1018)	(869-060-00140-9)	60.00	July 1, 2006	47 Parts:			
52 (52.1019-End)	(869-060-00141-7)	61.00	July 1, 2006	0-19	(869-060-00193-0)	61.00	Oct. 1, 2006
53-59	(869-060-00142-5)	31.00	July 1, 2006	20-39	(869-060-00194-8)	46.00	Oct. 1, 2006
60 (60.1-End)	(869-060-00143-3)	58.00	July 1, 2006	40-69	(869-060-00195-6)	40.00	Oct. 1, 2006
60 (Apps)	(869-060-00144-7)	57.00	July 1, 2006	70-79	(869-060-00196-4)	61.00	Oct. 1, 2006
61-62	(869-060-00145-0)	45.00	July 1, 2006	80-End	(869-060-00197-2)	61.00	Oct. 1, 2006
63 (63.1-63.599)	(869-060-00146-8)	58.00	July 1, 2006	48 Chapters:			
63 (63.600-63.1199)	(869-060-00147-6)	50.00	July 1, 2006	1 (Parts 1-51)	(869-060-00198-1)	63.00	Oct. 1, 2006
63 (63.1200-63.1439)	(869-060-00148-4)	50.00	July 1, 2006	1 (Parts 52-99)	(869-060-00199-9)	49.00	Oct. 1, 2006
63 (63.1440-63.6175)	(869-060-00149-2)	32.00	July 1, 2006	2 (Parts 201-299)	(869-060-00200-6)	50.00	Oct. 1, 2006
				3-6	(869-060-00201-4)	34.00	Oct. 1, 2006
				7-14	(869-060-00202-2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15-28	(869-060-00203-1)	47.00	Oct. 1, 2006
29-End	(869-060-00204-9)	47.00	Oct. 1, 2006
49 Parts:			
1-99	(869-060-00205-7)	60.00	Oct. 1, 2006
100-185	(869-060-00206-5)	63.00	Oct. 1, 2006
186-199	(869-060-00207-3)	23.00	Oct. 1, 2006
200-299	(869-060-00208-1)	32.00	Oct. 1, 2006
300-399	(869-060-00209-0)	32.00	Oct. 1, 2006
400-599	(869-060-00210-3)	64.00	Oct. 1, 2006
600-999	(869-060-00211-1)	19.00	Oct. 1, 2006
1000-1199	(869-060-00212-0)	28.00	Oct. 1, 2006
1200-End	(869-060-00213-8)	34.00	Oct. 1, 2006
50 Parts:			
1-16	(869-060-00214-6)	11.00	¹⁰ Oct. 1, 2006
17.1-17.95(b)	(869-060-00215-4)	32.00	Oct. 1, 2006
17.95(c)-end	(869-060-00216-2)	32.00	Oct. 1, 2006
17.96-17.99(h)	(869-060-00217-1)	61.00	Oct. 1, 2006
17.99(i)-end and 17.100-end	(869-060-00218-9)	47.00	¹⁰ Oct. 1, 2006
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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 January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

⁶ 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.

⁷ 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.

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⁹ 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.

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