



Federal Register

4-25-08

Vol. 73 No. 81

Friday

Apr. 25, 2008

Pages 22271-22784



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.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.archives.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** www.gpoaccess.gov/nara, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at gpoaccess@gpo.gov. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 73 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche 202-512-1800
Assistance with public single copies 1-866-512-1800
(Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Paper or fiche 202-741-6005
Assistance with Federal agency subscriptions 202-741-6005

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 20, 2008
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



Contents

Federal Register

Vol. 73, No. 81

Friday, April 25, 2008

Agriculture Department

See Forest Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22321

Alcohol and Tobacco Tax and Trade Bureau

RULES

Establishment of the Swan Creek Viticultural Area (2005R-414P), 22273–22277

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22462–22465

Arctic Research Commission

NOTICES

Meetings:

Arctic Research Commission, 22322

Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention

NOTICES

Meetings:

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 22418

Centers for Medicare & Medicaid Services

RULES

Grants to States for Operation of Qualified High Risk Pools, 22281–22287

PROPOSED RULES

Medicare Program:

Inpatient Rehabilitation Facility Prospective Payment System (2009 FY), 22674–22714

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22418–22420

Medicare and Medicaid Programs:

Det Norske Veritas Healthcare, Inc. for Deeming Authority for Hospitals, 22420–22421

Meetings:

Practicing Physicians Advisory Council, 22421–22423

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22423

Coast Guard

RULES

Drawbridge Operation Regulations; Chelsea River, Chelsea and East Boston, MA

Chelsea River, Chelsea and East Boston, MA, 22277

PROPOSED RULES

Regattas and Marine Parades:

Great Lakes Annual Marine Events, 22303–22307

NOTICES

Meetings:

Naheola Railroad Bridge Across the Black Warrior-Tombigbee Waterway, Mile 173.5, Near Pennington, Alabama, 22427–22428

Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement List; Additions and Deletion, 22322–22323

Procurement List; Proposed Additions, 22323–22324

Defense Department

NOTICES

Meetings:

Missile Defense Advisory Committee; Cancellation, 22344

Delaware River Basin Commission

NOTICES

Meetings:

Delaware River Basin Commission, 22344–22347

Drug Enforcement Administration

PROPOSED RULES

Classification of Three Steroids as Schedule III Anabolic Steroids, 22294–22300

Education Department

NOTICES

Applications for New Award for 2008 Fiscal Year;

Availability:

Office of Special Education and Rehabilitative Services, 22347–22351

Final Priority and Definitions:

National Institute on Disability and Rehabilitation Research et al., 22351–22355

Privacy Act; Systems of Records, 22355–22358

Election Assistance Commission

NOTICES

State Plan Pursuant to the Help America Vote Act, 22470–22652

Employment and Training Administration

NOTICES

Affirmative Determination of Application for

Reconsideration:

Agilent Technologies Measurement Systems Division, Loveland, Colorado, 22433–22434

Bolton Metal Products Company, Bellefonte, PA, 22434

Certification Eligibility for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance:

Faurecia Exhaust Systems et al., Granger, IN, 22434

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade

Adjustment Assistance:

Fedder North America, Inc., 22434–22435

Eligibility Certification for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance:
Fantech, Inc. et al., Sarasota, FL, 22435
Manosh Hardwoods LLC Sawmill, et al.; Morrisville, VT, 22435
Workforce Investment Act; Lower Living Standard Income Level, 22435–22441

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Meetings:

Biological and Environmental Research Advisory Committee, 22358
Environmental Management Site-Specific Advisory Board; Savannah River Site, 22358–22359

Environmental Protection Agency

RULES

Regulation of Fuels and Fuel Additives:
Revised Definition of Substantially Similar Rule for Alaska, 22277–22281

PROPOSED RULES

Approval and Promulgation of Implementation Plans;
Designation of Areas for Air Quality Planning Purposes:
San Joaquin Valley Air Basin, CA, 22307–22318
Regulation of Fuels and Fuel Additives:
Revised Definition of Substantially Similar Rule for Alaska, 22318–22320

NOTICES

Ambient Air Monitoring Reference and Equivalent Methods:
Correction to Description of MetOne Instruments, 22362–22363
Draft Risk and Exposure Assessment Reports for Nitrogen Dioxide, 22363–22365
Environmental Statements; Availability, etc., 22365
Environmental Statements; Availability, etc.:
Comment Availability, 22365–22366
Guidance for Industry; Availability:
EPA White Paper Regarding StarLink Corn Dietary Exposure and Risk, 22716
Integrated Risk Information System Assessments;
Availability of Literature Searches for IRIS Assessments, 22366–22367
Meetings:
National Advisory Council for Environmental Policy and Technology, 22367–22368
Notice of Receipt; Hevea brasiliensis Natural Rubber Latex Adhesives; TSCA Section 21 Petition, 22368–22369
Petition Receipt; Formaldehyde Emissions From Composite Wood Products, 22369–22372
Settlement Notice:
Smalley-Piper Superfund Site; Collierville, Shelby County, TN, 22372
Summary Information in the Integrated Risk Information System:
Draft Toxicological Review of Ethylene Glycol mono-Butyl Ether, 22372–22373

Executive Office of the President

See Presidential Documents

Federal Aviation Administration

RULES

Special Conditions:

Embraer S.A. EMB-500; Protection of Systems for High Intensity Radiated Fields (HIRF), 22271–22273

NOTICES

Meetings:

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues, 22454
RTCA Government/Industry Air Traffic Management Advisory Committee, 22454
RTCA Special Committee 217/EUROCAE Working Group 44, 22454–22455

Petitions for Exemption; Summary of Petitions Received, 22455

Federal Energy Regulatory Commission

NOTICES

Application Tendered for Filing With Commission, etc.:
Eric Jacobson, 22359
Environmental Statements; Availability, Etc.:
Alcoa Power Generating, Inc., et al., 22359–22360
Transcontinental Gas Pipe Line Corp., 22360–22361
Extension of Comment Date:
PPL Holtwood, LLC, 22361
Filing:
Polytop Corp., 22361
Intent to File License Application, etc.:
Gathright Hydroelectric Project, 22361
Issuance of Order:
Tiger Natural Gas, Inc., 22362

Federal Highway Administration

NOTICES

Final Federal Agency Actions on Proposed Highway; Washington, 22455–22456

Federal Law Enforcement Training Center

NOTICES

Meetings:

State and Local Training Advisory Committee, 22428

Federal Maritime Commission

NOTICES

Agreement Filed:

United States/Australasia Discussion Agreement, 22374

Federal Mine Safety and Health Review Commission

NOTICES

Meetings; Sunshine Act, 22442

Federal Motor Carrier Safety Administration

NOTICES

Qualification of Drivers; Exemption Applications; Diabetes, 22456–22457
Qualification of Drivers; Exemption Renewals; Vision, 22458

Federal Reserve System

NOTICES

Formations, Acquisitions, and Mergers of Bank Holding Companies, 22374

Federal Transit Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22458–22459

Fish and Wildlife Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22429–22431

Food and Drug Administration**RULES**

Substances Prohibited From Use in Animal Food or Feed,
22720–22758

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 22423–22424

Guidance for Industry; Availability:

EPA White Paper Regarding StarLink Corn Dietary
Exposure and Risk, 22716

Withdrawal of Guidance for Industry:

Recommendations for Sampling and Testing Yellow Corn
and Dry-Milled Yellow Corn Shipments for Cry9C
Protein Residues, 22716–22717

Forest Service**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 22321–22322

General Services Administration**NOTICES**

Meetings:

Multiple Award Schedule Advisory Panel; Correction,
22374

Privacy Act; Systems of Records, 22374–22398, 22400–
22417

Health and Human Services Department

See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services

See Children and Families Administration

See Food and Drug Administration

See National Institutes of Health

NOTICES

Call for Collaborating Partners for the OWH National Lupus
Awareness Campaign, 22417

Homeland Security Department

See Coast Guard

See Federal Law Enforcement Training Center

See Transportation Security Administration

See U.S. Customs and Border Protection

Housing and Urban Development Department**NOTICES**

Federal Property Suitable as Facilities to Assist the
Homeless, 22654–22672

Funding Opportunity for Fiscal Year 2007:

Demonstration Program for Elderly Housing for
Intergenerational Families, 22760–22776

Interior Department

See Fish and Wildlife Service

Internal Revenue Service**PROPOSED RULES**

Gross Estate; Election to Value on Alternate Valuation Date,
22300–22303

Hybrid Retirement Plans; Correction, 22300

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 22465–22466

International Trade Administration**NOTICES**

Extension of Time for Final Results of Antidumping Duty
Administrative Review and New Shipper Review:
Honey From the People's Republic of China, 22324

Final Results of Antidumping Duty Administrative Review:
Certain Stainless Steel ButtWeld Pipe Fittings From
Taiwan, 22324–22325

Implementation of Grants to Manufacturers of Certain
Worsted Wool Fabrics, 22325–22326

Preliminary Determination of Sales at Less Than Fair Value:

Raw Flexible Magnets From Taiwan, 22332–22337

Raw Flexible Magnets From the People's Republic of
China, 22327–22332

Preliminary Results of Antidumping Duty Administrative
Review:

Polyethylene Retail Carrier Bags From the Peoples'
Republic of China, 22337

Request to Conduct Antidumping and Countervailing Duty
Administrative Reviews, 22337–22339

International Trade Commission**NOTICES**

Investigation:

Certain Composite Wear Components and Products
Containing the Same, 22431–22432

Justice Department

See Drug Enforcement Administration

Labor Department

See Employment and Training Administration

See Occupational Safety and Health Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 22432–22433

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

National Credit Union Administration**PROPOSED RULES**

Freedom of Information Act and Privacy Act Regulations;
Revisions, 22289–22294

National Highway Traffic Safety Administration**NOTICES**

Grant of Petition for Decision of Inconsequential
Noncompliance:

General Motors Corporation, 22459–22460

Receipt of Petition for Decision of Inconsequential
Noncompliance:

Automobili Lamborghini SpA, 22460–22461

National Institutes of Health**NOTICES**

Meetings:

Center for Scientific Review, 22425

Muscular Dystrophy Coordinating Committee, 22425–
22426

National Advisory Council for Biomedical Imaging and
Bioengineering, 22426

National Diabetes and Digestive and Kidney Diseases
Advisory Council, 22426

National Institute of Allergy and Infectious Diseases,
22427

National Institute of Neurological Disorders and Stroke,
22427

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Northeastern United States:

Tilefish Fishery; Quota Harvested for Part-time Category,
22287–22288

Whaling Provisions; Aboriginal Subsistence Whaling Quotas, 22287

NOTICES

Application for Exempted Fishing Permit:
General Provisions for Domestic Fisheries, 22339–22341
General Provisions for Domestic Fisheries:
Application for Exempted Fishing Permits, 22341
Hurricane Forecasting Improvement Project Plan; Draft Revision, 22341–22342
Issuance of Permit:
Marine Mammals (File No. 7741714), 22342–22343
Meetings:
South Atlantic Fishery Management Council, 22343

Nuclear Regulatory Commission**NOTICES**

Consideration of Issuance of Amendment:
Virginia Electric and Power Company; Surry Power Station (Unit No. 2), 22443–22448
Environmental Statements; Availability, etc.:
Southern Nuclear Operating Company, Inc., 22448–22449

Occupational Safety and Health Administration**NOTICES**

Meetings:
Maritime Advisory Committee for Occupational Safety and Health, 22442

Patent and Trademark Office**NOTICES**

Request for Nominations:
Public Advisory Committees, 22343–22344

Postal Regulatory Commission**NOTICES**

Study on Reduced Postal Rates, 22449–22451

Postal Service**NOTICES**

Meetings; Sunshine Act, 22451

Presidential Documents**PROCLAMATIONS**

Special observances:
Loyalty Day (Proc. 8245), 22783–22784
National Volunteer Week (Proc. 8244), 22781–22782
Older Americans Month (Proc. 8243), 22777–22780

Securities and Exchange Commission**NOTICES**

Meetings; Sunshine Act, 22451–22452
Self-Regulatory Organizations; Proposed Rule Changes:
Options Clearing Corporation, 22452–22453

State Department**NOTICES**

Meetings:
Advisory Committee on Democracy Promotion, 22453–22454
Advisory Committee on Historical Diplomatic Documentation, 22453

Thrift Supervision Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22466–22468

Transportation Department

See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Transportation Security Administration**NOTICES**

Transportation Worker Identification Credential: Enrollment Date for the Port of Hueneme, CA
Enrollment Date for the Port of Hueneme, CA, 22429

Treasury Department

See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service
See Thrift Supervision Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22461–22462

U.S. Customs and Border Protection**NOTICES**

Approved Commercial Gauger:
Intertek Usa, Inc., 22429

Veterans Affairs Department**NOTICES**

Meetings:
Veterans Advisory Committee on Rehabilitation, 22468

Separate Parts In This Issue**Part II**

Election Assistance Commission, 22470–22652

Part III

Housing and Urban Development Department, 22654–22672

Part IV

Health and Human Services Department, Centers for Medicare & Medicaid Services, 22674–22714

Part V

Environmental Protection Agency; Health and Human Services Department, Food and Drug Administration, 22716

Part V

Health and Human Services Department, Food and Drug Administration, 22716–22717

Part VI

Health and Human Services Department, Food and Drug Administration, 22720–22758

Part VII

Housing and Urban Development Department, 22760–22776

Part VIII

Executive Office of the President, Presidential Documents,
22777–22784

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Proclamations:**

8243.....	22779
8244.....	22781
8245.....	22783

12 CFR**Proposed Rules:**

792.....	22289
----------	-------

14 CFR

23.....	22271
---------	-------

21 CFR

589.....	22720
----------	-------

Proposed Rules:

1300.....	22294
-----------	-------

26 CFR**Proposed Rules:**

1.....	22300
20.....	22300

27 CFR

9.....	22273
--------	-------

33 CFR

117.....	22277
----------	-------

Proposed Rules:

100.....	22303
----------	-------

40 CFR

79.....	22277
---------	-------

Proposed Rules:

52.....	22307
79.....	22318
81.....	22307

42 CFR**Proposed Rules:**

412.....	22674
----------	-------

45 CFR

148.....	22281
----------	-------

50 CFR

230.....	22287
648.....	22287

Rules and Regulations

Federal Register

Vol. 73, No. 81

Friday, April 25, 2008

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE282, Special Condition 23–282–SC]

Special Conditions; Embraer S.A. EMB–500; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Embraer S.A., for a type certificate for the EMB–500 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays, Model G1000 manufactured by Garmin, for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is April 16, 2008. Comments must be received on or before May 27, 2008.

ADDRESSES: Mail comments in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE282, Room 506, 901 Locust, Kansas City, Missouri 64106. Mark comments: Docket No. CE282. You may inspect

comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jim Brady, Aerospace Engineer, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Identify the regulatory docket or notice number and submit them in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. If you wish the FAA to acknowledge receipt of the comments submitted in response to this notice, include a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. CE282.” The postcard will be date stamped and returned to the commenter.

Background

On October 5, 2005, Embraer S.A. applied to the FAA for a new type certificate for the EMB–500 airplane. The proposed airplane incorporates a novel or unusual design feature, such as

digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Embraer S.A. must show that the EMB–500 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the project certification basis: 14 CFR part 23 at Amendment 55; 14 CFR part 34 at Amendment 3; 14 CFR part 36 at Amendment 27; Equivalent Levels of Safety for (ELOS) issued at the time of type certification; any special conditions issued at the time of type certification, as applicable, and § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Embraer S.A. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected

when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term “critical” means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements

of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the EMB–500 project. Should Embraer S.A. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the EMB–500 airplane manufactured by Embraer S.A. to include an EFIS.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be

designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on April 16, 2008.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-9024 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB-2007-0012; T.D. TTB-69; Re: Notice No. 63]

RIN 1513-AB20

Establishment of the Swan Creek Viticultural Area (2005R-414P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the “Swan Creek” viticultural area in Wilkes, Yadkin, and Iredell Counties, North Carolina. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* May 27, 2008.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville Street, No. 158, Petaluma, CA 94952; telephone 415-271-1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should,

among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and

- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Swan Creek Viticultural Area

Background

Raffaldini Vineyards submitted a petition to establish the 96,000-acre “Swan Creek” viticultural area on behalf of the Vineyards of Swan Creek, a trade association representing a group of vineyards and wineries in northwestern North Carolina. Three wineries and 75 acres of vineyards are located within the proposed Swan Creek viticulture area. The boundary of the proposed viticultural area incorporates portions of Wilkes, Yadkin, and Iredell Counties and includes a portion of the established Yadkin Valley viticultural area (27 CFR 9.174). We summarize below the evidence submitted in support of the petition.

Name and Boundary Evidence

The petitioner explains that the geographical name “Swan Creek” refers to a village in the approximate center of the proposed viticultural area, as well as a Yadkin River tributary creek system. As shown in the southwest portion of the provided 1:100,000-scale USGS Winston-Salem, North Carolina topographic map, Swan Creek village sits in the Brushy Mountains south of the Yadkin River. East and West Swan Creeks run north from the mountains before joining together as Swan Creek to the northwest of the village. The creek then empties into the Yadkin River approximately three miles west of Jonesville. Also, an undated State of North Carolina Department of Environment, Health, and Natural Resources document lists Swan Creek, West Swan Creek, and East Swan Creek as streams in the Yadkin-Pee Dee River Basin.

The DeLorme North Carolina Atlas and Gazetteer identifies the village as “Swan creek,” with East Swan Creek and West Swan Creek to its northwest. The petitioner explains that both names, “Swan Creek” and “Swan creek,” reference the proposed viticultural area region. However, the two-word spelling is the more common usage for businesses, roads, creeks, and historical documents, which led the petitioner to identify the proposed viticultural area as “Swan Creek.”

As further evidence of the significance of the “Swan Creek” name within the proposed area, the local Wilkes Telephone Membership Corp. telephone book, which covers the region that includes the proposed viticultural area, lists an airport, a church, and three

businesses using “Swan Creek” in their names. Also, the September 7, 2004, minutes of a Yadkin County Commission meeting includes a reference to the Swan Creek area and improvements to Swan Creek Road. Additionally, a National Weather Service bulletin from January 13, 2005, warns of the possibility of a tornado in the Swan Creek area. The name is also repeatedly used in the “Vineyards of Swan Creek Wine Trail” Web site (<http://www.swancreekvineyards.com>).

The petitioner relies on geographical and man-made elements identifiable on the supplied USGS maps to define and draw the boundary for the proposed viticultural area. Climate data and historic evidence that documents the breadth of the “Swan Creek” name also legitimize the proposed boundary line, according to the petitioner.

From the regional history of the Yadkin Valley, the petitioner connects

the “Swan Creek” name to stories of Revolutionary War soldiers traveling along the Yadkin River, the proposed Swan Creek viticultural area’s northern boundary line, while en route to the pivotal battle at King’s Mountain in South Carolina. Also, during the Civil War, Union Major General George Stoneman led troops through the Swan Creek region to Virginia. Historic manuscripts maintain that frontiersman Daniel Boone homesteaded in the Swan Creek region in the 1750s.

According to the petition, farming become more prominent in the Swan Creek area after the Civil War, the Swan Creek area, and agriculture continues to characterize this rural region. Today, agriculture in the Swan Creek region includes viticulture, with 75 acres within the proposed Swan Creek viticultural area currently dedicated to grape growing.

The geology of the Swan Creek region, along with its minor climatic variation, also creates distinguishing viticultural features upon which to base the proposed Swan Creek viticultural area’s boundary. The entire proposed viticultural area lies within the Yadkin River Basin. The general uniformity in the Swan Creek region’s soils is attributable to the natural weathering process of the Brushy Mountains and the Brevard Shear Zone, a major fault system that also defines the Blue Ridge Escarpment in the area. The homogeneous soil within the proposed viticultural area is unlike the varied soils and rock types found in other parts of the Yadkin Valley viticultural area.

The proposed Swan Creek viticultural area boundary overlaps the established Yadkin Valley viticultural area as shown in the table below.

Viticultural areas	Total acres	Overlapping acres	Percent overlapping
Yadkin Valley	1,416,000	57,600	4
Swan Creek (Proposed)	96,000	57,600	60

The northern 60 percent of the proposed Swan Creek viticultural area sits within the Yadkin Valley viticultural area, with the remaining 40 percent south of the Yadkin Valley viticultural area boundary line, according to the petition maps. The discussion below includes evidence regarding the differences between the established Yadkin Valley viticultural area and the proposed Swan Creek viticultural area, which, according to the petitioner, justifies the proposed boundary line.

Distinguishing Features

Situated in the moderate elevations of the Brushy Mountains, and bordering the Yadkin River on the north, the proposed Swan Creek viticultural area’s geographical location is responsible for the area’s temperate climate and

homogenous soil as compared to surrounding areas, according to the petitioner.

Topography

The Brushy Mountains run through the center of the Swan Creek region, with elevations in the proposed Swan Creek viticultural area varying between 1,000 feet and 2,000 feet, according to the USGS maps submitted with the petition. Within the proposed viticultural area the Brushy Mountains have elevations lower than the Blue Ridge Mountains to the west but higher than the other surrounding areas. The Blue Ridge Mountain region to the immediate west of the proposed boundary line rises to elevations of 3,000 to 5,000 feet. To the east and south of the proposed viticultural area,

the elevation drops to between 500 and 1,000 feet.

Climate

Both the Yadkin River, which serves as the proposed Swan Creek viticultural area’s northern boundary line, and that portion of the Brushy Mountains located within the proposed viticultural area serve as climatically moderating influences.

The Swan Creek region has an average annual high temperature of 68.9 °F and an average annual low temperature of 42.8 °F. The table below shows the contrasting temperatures in the regions beyond the proposed viticultural area’s boundary line, as collected by the Southeast Regional Climate Center (SERCC) of the National Climatic Data Center.

Region	Average annual maximum temperature in degrees Fahrenheit	Average annual minimum temperature in degrees Fahrenheit
Swan Creek	68.9	42.8
West and northwest	59.8	40.4
South and east	70.6	46.6
Yadkin Valley	69.5	44.8

The SERCC data shows that the Swan Creek area is generally warmer than the regions to the west and northwest, cooler than the regions to the south and

east, and slightly cooler than the Yadkin Valley as a whole. Also, average January temperatures of 20° F to 25° F make the Swan Creek region less prone to Pierce’s

Disease, which adversely affects vineyards, than the majority of the Yadkin Valley viticultural area.

The proposed Swan Creek viticultural area averages 3,576 degree days of heat accumulation annually, which puts it in climatic region IV, according to temperature data collected by the SERCC. (As a measurement of heat accumulation during the growing season, one degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. (See "General Viticulture," by Albert J. Winkler, University of California Press, 1974.)

The surrounding areas, based on Amerine and Winkler heat summation definitions, include climatic regions IV and V to the east, region V to the south, and region I to the west-northwest.

The frost-free season of the proposed Swan Creek viticultural area extends on average from April 19 to October 17 annually, according to the "Average Last Spring Frost Dates for Selected North Carolina Locations," horticulture information leaflets (published December 1996 and revised December 1998), by Katharine Perry, North Carolina State University. According to the petition, this frost-free season is nearly identical to Surry County, which is part of the Yadkin Valley viticultural area located immediately northeast of the proposed Swan Creek viticultural area. However, southeast of the proposed viticultural area, but also within the Yadkin Valley viticultural area, the Davidson County frost-free season runs on average from March 31 to October 31, resulting in a month less frost than in the proposed Swan Creek viticultural area. The frost-free season varies in counties outside the Yadkin Valley viticultural area and the proposed Swan Creek viticultural area, extending three weeks longer to the east and lasting four to six weeks less in regions to the west and northwest.

The growing season of the proposed Swan Creek viticultural area averages 170 to 190 days annually, according to Perry's "Average Growing Seasons for Selected North Carolina Locations," horticulture information leaflets (published December 1996 and revised December 1998). Again, this growing season is almost identical to Surry County, located immediately northeast within the Yadkin Valley viticultural area. However, according to Perry's data, Davidson County averages a 214-day growing season annually, or between 24 and 44 more growing days than the proposed Swan Creek viticultural area. Similarly, the petition shows that Guilford County to the east has an annual growing season of between 199 and 210 days. Counties to

the west and northwest of the Swan Creek region have a significantly shorter growing season, lasting an average of 139 to 162 days.

Precipitation

The petitioner attributes the moderate rainfall within the proposed viticultural area to the protective influence of the Brushy Mountains. Rainfall within the proposed Swan Creek viticultural area averages 48.6 inches annually, based on SERCC data, with the local grape growers surveyed by the petitioner recording less rainfall at their own weather stations. The areas to the west and northwest of the proposed viticultural area average 57 inches each year, while regions to the south and east average 44.4 inches of rain annually.

Furthermore, snowfall within the proposed Swan Creek viticultural area averages 6.3 inches annually, based on SERCC records, which is far less than the data recorded at weather stations in surrounding areas.

Geology

The documentation and evidence provided for the petition by Matthew Mayberry of the Mayberry Land Company, Elkin, North Carolina, indicate that the geology of the proposed Swan Creek viticultural area is shaped by plate tectonics and a spectrum of uplift and erosion for the entire Appalachian Mountains building cycle. The Swan Creek region is part of the larger Appalachian Mountain Range area that has gone through at least three cycles of uplift and erosion, with each cycle lasting around 300 million years. Also, the weathering and erosion cycles created the resulting Piedmont and Blue Ridge surfaces found in the proposed viticultural area today.

Mr. Mayberry explains that the four predominant rock types in the proposed viticultural area are Henderson Gneiss, Granite, Biotite Gneiss and Biotite Amphibolite Gneiss, and Sillimanite Mica Schist. These types underlay more than 90 percent of the Swan Creek area, with the latter three predominant in the southern half of the area. Along the proposed north boundary line at the Yadkin River the predominant rock types include Ashe Formation, Ultramafics, and Granitic Rocks of the Crossnore Group.

Soil

The soil information in the Swan Creek viticultural area petition is compiled from the published soil surveys of Wilkes, Yadkin, and Iredell Counties in North Carolina. Roy Mathis, Soil Specialist for Correlations, Natural Resources Conservation Service, United

States Department of Agriculture, provided the soil information included in the petition.

The areas surrounding the proposed Swan Creek viticultural area have soils with differing characteristics, Mr. Mathis explains. The areas to the south and east have high shrink-swell clayey soils, which are less desirable for agriculture. To the west and north are the mountainous rocks and soils of the encroaching Blue Ridge Mountains. Also, the Yadkin Valley viticultural area, which surrounds the proposed Swan Creek viticultural area to the west, north, and east, has a greater variety of soil types and temperature regimes.

The proposed Swan Creek viticultural area mesic temperature regime has soil temperatures of 47 °F to 59 °F at the depth of 20 inches, according to Mr. Mathis. In comparison, the Yadkin Valley viticultural area is in both the mesic and thermic temperature regimes, with much warmer soil temperatures at the same depth that range from 59 °F to 72 °F at the same soil depth.

Mr. Mathis explains that the soils in the proposed Swan Creek viticultural area are primarily saprolite, a soft, clay-rich soil derived from weathered felsic (acidic) metamorphic rocks of the Inner Piedmont Belt such as granites, schists, and gneisses. The region includes a small area of Sauratown Belt with the rocks being primarily metagraywacke. In contrast, the surrounding west and north areas include residuum (saprolite) weathered from felsic metamorphic rocks such as gneisses, schists, and phyllites of the Blue Ridge Geologic Belt and Smith River Allochthon. The saprolite in the surrounding area to the east is composed of weathered igneous intrusive rocks like granites, gabbros, and diorites, as well as some gneisses and schists of the Charlotte Belt.

Evard and Cowee soils, which have moderate permeability and are well-drained with a loamy surface and sub-soil layer, predominate in the Brushy Mountains. The dominant ridge top soils of the proposed Swan Creek viticultural area also include the Fairview and Clifford series. These soils have sandy clay loam or clay loam surface layers with red clayey sub-soils, and are well-drained with moderate permeability.

Rhodhiss series is the dominant soil on the steep side slopes within the proposed viticultural area boundary. This well-drained soil has a loamy surface and moderate permeability at the sub-soil level. Mr. Mathis notes that Fairview, Clifford, and Rhodhiss soils all have bedrock deeper than 60 inches.

The Yadkin River, at the northern boundary of the proposed Swan Creek

viticultural area, has alluvial soil diversity with textures and drainage. In general, most of the proposed Swan Creek viticultural area soils are acidic and low in natural fertility.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 63 regarding the proposed Swan Creek viticultural area in the **Federal Register** on September 12, 2006 (71 FR 53612). In response to that notice, we received one comment supporting establishment of the proposed Swan Creek viticultural area from U.S. Representative Virginia Foxx of North Carolina.

TTB Finding

After careful review of the petition, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Although a portion of the proposed viticultural area falls within the boundary of the existing Yadkin Valley viticultural area, and notwithstanding the fact that the two areas share some common features, we believe that the submitted evidence regarding climate and soil type and temperature supports the conclusion that the proposed new viticultural area is sufficiently different from the rest of the Yadkin Valley viticultural area. We also believe that establishment of the new viticultural area without changing the boundary of the existing viticultural area to exclude the overlap area would best protect labels and other commercial interests of existing viticultural entities within the overlap area. Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Swan Creek" American viticultural area in Wilkes, Yadkin, and Iredell Counties, North Carolina, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, "Swan Creek," is

recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. Consequently, wine bottlers using "Swan Creek" in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term specified as having viticultural significance in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or other term of viticultural significance as an appellation of origin and that name or other term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N. A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend subpart C by adding § 9.211 to read as follows:

§ 9.211 Swan Creek.

(a) *Name.* The name of the viticultural area described in this section is "Swan Creek". For purposes of part 4 of this chapter, "Swan Creek" is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Swan Creek viticultural area are three United States Geological Survey (USGS) 1:100,000 scale topographic maps. They are titled:

(1) Winston-Salem, North Carolina, 1984, photoinspected 1982;

(2) Boone, North Carolina-Tennessee, 1985; and

(3) Salisbury, North Carolina, 1985, photoinspected 1983.

(c) *Boundary.* The Swan Creek viticultural area is located in Wilkes, Yadkin, and Iredell Counties, North Carolina. The boundary of the Swan Creek viticultural area is as described below:

(1) The beginning point is on the Winston-Salem, North Carolina map at the intersection of the Yadkin River and U.S. Highway 21, along the Surry-Yadkin county line, between Elkin and Jonesville;

(2) From the beginning point, proceed 24.6 miles generally south on U.S. Highway 21, crossing onto the Salisbury, North Carolina map, to the intersection of U.S. Highway 21 with Rocky Creek at Turnersburg; then

(3) Proceed 12.3 miles generally north and west along Rocky Creek, returning to the Winston-Salem map, to the intersection of Rocky Creek with State Highway 115 at New Hope in the southwest corner of the map; then

(4) Proceed 15.5 miles generally northwest along State Highway 115, crossing onto the Boone, North Carolina-Tennessee map, to the intersection of State Highway 115 and the Yadkin River, at North Wilkesboro; and

(5) Proceed 16.7 miles generally east-northeast along the Yadkin River,

crossing onto the Winston-Salem map, and return to the beginning point.

Signed: January 18, 2008.

John J. Manfreda,
Administrator.

Approved: March 13, 2008.

Timothy E. Skud,
*Deputy Assistant Secretary (Tax, Trade, and
Tariff Policy).*

[FR Doc. E8-9106 Filed 4-24-08; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2008-0001]

Drawbridge Operation Regulations; Chelsea River, Chelsea and East Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation
from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the P.J. McArdle Bridge across the Chelsea River, mile 0.3, between Chelsea and East Boston, Massachusetts. This deviation is necessary to facilitate the annual Chelsea River Revel and 5K Road Race. This deviation allows the bridge to remain in the closed position during the running of the 5K Road Race. Vessels that can pass under the draw without a bridge opening may do so at all times.

DATES: This deviation is effective from 8 a.m. through 5 p.m. on June 14, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0001 and are available online at www.regulations.gov. They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223-8364.

SUPPLEMENTARY INFORMATION: The owner of the bridge, the City of Boston,

requested this temporary deviation. The P.J. McArdle Bridge, across the Chelsea River at mile 0.3, between Chelsea and East Boston, Massachusetts, has a vertical clearance in the closed position of 21 feet at mean high water and 30 feet at mean low water. The bridge opens on signal as required by 33 CFR 117.593. This deviation which allows the bridge to remain closed is effective from 8 a.m. through 5 p.m. on June 14, 2008. Vessels able to pass under the closed draw may do so at any time. Tankers, and tug and barge units transit Chelsea Creek under the McArdle Bridge. Waterway users were advised of the requested bridge closure period and offered no objection.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 17, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8-8993 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 79

[EPA-HQ-OAR-2007-0071; FRL-8557-8]

RIN 2060-AN94

Regulation of Fuels and Fuel Additives: Revised Definition of Substantially Similar Rule for Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final interpretive rule.

SUMMARY: EPA is taking direct final action to revise an interpretive rule defining the term "substantially similar" for unleaded gasoline as that phrase is used in section 211(f) of the Clean Air Act (the Act). To meet the current definition, fuel or fuel additives must possess, at the time of manufacture, all of the physical and chemical characteristics of an unleaded gasoline as specified in ASTM Standard D 4814-88 for at least one of the Seasonal and Geographical Volatility Classes specified in the standard. EPA is amending the definition to allow some additional flexibility for the vapor/liquid ratio specification for fuel introduced into commerce in the state of Alaska in order to improve cold starting for vehicles during the winter months in Alaska.

DATES: This rule is effective on June 24, 2008 without further notice, unless EPA receives adverse comment by May 27, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0071, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- *E-mail:* a-and-r-docket@epa.gov.

- *Fax:* (202) 566-9744

- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. EPA-HQ-OAR-2007-0071. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2007-0071. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects

or viruses. 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 www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone

number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Jaimee Dong, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Office of Air and Radiation, Environmental Protection Agency, Mail Code 6406J, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: (202) 343-9672; fax number: (202) 343-2800; e-mail address: Dong.Jaimee@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule¹ because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to amend

the definition of "substantially similar." If adverse comments are received on this direct final rule, we will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production or importation of unleaded gasoline for use in Alaska. Categories and entities affected by this action include:

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated entities
Industry	324110	2911	Petroleum refiners.
Industry	422710	5171	Gasoline marketers and distributors.
	422720	5172	
Industry	484220	4212	Gasoline carriers.
	484230	4213	

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action; however, other types of entities not listed in the table could also be affected. To determine whether your entity is affected by this action, you should examine the applicability criteria of Parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that

is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for Preparing Your Comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. **Docket Copying Costs.** You may be charged a reasonable fee for photocopying docket materials, as provided by 40 CFR Part 2.

III. Statutory Background

Section 211(f)(1) of the Act makes it unlawful for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the

¹ EPA is not statutorily obligated to conduct notice and comment rulemaking when amending this interpretive rule. See *APA* section 553(b)(A);

CAA section 307(d). However, as it has done when previously amending this rule, EPA desires to

provide an opportunity for the public to comment on this amendment.

certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. An EPA interpretive rule, published at 46 FR 38582 (July 28, 1981) and amended at 56 FR 5352 (February 11, 1991), defines the term “substantially similar” for unleaded gasoline. Under this definition, unleaded gasoline that meets several conditions, including complying with the physical and chemical specifications of ASTM Standard D 4814–88 for at least one of the Seasonal and Geographical Volatility classes specified in the standard, is considered substantially similar. Further conditions are described in the interpretive rule and its amendment.

IV. Need for Action

Discussions with an Alaskan refiner have highlighted the need for an amendment to the definition of “substantially similar” for unleaded gasoline. Currently, manufacturers of gasoline for Alaska may not use a temperature below 41 degrees Celsius when testing the vapor-liquid (V/L) ratio of the fuel and still be within the current definition of “substantially similar.” This amendment will allow manufacturers producing unleaded gasoline for use only in Alaska during the winter months to use a minimum test temperature of 35 degrees Celsius when testing for a maximum V/L ratio of 20 instead of requiring a V/L test temperature of 41 degrees Celsius.

ASTM D 2533 is a test method that covers a procedure for measuring the volume of vapor formed at atmospheric pressure from a given volume of gasoline. The ratio of these volumes is expressed as the V/L ratio of the gasoline at the temperature of the test. The tendency of a fuel to vaporize in common automobile fuel systems is indicated by the V/L ratio of that fuel at conditions approximating those in critical parts of the fuel system. Allowing a lower test temperature means that the vapor fraction of the fuel may be higher.

The extreme cold of Alaska during the winter months increases the risk that engines using typical gasoline blends will suffer from difficulty in cold starting. A higher vapor fraction improves mixing of the fuel with air, which in turn improves cold starting. Because the automotive fuel system is closed, the lower test temperature of 35 degrees Celsius compared to 41 degrees Celsius in the winter months is unlikely to significantly increase evaporative emissions. In addition, Alaska presently does not possess ozone non-attainment areas, most likely due to the cold temperatures observed in Alaska.

Therefore, in the Agency’s judgment, the impact on emissions will not be significant and this increased flexibility will allow refiners to provide a fuel more suitable to the climatic conditions of Alaska.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). No information is collected as a result of this amendment to the “substantially similar” interpretive rule.

C. Regulatory Flexibility Act

This interpretive rule is not subject to the Regulatory Flexibility Act (RFA) which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because it is an interpretive rule. *See APA section 553(b)(A); CAA section 307(d).*

Although this interpretive rule is not subject to the RFA, EPA nonetheless has assessed the potential of this rule to adversely impact small entities subject to the rule. Small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The impact of concern is any significant adverse economic impact on small entities since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic

impact of the rule on small entities.” 5 U.S.C. 603 and 604.

After considering the economic impacts of today’s direct final interpretive rule on small entities, the Agency does not believe that this action is likely to have an adverse economic impact on small entities. This final action amends the “substantially similar” interpretive rule by allowing a minimum test temperature of 35 degrees Celsius for a maximum V/L ratio of 20 from September 16 to May 31 for unleaded gasoline for use only in Alaska. This change is intended to improve cold starting in automobiles during the winter months in Alaska by allowing production and sale in Alaska during the winter season of unleaded gasoline with a higher volatility. This amendment to the interpretive rule does not impose a regulatory burden on anyone, including small businesses. Instead, this final action will have a positive impact, enabling all manufacturers, including small manufacturers, to produce and market this gasoline in Alaska. We therefore believe that today’s final interpretive rule should have a positive economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed

under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this interpretive rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This final action will amend the “substantially similar” interpretive rule by allowing a minimum test temperature of 35 degrees Celsius for a maximum V/L ratio of 20 from September 16 to May 31 for unleaded gasoline for use only in Alaska, instead of requiring a test temperature of 41 degrees Celsius. Thus, today’s interpretive rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This final interpretive rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final action will amend the “substantially similar” interpretive rule by allowing a minimum test temperature of 35 degrees Celsius for a maximum V/L ratio of 20 from September 16 to May 31 for unleaded gasoline for use only in Alaska. The requirements of this amendment will be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this interpretive rule.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final interpretive rule does not have tribal implications, as specified in Executive Order 13175. This interpretive rule will apply to gasoline refiners and importers of gasoline. This final action changes the volatility standards for gasoline in Alaska, and will not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this interpretive rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Energy Effects

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This interpretive rulemaking involves technical standards. This final action will amend the “substantially similar” interpretive rule by allowing a minimum test temperature of 35 degrees Celsius for a maximum V/L ratio of 20 from September 16 to May 31 for unleaded gasoline for use only in Alaska. The test temperature of 35 degrees Celsius may be found in Table 3, Vapor Lock Protection Class 6, of ASTM D4814–04a. All technical standards included in today’s amendment to the “substantially similar” interpretive rule are standards developed by ASTM, a voluntary consensus standards body, and thus raise no issues under the NTTAA. ASTM D4814–04a may be obtained from ASTM International at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, 610–832–9585 (phone), 610–832–9555 (fax), or service@astm.org (e-mail); or through the ASTM Web site (<http://www.astm.org>).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final interpretive rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This direct final interpretive rule will amend the “substantially similar” interpretive rule by allowing a minimum test temperature of 35 degrees Celsius for a maximum V/L ratio of 20 from September 16 to May 31 for unleaded gasoline for use only in Alaska. This interpretive rule amendment does not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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). This rule will be effective June 24, 2008.

Dated: April 17, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons set forth above, EPA is amending the definition of substantially similar as follows:

Definition—Substantially Similar

EPA will treat a fuel or fuel additive for general use in light-duty vehicles manufactured after model year 1974 as substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year vehicle or engine, under section 206 of the Act, i.e., "substantially similar," if the following criteria are met.

(1) The fuel must contain carbon, hydrogen, and oxygen, nitrogen, and/or sulfur, exclusively,² in the form of some combination of the following:

- (a) Hydrocarbons;
- (b) Aliphatic ethers;
- (c) Aliphatic alcohols other than methanol;

(d)(i) Up to 0.3 percent methanol by volume;

(ii) Up to 2.75 percent methanol by volume with an equal volume of butanol, or higher molecular weight alcohol;

(e) A fuel additive³ at a concentration of no more than 0.25 percent by weight

²Impurities which produce gaseous combustion products (i.e., products which exist as a gas at Standard Temperature and Pressure) may be present in the fuel at trace levels. An impurity is that substance which is present through contamination, or remains naturally, after processing of the fuel is completed.

³For the purposes of this interpretive rule, the term "fuel additive" refers only to that part of the additive package which is not hydrocarbon.

which contributes no more than 15 ppm sulfur by weight to the fuel.

(2) The fuel must contain no more than 2.0 percent oxygen by weight, except fuels containing aliphatic ethers and/or alcohols (excluding methanol) must contain no more than 2.7 percent oxygen by weight.

(3) The fuel must possess, at the time of manufacture, all of the physical and chemical characteristics of an unleaded gasoline as specified in ASTM Standard D 4814–88 for at least one of the Seasonal and Geographical Volatility Classes specified in the standard, with the exception of fuel introduced into commerce in the state of Alaska. For fuel introduced into commerce in the state of Alaska, all of the requirements of this section (3) apply, with the exception of the test temperature for a maximum Vapor/Liquid Ratio (V/L) of 20, which shall be a minimum of 35 °C (95 °F) for the period from September 16 through May 31.

(4) The fuel additive must contain only carbon, hydrogen, and any one or all of the following elements: Oxygen, nitrogen, and/or sulfur.⁴

[FR Doc. E8–8944 Filed 4–24–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 148

[CMS–2260–F]

RIN 0938–A046

Grants to States for Operation of Qualified High Risk Pools

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final Rule.

SUMMARY: This rule finalizes the interim final rule with comment period that was published on July 27, 2007, regarding extended funding for seed and operational grants for State High Risk Pools under the Public Health Service Act.

DATES: *Effective Date:* These regulations are effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Jessica Kahn, (410) 786–9361, or John Young, (410) 786–0505.

SUPPLEMENTARY INFORMATION:

⁴Impurities which produce gaseous combustion products may be present in the fuel additive at trace levels.

I. Background

The Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210) added section 2745 of the Public Health Service Act (PHS Act) to provide for two types of grants to States for the promotion of "qualified high risk pools." These pools provide health coverage to high-risk individuals who may find private health insurance unavailable or unaffordable. Under this provision, a pool could meet the definition of a "qualified" high risk pool for purposes of section 2745 only if it met the definition of a qualified high risk pool in section 2744(c)(2) of the PHS Act. Section 2744 deals with how States can satisfy the requirement of section 2741 of the PHS Act to guarantee access to health coverage for individuals who meet the definition of an "eligible individual" under section 2741, as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). These individuals are commonly referred to as "HIPAA-eligible" individuals.

Under section 2744(c)(2) of the PHS Act, a qualified high risk pool must provide health coverage without a pre-existing condition exclusion to "all" HIPAA-eligible individuals. This meant that State high risk pools that did not allow all HIPAA-eligible individuals into the pool without a pre-existing condition exclusion could not meet the definition of a "qualified" risk pool.

The two types of grants authorized by the legislation were "seed grants" for States that had not yet created a high risk pool, and "operational" grants to offset losses incurred by States that operate a qualified high risk pool. Under the prior law, in order for a risk pool to qualify for an operational grant, it could not charge premiums that exceeded 150 percent of the premium for applicable standard risk rates. Moreover, the amount of the grants was limited to 50 percent of the losses incurred by a State.

Section 6202 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) and the State High Risk Pool Extension Act of 2006 (Pub. L. 109–172) (Extension Act) extended funding for seed and operational grants for State High Risk Pools and amended section 2745 of the PHS Act. The Extension Act made the following changes:

1. Expanded the definition of a "qualified high risk pool." As noted above, section 2745(d) of the PHS Act previously defined the term to have the same meaning as in section 2744(c)(2) of the PHS Act, which required that the risk pool provide coverage to "all" HIPAA-eligible individuals (as defined in § 148.103), without any pre-existing

condition exclusion. The revised definition specifies that, for purposes of grants under section 2745, a risk pool can be qualified even if the State uses other mechanisms beyond the risk pool to ensure that health coverage is provided to all HIPAA-eligibles.

2. Expanded the definition of “State.” Section 2745 of the PHS Act previously defined this term to include only the 50 States and the District of Columbia, but has now been amended to include U.S. Territories.

3. Increased the amount of premiums that a risk pool can charge and still qualify for an operational grant. Section 2745 of the PHS Act previously required that the premiums charged under the pool not exceed 150 percent of the premium for applicable standard risk rates. As amended, it permits grants to States with premiums of up to 200 percent of the standard risk rates, as long as States with premiums greater than 150 percent of the standard rate use at least half of the grant funds to reduce high risk pool premiums for enrollees.

4. Removed the limitation that a State’s grant not exceed 50 percent of its operating losses.

5. Changed the funding allotment formula. Previously, the grant funds were to be allotted to States under a relatively simple formula based on the number of uninsured individuals in the State. Under the new legislation, the allotment formula is more complex. Of the total appropriation for a given year—if money is appropriated—two-thirds would be available for grants to cover operational losses. Of these funds, 40 percent is to be equally divided among any of the 50 States and the District of Columbia that apply. Another 30 percent of that amount is allotted among all States that apply for grants based on the ratio of uninsured individuals in the State to uninsured individuals in all States that apply. The final 30 percent is to be allotted based on the ratio of the number of individuals enrolled in a State’s risk pool to the number enrolled through the risk pools of all the qualifying States that apply. (Territories are eligible for the proportional allotments, but only up to a total of \$1 million for all Territories combined.)

6. Provided authority for “bonus grants” to States (not including Territories) that qualify for operational grants. One-third of a total yearly appropriation will be used to provide grants to enable States to provide specified supplemental consumer benefits to enrollees or potential enrollees of the qualified high risk pool.

(A bonus grant is not to exceed 10 percent of the total for any one State.)

This final rule updates our regulations at 45 CFR Part 148, Subpart E, Grants to States for Operation of Qualified High Risk Pools, to implement the changes made by the Deficit Reduction Act of 2005 and the State High Risk Pool Extension Act of 2006. Specific instructions about the grant solicitation and award process will be addressed in official grant announcements or other appropriate documents.

II. Provisions of the Interim Final Rule

On July 27, 2007, we published in the **Federal Register** an interim final rule with comment period (72 FR 41232). In that rule we revised the regulation text in 45 CFR part 148 to conform with the State High Risk Pool Extension Act of 2006 and the DRA. These revisions are discussed in detail below.

A. Definitions (§ 148.308)

We amended § 148.308 (Definitions) to

- Add a definition of “bonus grants.”
- Revise the definition of “qualified high risk pool;” and
- Revise the definition of “State.”

1. Bonus Grant

We added the following definition for Bonus Grants—Funds that the Secretary provides from the appropriated grant funds to be used to provide supplemental consumer benefits to enrollees or potential enrollees in qualified high risk pools.

2. Qualified High Risk Pool

We amended the definition at § 148.308 to reflect the exception added by the Extension Act in section 2745(g)(1)(A) of the PHS Act. Specifically, a State may elect to meet the definition of a qualified high risk pool under § 148.128(a)(2)(ii)(A) by providing for enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 2744 of the PHS) that includes a high risk pool as a component.

3. State

In accordance with the Extension Act, we amended the definition to include any of the 50 States and the District of Columbia, and the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

B. Grants for Operational Losses (§ 148.310)

1. Eligibility Requirements for an Operational Grant

This section specifies the eligibility requirements for operational grants. A State must meet all of the following requirements to be eligible for a grant:

a. *Maximum premium.* We amended § 148.310 to reflect that the statute has increased the maximum premium that a risk pool can charge and still qualify for a grant. The maximum has been changed from 150 percent to 200 percent of the premium for applicable standard risk rates for the State.

b. *Continued funding.* The statute previously required that the pool have in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of FY 2004, which was the last year that grants were authorized under the prior appropriation. The statute, as revised by the Extension Act, now requires that a risk pool have such a mechanism to ensure funding after the end of the last fiscal year for which a grant is provided. We interpret this to mean that the pool has capacity or mechanisms in place that can reasonably be expected to ensure that it may operate in the future without the benefit of Federal funding.

In the case of a qualified high risk pool of a State that charges premiums that exceed 150 percent of the premium for applicable standard risks, the State must use at least 50 percent of the amount of the grant provided to the State to reduce premiums for enrollees. The application should demonstrate/attest that the funds will be used this way.

2. Amount of Grant Payment (§ 148.312)

Two-thirds of any amounts appropriated are made available for operational grants. An eligible State may receive a grant to fund up to 100 percent of the losses incurred in the operation of its qualified high risk pool during the fiscal year for which it is applying. The grant may be less than 100 percent after the allotment limits are applied, but in no case will it be more than 100 percent.

Funds will be allocated in accordance with § 148.312 to each State that meets the eligibility requirements of § 148.310 and files an application in accordance with § 148.316. Specifically:

- Forty percent of funds made available under that section will be equally divided among any of the 50 States and the District of Columbia that meet the eligibility criteria for an operational grant;
- Thirty percent of funds made available will be divided among States

(including territories) based on the number of uninsured residents in the State during the specified year as compared to the total number of uninsured residents in all States that apply for grants;

- Thirty percent will be divided among States (including territories) based on the number of people in State high risk pools during the specified year as compared to all States that apply.

In accordance with the statute, in no case will the aggregate amount allotted and made available to the U.S. Territories for a fiscal year exceed \$1 million.

We will calculate the number of uninsured individuals for each eligible State by taking a 3-year average of the number of uninsured individuals in that State in the Current Population Survey (CPS) of the Census Bureau. The 3-year average will be calculated using numbers available as of March 1 of each year for the preceding 3-year period.

C. Bonus Grants

One-third of the total appropriation will be available for the bonus grants. These grants will be available to any one of the 50 States and the District of Columbia that receives an operational grant under § 148.310. The grants must be used to provide one or more of the following benefits:

- (1) Low income premium subsidies;
- (2) Reduction in premium trends, actual premium or other cost-sharing requirements;
- (3) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules;
- (4) Less stringent rules or additional waiver authority with respect to coverage of pre-existing conditions;
- (5) Increased benefits; and
- (6) The establishment of disease management programs. In no case will a State receive bonus grants that exceed 10 percent of the total funds allotted for bonus grants in that fiscal year.

D. Periods During Which Eligible States May Apply for a Grant (§ 148.314)

Funds were appropriated for Federal FY 2006 and are authorized for FY 2008 through FY 2010. Funding for FY 2008, FY 2009, and FY 2010 under the Extension Act requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available. A State that meets the eligibility requirements in § 148.310 may apply for a grant to fund losses that were incurred during the State's or pool's fiscal year ending prior to or

during any federal fiscal year, 2007 through 2010 for which authorized funds are appropriated, in connection with the operation of its qualified high risk pool. Grant funding is administered on a retrospective basis (for example, pools with losses incurred in 2005 may apply for Federal FY 2006 grant funds). If a State becomes eligible for a grant in the middle of its fiscal year, a State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Only losses that are incurred after it is established that a pool is eligible (that is, that it is a qualified high risk pool as defined by § 148.128(a)(2)(ii)) will qualify for a grant. An eligible State must apply for a grant no later than June 30 following the end of the State fiscal year during which it incurred losses. Each State may only be awarded one grant per fiscal year. A grant for a partial fiscal year counts as a full grant.

States that meet all of the eligibility requirements in § 148.310 and submit timely requests in accordance with paragraph (c) of § 148.314 will receive distribution of grant funds using the following methodology:

- Grant applications for losses will be on a retrospective basis. For example, grant applications for 2006 funds are based on the State's FY 2005 incurred losses.
- Grant allocations for each fiscal year will be determined by taking all grant applications received by June 30 of the Federal fiscal year and allocating grant funds in accordance with § 148.312. In no case will a State receive funds greater than 100 percent of its losses.

If any excess funds remain after the initial calculation, these excess funds will be proportionately redistributed to the States whose allocations have not exceeded 100 percent of their losses. This process will occur at the time of the initial calculation and there will be one annual allocation and distribution by September 30 of each year.

Grant Application Instructions (§ 148.316)

We amended § 148.316 to reflect the addition of application requirements for bonus grants. We changed the heading of § 148.316(a), "Application package," to "Application for operational losses." We inserted a bonus grants section by redesignating § 148.316(a)(3) as § 148.316(a)(4) and adding new paragraph (a)(3), the bonus grants requirements. The individual State applying for a bonus grant must provide:

- (i) A narrative description with detailed information about each one of the following supplemental consumer

benefits to be provided to enrollees and/or potential enrollees in the high risk pool:

- (A) Low income premium subsidies;
- (B) Reduction in premium trends, actual premium or other cost-sharing requirements;
- (C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment;
- (D) Less stringent rules, or additional waiver authority with respect to coverage of pre-existing conditions;
- (E) Increased benefits; and
- (F) The establishment of disease management programs.

- (ii) A description of the population or subset population that will be eligible for the supplemental consumer benefits.

- (iii) A projected budget for the use of bonus grant funds using the SF 424 and SF 424 A.

We revised the "Standard forms application kit" in § 148.316(b). We eliminated the text "Additional Assurances" in "Standard forms application kit," paragraph (b)(1)(i).

We also changed the Web site URL address for the "Standard forms kit" download at paragraph (b)(1)(ii) to <http://www.grants.gov>.

There are no other changes to the content of the "Standard forms application kit."

In § 148.316(c), "Submission of application package," we deleted paragraphs (c)(1) and (c)(2) and replaced with text that will read: All applications should be submitted electronically via <http://www.grants.gov>.

In § 148.316(d), "Application deadlines," we changed the applications deadlines text to read: The deadline for States to submit an application for losses incurred in a State fiscal year is June 30 of the next Federal fiscal year that begins after the end of the State fiscal year.

In § 148.316(e), "Where to submit an application," we changed the text to read: Applications must be submitted to <http://www.grants.gov>.

Funding Mechanism (§ 148.318)

We amended § 148.318, dealing with continued funding of a risk pool. The State must outline funding sources, such as assessments and State general revenues, which can cover the projected costs and are reasonably designed to ensure continued funding of losses a State incurs in connection with the operation of the qualified high risk pool after the last fiscal year for which it is applying for grant funds.

Grant Awards (§ 148.320)

We amended this section to specify that the grantee will be required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by the States.

III. Analysis of and Responses to Public Comments and Provisions of the Final Regulations

We did not receive any public comments on the July 27, 2007 interim final rule with comment period. Therefore, this final rule implements the provisions of the interim final rule without change.

IV. Collection of Information Requirement

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 (PRA) 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 148.316 Grant Application Instructions

Section 148.316(a) requires each State to compile an application package that documents that it has met the requirements for a grant. If a risk pool entity applies on behalf of a State, it must provide documentation that it has been delegated appropriate authority by the State.

The burden associated with this requirement is subject to the PRA; however, the structure of the application collection and grant

monitoring reporting requirements of the grants has not been changed from the original grants program and is currently approved under OMB control number 0938–0887 “Matching Grants to States for the Operation of High Risk Pools and Supporting Regulations at 42 CFR 148.316, 148.318, and 148.320” with a current expiration date of 01/31/2010. We are, however, revising this package to include the additional request under 148.316(a)(3) for (1) Description of Type of Consumer Benefits; (2) Description of the Eligible Population for the consumer benefits; and, (3) Projected Budget for the use of Bonus Grants. We believe the burden associated with the additional information is already captured in the currently approved OMB package (#0938–0887).

Section 148.320 Grant Awards

Section 148.320(a)(2)(iii) states that a grantee is required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by States.

The burden associated with this requirement is the time it would take for a grantee to submit quarterly progress and financial reports. We estimate it will take one grantee 1 hour per quarter to comply with this requirement.

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–2260–IFC, 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 Astrich, CMS Desk Officer, CMS–2260–IFC, katherine_astrich@omb.eop.gov. Fax (202) 395–6974.

V. 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), 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 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

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 did not prepare an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

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 rule will have no consequential effect on State, local, or tribal governments or on the private sector.

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. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 45 CFR Part 148

Administrative practice and procedure, Health care Health insurance, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare &

Medicaid Services amends 45 CFR chapter IV as set forth below:

PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg–41 through 300gg–63, 300gg–91, and 300gg–92).

Subpart E—Grants to States for Operation of Qualified High Risk Pools

■ 2. Section 148.306 is revised to read as follows:

§ 148.306 Basis and scope.

This subpart implements section 2745 of the Public Health Service Act (PHS Act). It extends grants to States that have qualified high risk pools that meet the specific requirements described in § 148.310. It also provides specific instructions on how to apply for the grants and outlines the grant review and grant award processes.

■ 3. Section 148.308 is amended by—

■ A. Revising the definition for “bonus grants.”

■ B. Revising the definition of “qualified high risk pool.”

■ C. Revising the definition of “State.”

The revisions read as follows:

§ 148.308 Definitions.

* * * * *

Bonus grants means funds that the Secretary provides from the appropriated grant funds to be used to provide supplemental consumer benefits to enrollees or potential enrollees in qualified high risk pools.

* * * * *

Qualified high risk pool as defined in sections 2744(c)(2) and 2745(g) of the PHS Act means a risk pool that—

(1) Provides to all eligible individuals health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion with respect to such coverage for all eligible individuals, except that it may provide for enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 2744 of the PHS Act) that includes a high risk pool as a component; and

(2) Provides for premium rates and covered benefits for such coverage consistent with standards included in the NAIC Model Health Plan for Uninsurable Individuals Act that was in effect at the time of the enactment of the Health Insurance Portability and Accountability Act of 1996 (August 21,

1996) but only if the model has been revised in State regulations to meet all of the requirements of this part and title 27 of the PHS Act.

* * * * *

State means any of the 50 States and the District of Columbia and includes the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

* * * * *

■ 4. Section 148.310 is amended by—

■ A. Republishing the introductory text to the section.

■ B. Revising paragraph (b).

■ C. Revising paragraph (d).

■ D. Revising paragraphs (f), (g), and (h).

The republication, revisions, and additions read as follows:

§ 148.310 Eligibility requirements for a grant.

A State must meet all of the following requirements to be eligible for a grant:

* * * * *

(b) The pool restricts premiums charged under the pool to no more than 200 percent of the premium for applicable standard risk rates for the State.

* * * * *

(d) The pool has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of each fiscal year for which the State applies for Federal Funding in fiscal year (FY) 2005 through FY 2010 in connection with the operation of the pool.

* * * * *

(f) In the case of a qualified high risk pool in a State that charges premiums that exceed 150 percent of the premium for applicable standard risks, the State will use at least 50 percent of the amount of the grant provided to the State to reduce premiums for enrollees.

(g) In no case will the aggregate amount allotted and made available to the U.S. Territories for a fiscal year exceed \$1,000,000 in total.

(h) Bonus grant funding must be used for one or more of the following benefits:

(1) Low income premium subsidies;

(2) Reduction in premium trends, actual premium or other cost-sharing requirements;

(3) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules;

(4) Less stringent rules or additional waiver authority with respect to coverage of pre-existing conditions;

(5) Increased benefits; and

(6) The establishment of disease management programs.

■ 5. Section 148.312 is amended by—

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

■ C. Revising paragraph (d).

The revisions read as follows:

§ 148.312 Amount of grant payment.

(a) An eligible State may receive a grant to fund up to 100 percent of the losses incurred in the operation of its qualified high risk pool during the period for which it is applying or a lesser amount based on the limits of the allotment under the formula.

(b) Funds will be allocated in accordance with this paragraph to each State that meets the eligibility requirements of § 148.310 and files an application in accordance with § 148.316. The amount will be divided among the States that apply and are awarded grants according to the allotment rules that generally provide that: 40 percent will be equally divided among those States; 30 percent will be divided among States and territories based on their number of uninsured residents in the State during the specified year as compared to all States that apply; and 30 percent will be divided among States and territories based on the number of people in State high risk pools during the specified year as compared to all States that apply.

For purposes of this paragraph:

(1) The number of uninsured individuals is calculated for each eligible State by taking a 3-year average of the number of uninsured individuals in that State in the Current Population Survey (CPS) of the Census Bureau during the period for which it is applying. The 3-year average will be calculated using numbers available as of March 1 of each year.

(2) The number of individuals enrolled in health care coverage through the qualified high risk pool of the State will be determined by attestation by the State in its grant application and verified for reasonability by the Secretary through acceptable industry data sources.

* * * * *

(d) One-third of the total appropriation will be available for the bonus grants. In no case will a State for a fiscal year receive bonus grants that exceed 10 percent of the total allotted funds for bonus grants.

■ 6. Section 148.314 is revised to read as follows:

§ 148.314 Periods during which eligible States may apply for a grant.

(a) *General rule.* A State that meets the eligibility requirements in § 148.310

may apply for a grant to fund losses that were incurred during the State's FYs 2005, 2006, 2007, 2008 and 2009 in connection with the operation of its qualified high risk pool. Funding for FY 2007 through FY 2010 under the Extension Act requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available. Grants funding is on a retrospective basis and applies to the States previous fiscal year. If a State becomes eligible for a grant in the middle of its fiscal year, a State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Only losses that are incurred after eligibility is established will qualify for a grant.

(b) *Maximum number of grants.* An eligible State may only be awarded a maximum of five grants, with one grant per fiscal year. A grant for a partial fiscal year counts as a full grant.

(c) *Deadline for submitting grant applications.* The deadlines for submitting grant applications are stated in § 148.316(d).

(d) *Distribution of grant funds.* States that meet all of the eligibility requirements in § 148.310 and submit timely requests in accordance with paragraph (c) of this section will receive an initial distribution of grant funds using the following methodology: Grant applications for losses will be on a retrospective basis. For example, grant applications for 2006 funds are based on the State's FY 2005 incurred losses. Grant funding was appropriated for Federal FY 2006 and is authorized to be appropriated for Federal FYs 2008 through 2010.

(e) *Grant allocations.* Grant allocations for each fiscal year will be determined by taking all grant applications during the period for which States are applying and allocating the funds in accordance with § 148.312.

(1) In no case will a State receive funds greater than 100 percent of their losses.

(2) If any excess funds remain after the initial calculation, these excess funds will be proportionately redistributed to the States whose allocations have not exceeded 100 percent of their losses.

■ 7. Section 148.316 is amended by—

■ A. Revising the introductory text to the section.

■ B. Amending paragraph (a) introductory text by revising the heading.

■ C. Revising paragraph (a)(3).

■ D. Revising paragraph (b).

■ E. Revising paragraph (c).

■ F. Revising paragraph (d).

■ G. Revising paragraph (e).

The revisions read as follows:

§ 148.316 Grant application instructions.

Funding for FY 2008, FY 2009, and FY 2010 under the Extension Act requires the subsequent enactment of appropriations authority. Funding was appropriated for Federal FY 2006. States will be unable to apply for FY 2008 through FY 2010 grants unless and until such funding becomes available.

(a) *Application for operational losses.*

* * *

* * * * *

(3) *Bonus grants for supplemental consumer benefits.* Provide detailed information about the following supplemental consumer benefits for which the entity is applying:

(i) A narrative description of one or more of the following of the supplemental consumer benefits to be provided to enrollees and/or potential enrollees in the high risk pool:

(A) Low income premium subsidies;

(B) Reduction in premium trends, actual premium or other cost-sharing requirements;

(C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment;

(D) Less stringent rules, or additional waiver authority with respect to coverage of pre-existing conditions;

(E) Increased benefits; and

(F) The establishment of disease management programs.

(ii) A description of the population or subset population that will be eligible for the supplemental consumer benefits.

(iii) A projected budget for the use of bonus grant funds using the SF 424 A.

* * * * *

(b) *Standard form application kit—(1) Forms.* (i) The following standard forms must be completed with an original signature and enclosed as part of the application package:

SF-424 Application for Federal Assistance.

SF-424A Budget Information.

SF-424B Assurances Non-Construction Programs.

SF-LLL Disclosure of Lobbying Activities Biographical Sketch.

(ii) These forms can be accessed from the following Web site: <http://www.grants.gov>.

(2) *Other narrative.* All other narrative in the application must be submitted on 8½ x 11 inches white paper.

(c) *Application submission.*

Submission of application package is through <http://www.grants.gov>.

Submissions by facsimile (fax) transmissions will not be accepted.

(d) *Application deadlines.* (1) The deadline for States to submit an application for losses incurred in a State fiscal year is June 30 of the next Federal fiscal year that begins after the end of the State fiscal year. Funding for FY 2008, FY 2009, and FY 2010 under the Extension Act requires the subsequent enactment of appropriations authority. Funding was appropriated for Federal FY 2006. States will be unable to apply for FY 2008 through FY 2010 grants unless and until such funding becomes available.

(2) *Deadline for States to submit an application for losses incurred in their fiscal year 2005.* States had to submit an application to CMS no later than June 30, 2006.

(3) *Deadline for States to submit an application for losses incurred in their fiscal year 2006.* States must submit an application to CMS by no later than June 30, 2007.

(4) *Deadline for States to submit an application for losses incurred in their fiscal year 2007.* States must submit an application to CMS by no later than June 30, 2008.

(5) *Deadline for States to submit an application for losses incurred in their fiscal year 2008.* States must submit an application to CMS by no later than June 30, 2009.

(6) *Deadline for States to submit an application for losses incurred in their fiscal year 2009.* States must submit an application to CMS by no later than June 30, 2010.

(e) *Where to submit an application.*

Applications must be submitted to <http://www.grants.gov>. Submissions by facsimile (fax) transmissions will not be accepted.

■ 8. Section 148.318 is amended by revising paragraph (d)(2) to read as follows:

§ 148.318 Grant application review.

* * * * *

(d) * * * * *

(2) *Funding mechanism.* The State has outlined funding sources, such as assessments and State general revenues, which can cover the projected costs and are reasonably designed to ensure continued funding of losses a State incurs in connection with the operation of the qualified high risk pool after each fiscal year for which it is applying for grant funds.

■ 9. Section 148.320 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 148.320 Grant awards.

(a) * * *

(2) * * *

(iii) The grantee will be required to submit quarterly progress and financial

reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by States.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 17, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: January 17, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8-9066 Filed 4-24-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[Docket No. 080414564-8565-01]

RIN 0648-AW71

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notification.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota it has assigned to the Alaska Eskimo Whaling Commission (AEWC) for bowhead whales, and other limitations deriving from regulations adopted at the 59th Annual Meeting of the International Whaling Commission (IWC). For 2008, the quota is 75 bowhead whales struck. This quota and other limitations govern the harvest of bowhead whales by members of the AEWC.

DATES: Effective April 25, 2008.

ADDRESSES: Office of International Affairs, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, (301) 713-9090.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other

limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 59th Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 2008 through 2012, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 2003 through 2007 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2007 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2008 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2008 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

Through its cooperative agreement with the AEWC, NOAA has assigned 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 11 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant

cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: April 21, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E8-9111 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075-1217-02]

RIN 0648-XF92

Fisheries of the Northeastern United States; Tilefish Fishery; Quota Harvested for Part-time Category

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

ACTION: Temporary rule; tilefish Part-time permit category closure.

SUMMARY: NMFS announces that the percentage of the tilefish annual total allowable landings (TAL) available to the tilefish Part-time permit category for the 2008 fishing year has been harvested. Therefore, commercial vessels fishing under the Part-time tilefish category may not harvest tilefish from within the Golden Tilefish Management Unit for the remainder of the 2008 fishing year (through October 31, 2008) as of April 25, 2008. Regulations governing the tilefish fishery require publication of this notification to advise the public of this closure.

DATES: Effective 0001 hrs local time, April 25, 2008, through 2400 hrs local time, October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Timothy A. Cardiasmenos, Fishery Policy Analyst, at (978) 281-9204.

SUPPLEMENTARY INFORMATION: Regulations governing the tilefish

fishery are found at 50 CFR part 648. The regulations require annual specification of a TAL for federally permitted tilefish vessels harvesting tilefish from within the Golden Tilefish Management Unit. The Golden Tilefish Management Unit is defined as an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36' N. lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone, and northward to the U.S.-Canada border. After 5 percent of the TAL is deducted to reflect landings by vessels issued an open-access Incidental permit category, and after up to 3 percent of the TAL is set aside for research purposes, should research TAL be set aside, the remaining TAL is distributed among three tilefish limited access permit categories: Full-time tier 1 category (66 percent), Full-time tier 2 category (15 percent), and the Part-time category (19 percent).

The TAL for tilefish for the 2008 fishing year was set at 1,995 million lb (905,172 kg) and then adjusted downward by 5 percent to 1,895,250 lb (859,671 kg) to account for incidental catch. There was no research set-aside for the 2008 fishing year. Thus, the Part-time permit category quota for the 2008 fishing year, which is equal to 19 percent of the TAL, was specified at 360,098 lb (163,338 kg). Notification of the 2008 Part-time permit category quota for the 2008 fishing year was sent in a Permit Holder Letter to all tilefish limited access permit holders on October 18, 2007.

The Administrator, Northeast Region, NMFS (Regional Administrator)

monitors the commercial tilefish quota for each fishing year using dealer reports, vessel catch reports, and other available information to determine when the quota for each limited access permit category is projected to have been harvested. NMFS is required to publish notification in the **Federal Register** notifying commercial vessels and dealer permit holders that, effective upon a specific date, the tilefish TAL for the specific limited access category has been harvested and no commercial quota is available for harvesting tilefish by that category for the remainder of the fishing year, from within the Golden Tilefish Management Unit.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2008 tilefish TAL for the Part-time category has been harvested. Therefore, effective 0001 hr local time, April 25, 2008, further landings of tilefish harvested from within the Golden Tilefish Management Unit by tilefish vessels holding Part-time category Federal fisheries permits are prohibited through October 31, 2008. The 2009 fishing year for commercial tilefish harvest will open on November 1, 2008. Federally permitted dealers are also advised that, effective April 25, 2008, they may not purchase tilefish from Part-time category federally permitted tilefish vessels who land tilefish harvested from within the Golden Tilefish Management Unit for the remainder of the 2008 fishing year (through October 31, 2008).

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. If implementation of this closure were delayed to solicit prior public comment, the quota for this category would be exceeded, given the rate of harvest of tilefish for vessels in this category. This would conflict with the agency's legal obligation under section 304(e) of the Magnuson-Stevens Act to prevent overfishing and to rebuild this fishery as soon as possible. Overage of the Part-time category quota that occurs in a given fishing year is subtracted from the quota for this category in the following fishing year. Thus, allowing an overage would have a negative economic impact on owners of vessels permitted in the Part-time category, who did not contribute to the overage this year, and who would fish during the next fishing year. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: April 22, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 08-1184 Filed 4-22-08; 1:51 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 73, No. 81

Friday, April 25, 2008

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

RIN 3133-AD44

Revisions for the Freedom of Information Act and Privacy Act Regulations

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing changes to its Freedom of Information Act (FOIA) and the Privacy Act regulations. The changes to FOIA provisions largely relate to recent amendments to the Freedom of Information Act addressing several procedural issues concerning fee practices, time limits for complying with requests, and new reporting requirements. The changes to Privacy Act provisions reflect the agency's efforts to clarify the procedures whereby individuals may obtain notification of whether an NCUA system of records contains information about the individual and access or amend a record.

DATES: Comments must be received on or before June 24, 2008.

ADDRESSES: You may submit comments by any of the following methods (please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *NCUA Web Site:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- *E-mail:* Address to regcomments@ncua.gov. Include "[Your name] Comments on Proposed Rule (FOIA/Privacy Act)" in the e-mail subject line.

• *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit

Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT:

Linda K. Dent, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION: NCUA's policy is to review regulations periodically to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis so that a third of its regulations are reviewed each year. The changes in this proposed rule are the result of NCUA review under IRPS 87-2.

A. Background

Freedom of Information

The Openness Promotes Effectiveness in our National Government Act of 2007, (OPEN Government Act) was signed into law by the President on December 31, 2007. The OPEN Government Act of 2007 consists of several amendments to the Freedom of Information Act (FOIA) affecting FOIA administration. While many of the provisions are not effective until December 31, 2008, NCUA is using the opportunity of its periodic regulatory review to update its FOIA regulations to comply with the requirements of the Act. NCUA's FOIA provisions address: Types of agency records; their availability or exemption from release; procedures for requesting access to records; processing times; fees; appeals; and handling of FOIA requests involving confidential commercial information. NCUA publishes its FOIA rules at part 792, subpart A of the agency's regulations.

Privacy

The Privacy Act of 1974 places requirements on federal agencies regarding the collection, maintenance, distribution, and security of an individual's personal information that is contained in an agency's systems of records. Pursuant to the Privacy Act, NCUA publishes a Notice of Systems of Records that informs the public of each

system of records the agency maintains, describes the nature and routine use of records in the system, identifies the system manager responsible for the system including contact information, and provides procedures whereby individuals may determine whether a system contains a record pertaining to them, gain access to records pertaining to them, or seek to amend or correct information in a record about them. The Notice of Systems of Records is published in the **Federal Register** and also is available on NCUA's Web site at <http://www.ncua.gov>.

The Privacy Act also requires each federal agency to publish rules describing its Privacy Act procedures and any system of records it exempts from provisions of the Act, including the reasons for the exemption. NCUA publishes its rules at part 792, subpart E; the rules provide individuals with detailed information regarding the exercise of their rights under the Privacy Act, identifies and describes the NCUA systems of records that are exempt from provisions of the Privacy Act, and provides standards for NCUA employees regarding collecting, using, maintaining, or disseminating records.

B. Proposed Changes

Freedom of Information

The Board proposes several housekeeping changes to correct address information, cross-references, grammar and punctuation. More substantively, the Board proposes several changes designed to facilitate submissions of proper FOIA requests including where requests may be sent, how requests must be addressed, and what information must be included in a request. The Board also proposes to clarify the conditions and time periods for processing requests and to describe the circumstances that may halt or extend processing times.

Under the FOIA, federal agencies have a prescribed period of time to process requests for information. The Open Government Act clarifies the processing period begins on the date the request is first received by the appropriate information center, but in any event, no later than ten days after first received by any agency designated FOIA information center. The Open Government Act also clarifies the circumstances for tolling the processing time versus extending the processing

time in unusual circumstances. The proposed changes incorporate this information into the regulation by clearly identifying NCUA's Information Centers and their addresses, and describing required content for the request letter. The changes are intended to minimize delays caused by requests being sent to an inappropriate office or lacking necessary and sufficient information. The proposed rule clarifies that for the purpose of computing the time from which the agency must respond to the request, a FOIA request will not be considered received until these requirements are met.

In § 792.11, paragraph (a)(6), the Board proposes to clarify two circumstances where records, typically exempt from disclosure, may be released. Generally, an individual's records are exempt from disclosure to other persons if the release would constitute an invasion of personal privacy. However, where the requester provides the subject person's written consent to the release of his or her records or proof of the subject person's death, disclosure is permissible.

Privacy

The Board proposes several housekeeping changes to the regulation to correct cross-references, grammar and punctuation. The Board also proposes a change in nomenclature and additional definitions to improve understanding of rights and requirements under the regulation. For example, the term "system manager" would replace "NCUA official" to more specifically identify the person responsible for a system of records and to use nomenclature consistent with that used in the Notice of Systems of Records published in the **Federal Register**. Definitions would be added for "Notice of Systems of Records," "system manager" and "working day."

The Board proposes to revise language in various sections of the regulation to clarify that requests must be submitted in writing to the appropriate system manager generally, or to other staff as specified, and identifying the nature of the request on both the envelope and letter. The Board proposes to remove language which permitted individuals to submit requests via telephone because of the difficulties telephone requests present in meeting the regulation's identification requirements. These changes are intended to facilitate recordkeeping and the timely processing of Privacy Act requests. Revisions are proposed also for sections concerning medical records and the basis for exemptions of certain of NCUA's

systems of records from provisions of the Privacy Act.

Request for Comment

The NCUA Board is interested in receiving comments on the proposed amendments to subparts A and E of part 792.

Regulatory Procedures

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the proposed rule and determined it does not contain a collection of information subject to the PRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under \$10 million in assets). This proposed rule does not impose any requirements on federally-insured credit unions. Therefore, it will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Credit unions, Freedom of Information, Information, Privacy, Records, System of records.

By the National Credit Union Administration Board on April 17, 2008.

Mary Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 792 as set forth below:

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

1. The authority citation for part 792 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p.235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p.333.

2. In § 792.3, revise the fourth sentence of the introductory text and the last sentence of paragraph (c) to read as follows:

§ 792.3 How will I know which records to request?

* * * You may obtain copies of indices by making a request to the NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-2387, Attn: FOIA Officer or as indicated on the NCUA Web site at <http://www.ncua.gov>. * * *

(c) * * * The Popular FOIA Index is available on the NCUA web site.

3. In § 792.4, revise paragraph (a) to read as follows:

§ 792.4 How can I obtain these records?

* * * * *

(a) You may obtain copies of the records referenced in § 792.2 by obtaining the index referred to in § 792.3 and following the ordering instructions it contains, or by making a written request to NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428, Attn: FOIA Officer or as indicated on the NCUA Web site.

* * * * *

4. In § 792.7, revise the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 792.7 Where do I send my request?

(a) You must send your written request to one of NCUA's Information Centers. * * *

(b) If you are seeking any NCUA record, other than those maintained by the Office of Inspector General, you should send your request to NCUA, Office of the General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428, Attn: FOIA Officer or as indicated on the NCUA Web site at <http://www.ncua.gov>.

* * * * *

5. In § 792.8, revise the introductory text and revise paragraph (a) to read as follows:

§ 792.8 What must I include in my request?

Until an Information Center receives your FOIA request, it is not obligated to search for responsive records, meet time deadlines, or release any records. A request will not be considered received if it does not include all of the items in paragraphs (a) through (c) of this section.

(a) Your request must be in writing and include the words "FOIA REQUEST" on both the envelope and request letter. The request letter must also include your name, address and a telephone number where you can be reached during normal business hours. If you would like us to respond to your FOIA request by electronic mail (e-mail), you should include your e-mail address.

* * * * *

6. In § 792.10, revise the second sentence of paragraph (a), the last sentence of paragraph (b) and the second sentence of paragraph (e) to read as follows:

§ 792.10 What will NCUA do with my request?

(a) * * * The date of receipt for any request, including one that is addressed incorrectly or is forwarded to NCUA by another agency, is the earlier of the date the appropriate Information Center actually receives the request or 10 working days after either of NCUA's Information Centers receives the request.

(b) * * * All other requests will be handled under normal processing procedures in the order they were received.

* * * * *

(e) * * * If we notify you of a denial of your request, we will include the reason for the denial.

* * * * *

7. In § 792.11, revise paragraph (a)(6) by removing the first sentence and adding three sentences in its place to read as follows:

§ 792.11 What kind of records are exempt from public disclosure?

(a) * * *

(6) Personnel, medical, and similar files (including financial files) pertaining to another person, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy without the subject person's written consent or proof of death. Written consent consists of a written statement by the subject person, authorizing the release of the information to you, and including either the subject person's notarized signature or a declaration made under penalty of perjury that the statement is true and correct. Proof of death consists of evidence that the subject of your request is deceased—such as a death certificate, a newspaper obituary, or some comparable proof of death. * * *

* * * * *

8. In § 792.15, revise paragraph (a) to read as follows:

§ 792.15 How long will it take to process my request?

* * * * *

(a)(1) Where the running of such time is suspended while:

(i) The Information Center awaits additional information from the requester. A suspension of time for this purpose may occur only once during the processing period; and

(ii) The Information Center clarifies with the requester issues regarding the payment of fees pursuant to § 792.26.

(2) The Information Center's receipt of the requester's response to the request for additional information or clarification ends the tolling period;

* * * * *

9. Revise § 792.17 to read as follows:

§ 792.17 What can I do if the time limit passes and I still have not received a response?

If NCUA does not comply with the time limits under § 792.15, or as extended under § 792.16, you do not have to pay search fees; requesters qualifying for free search fees will not have to pay duplication fees. You also can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. If NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the records. In determining whether exceptional circumstances exist, the court may consider your refusal to modify the scope of your request or arrange an

alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

10. In § 792.18, revise the first sentence of paragraph (b) to read as follows:

§ 792.18 What if my request is urgent and I cannot wait for the records?

* * * * *

(b) In response to a request for expedited processing, the Information Center will notify you of the determination within ten working days of receipt of the request. * * *

* * * * *

11. In § 792.19, revise paragraph (c)(1) to read as follows:

§ 792.19 How does NCUA calculate the fees for processing my request?

* * * * *

(c) * * *

(1) The per-page fee for paper copy reproduction of a document is \$.10;

* * * * *

12. In § 792.27, revise paragraphs (a)(1) through (a)(4) to read as follows:

§ 792.27 Can fees be reduced or waived?

* * * * *

(a) * * *

(1) Whether the subject of the requested records concerns identifiable operations or activities of the government, with a connection that is direct and clear;

(2) Whether the disclosable portions of the requested records are meaningfully informative about government operations and activities in order to be likely to contribute to an understanding of government operations or activities. Information already in the public domain, either in a duplicate or substantially identical form where nothing new would be added to the public's understanding, would not be meaningfully informative;

(3) Whether disclosure of the requested information will contribute to public understanding, meaning a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. Representatives of the news media are presumed to satisfy this consideration; and

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The level of public understanding before disclosure must be

enhanced by the disclosure to a significant extent.

* * * * *

13. In § 792.28, revise the first and third sentences of paragraph (a), and paragraph (c), to read as follows:

§ 792.28 What if I am not satisfied with the response I receive?

* * * * *

(a) Make a determination with respect to any appeal within 20 working days after the receipt of such appeal. * * * Where you do not address your appeal to the General Counsel, the time limitations stated above will be computed from the date of receipt of the appeal by the General Counsel.

* * * * *

(c) Address your appeal to NCUA, Office of General Counsel—FOIA APPEAL, 1775 Duke Street, Alexandria, VA 22314–3428. The words “FOIA APPEAL” should appear on the envelope and in the letter. Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

14. Amend subpart E by removing the term “NCUA official” wherever it appears and adding in its place the term “system manager.”

15. In § 792.53, add new paragraphs (g), (h) and (i) to read as follows:

§ 792.53 Definitions.

* * * * *

(g) “Notice of Systems of Records” means the annual notice published by NCUA in the **Federal Register** informing the public of the existence and character of the systems of records it maintains. The Notice of Systems of Records also is available on NCUA’s Web site at <http://www.ncua.gov>. (h) “System manager” means the NCUA official responsible for the maintenance, collection, use or distribution of information contained in a system of records. The system manager for each system of records is provided in the **Federal Register** publication of NCUA’s annual systems of records notice.

(i) “Working day” means Monday through Friday excluding legal public holidays.

16. Revise § 792.54 to read as follows:

§ 792.54 Procedures for requests pertaining to individual records in a system of records.

(a) Individuals desiring to know if a system of records contains records pertaining to them, and individuals requesting access to records in a system of records pertaining to them should

submit a written request to the appropriate system manager as identified in the Notice of Systems of Records. An individual who does not have access to the **Federal Register** and who is unable to determine the appropriate system manager to whom to submit a request may submit a request to the Privacy Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, in which case the request will be referred to the appropriate system manager. (b) Individuals requesting notification of, or access to, records should include the words “PRIVACY ACT REQUEST” on both the letter and the envelope, describe the record sought, the approximate dates covered by the record, and the systems of record in which records are thought to be included. Individuals must also meet the identification requirements in § 792.55.

17. In § 792.55, revise paragraphs (a)(1) through (a)(3) and (c) to read as follows:

§ 792.55 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) * * *

(1) Individuals appearing in person, if not personally known to the system manager responding to the request, must present a single document bearing a photograph (such as a passport or identification badge) or two items of identification which do not bear a photograph but do bear both a name and address (such as a driver’s license or voter registration card);

(2) Individuals submitting requests by mail may establish identity by a signature, address, date of birth, employee identification number if any, and one other identifier such as a photocopy of driver’s license or other document. If inadequate identifying information is provided, the system manager responding to the request may require further identifying information before any notification or responsive disclosure.

(3) Individuals appearing in person or submitting requests by mail, who cannot provide the required documentation or identification, may provide an unsworn declaration subscribed to as true under penalty of perjury.

* * * * *

(c) A record may be disclosed to a representative of an individual to whom the record pertains provided the system manager receives written authorization

from the individual who is the subject of the record.

* * * * *

18. In § 792.57, revise paragraph (b) to read as follows:

§ 792.57 Special procedures: Information furnished by other agencies; medical records.

* * * * *

(b) Medical records may be disclosed on request to the individuals to whom they pertain unless disclosing the medical information directly to the requesting individual could have an adverse effect on the individual. Where medical information is potentially adverse to the requesting individual, the system manager responsible may advise the requesting individual that the medical records will be transmitted only to a physician designated in writing by the individual.

19. In § 792.58, revise paragraph (a) and the second sentence of paragraph (b) to read as follows:

§ 792.58 Requests for correction or amendment to a record; administrative review of requests.

(a) An individual may request amendment of a record concerning that individual by submitting a written request, either in person or by mail, to the system manager identified in the Notice of Systems of Records. The words “PRIVACY ACT—REQUEST TO AMEND RECORD” should be written on the letter and the envelope. The request must describe the system of records containing the record sought to be amended, indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. An individual who does not have access to NCUA’s Notice of Systems of Records, and to whom the appropriate address is otherwise unavailable, may submit a request to the Privacy Act Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428, in which case the request will then be referred to the appropriate system manager. The date of receipt of the request will be determined as of the date of receipt by the system manager.

(b) * * * The appropriate system manager will promptly (under normal circumstances, not later than 30 working days after receipt of the request) advise the individual that the record will be amended or corrected, or inform the individual of rejection of the request to amend the record, the reason for the rejection, and the procedures established by § 792.59 for the

individual to request a review of that rejection.

20. In § 792.59, revise the second sentence of paragraph (a) and the first two sentences of paragraph (c) to read as follows:

§ 792.59 Appeal of initial determination.

(a) * * * Appeals must be addressed to the Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428 with the words “PRIVACY ACT—APPEAL” written on the letter and the envelope.* * *

* * * * *

(c) If an appeal under this section is denied in whole or in part, an individual may file a statement of disagreement concisely stating the reason(s) for disagreeing with the denial for amendment or correction, and clearly identifying each part of any record that is disputed. The statement must be sent within 30 working days of the date of receipt of the notice of General Counsel’s refusal to authorize amendment or correction, to the General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.* * *

* * * * *

21. In § 792.60, revise paragraph (j) read as follows:

§ 792.60 Disclosure of record to person other than the individual to whom it pertains.

* * * * *

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accountability Office;

* * * * *

22. In § 792.61, revise the first sentence of paragraph (a) to read as follows:

§ 792.61 Accounting for disclosures.

(a) Each system manager identified in the “Notice of Systems of Records” must establish a system of accounting for all disclosures of information or records under the Privacy Act made outside NCUA.* * *

* * * * *

23. In § 792.63, revise paragraphs (a), (b)(1), and (b)(4), to read as follows:

§ 792.63 Collection of information from individuals: information forms.

(a) The system manager for each system of records is responsible for reviewing all forms developed and used to collect information from or about individuals for incorporation into the system of records.

(b) * * *

(1) To ensure that no information concerning religion, political beliefs or

activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of any authorized law enforcement activity;

* * * * *

(4) To ensure that the form or accompanying statement clearly indicates to the individual the effects on him or her, if any, of refusing to provide some or all of the requested information; and

* * * * *

24. In § 792.66, revise paragraphs (a) and (b)(2), add four new sentences to the end of paragraph (b)(3), and add four new sentences to the end of paragraph (b)(4) to read as follows:

§ 792.66 Exemptions.

(a) NCUA maintains several systems of records that are exempted from some provisions of the Privacy Act. The system number and name, description of records contained in the system, exempted provisions and reasons for exemption are as follows:

(b) * * *

(2) System NCUA–8, entitled, “Investigative Reports Involving Any Crime or Suspicious Activity Against a Credit Union, NCUA,” consists of investigatory or enforcement records about individuals suspected of involvement in violations of laws or regulations, whether criminal or administrative. These records are maintained in an overall context of general investigative information concerning crimes against credit unions. To the extent that individually identifiable information is maintained for purposes of protecting the security of any investigations by appropriate law enforcement authorities and promoting the successful prosecution of all actual criminal activity, the records in this system are exempted, pursuant to section k(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), from sections (c)(3), (d), (e)(1), (e)(2), (e)(4)(G), (e)(4)(H), (f), and (g). The records in this system are also exempted pursuant to section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3), (d), (e)(1), (e)(2), (e)(4)(G), (e)(4)(H), (f), and (g). Where possible, information that would identify a confidential source will be extracted or summarized in a manner that protects the source and the summary or extract will be provided to the requesting individual.

(3) * * * NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, and NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA will advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, if review of the record reveals that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under federal law, the individuals will be advised of the existence of the information and will be provided the information, except to the extent disclosure would identify a confidential source. Where possible, information which would identify a confidential source will be extracted or summarized in a manner which protects the source and the summary or extract will be provided to the requesting individual.

(4) * * * NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, and NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA will advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, if review of the record reveals that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under federal law, the individuals will be advised of the existence of the information and will be provided the information, except to the extent disclosure would identify a confidential source. Where possible, information that would identify a confidential source will be extracted or summarized in a manner which protects the source and the summary or extract will be provided to the requesting individual.

* * * * *

25. In § 792.69, revise paragraph (a) to read as follows:

§ 792.69 Training and employee standards of conduct with regard to privacy.

(a) The Director of the Office of Human Resources, with advice from the Senior Privacy Act Officer, is

responsible for training NCUA employees in the obligations imposed by the Privacy Act and this subpart.

* * * * *

[FR Doc. E8-8948 Filed 4-24-08; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1300

[Docket No. DEA-285P]

RIN 1117-AB17

Classification of Three Steroids as Schedule III Anabolic Steroids Under the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to classify the following three steroids as “anabolic steroids” under the Controlled Substances Act (CSA): boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione. The Drug Enforcement Administration (DEA) believes that this action is necessary in order to prevent the abuse and trafficking of these steroids. If the regulations are amended, these steroids will be listed as schedule III controlled substances subject to the regulatory control provisions of the CSA.

DATES: Written comments must be postmarked, and electronic comments must be sent on or before June 24, 2008.

ADDRESSES: To ensure proper handling of comments, please reference “Docket No. DEA-285” on all written and electronic correspondence. Written comments via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 8701 Morrisette Drive, Springfield, VA 22152. Comments may be sent directly to DEA electronically by sending an electronic message to dea.diversion.policy@usdoj.gov. Comments may also be sent electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the

<http://www.regulations.gov> Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats. DEA will not accept any file format other than those specifically listed here.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov> and in the Drug Enforcement Administration’s public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration’s public docket file. If you wish to inspect the agency’s public docket file in person, by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307-7183.

SUPPLEMENTARY INFORMATION:

I. Background Information

On November 29, 1990, the President signed into law the Anabolic Steroids Control Act of 1990 (Title XIX of Pub. L. 101-647), which became effective February 27, 1991. This law established and regulated anabolic steroids as a class of drugs under schedule III of the Controlled Substances Act (CSA). As a result, a new anabolic steroid is not scheduled according to the procedures set out in 21 U.S.C. 811, but can be administratively classified as an anabolic steroid through the rulemaking process by adding the steroid to the regulatory definition of an anabolic steroid in 21 CFR 1300.01(b)(4).

On October 22, 2004, the President signed into law the Anabolic Steroid Control Act of 2004 (Pub. L. 108-358), which became effective on January 20, 2005. Section 2(a) of the Anabolic Steroid Control Act of 2004 amended 21 U.S.C. 802(41)(A) by replacing the existing definition of “anabolic steroid.” The Anabolic Steroid Control Act of 2004 classifies a drug or hormonal substance as an anabolic steroid if the following four criteria are met: (A) The substance is chemically related to testosterone; (B) the substance is pharmacologically related to testosterone; (C) the substance is not an estrogen, progestin, or a corticosteroid; and (D) the substance is not dehydroepiandrosterone (DHEA). Any substance that meets the criteria is considered an anabolic steroid and must be listed as a schedule III controlled substance. DEA believes that boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione meet this definition of anabolic steroid and is proposing that they be added to the list of anabolic steroids in 21 CFR 1300.01(b)(4).

Anabolic steroids are a class of drugs with a basic steroid ring structure that produces anabolic and androgenic effects. The prototypical anabolic steroid is testosterone. Anabolic effects include promoting the growth of muscle. The androgenic effects consist of promoting the development of male secondary sexual characteristics such as facial hair, deepening of the voice, and thickening of the skin.

In the United States, only a small number of anabolic steroids are approved for either human or veterinary use. Approved medical uses for anabolic steroids include treatment of androgen deficiency in hypogonadal males, adjunctive therapy to offset protein catabolism associated with prolonged administration of corticosteroids, treatment of delayed puberty in boys, treatment of metastatic breast cancer in

women, and treatment of anemia associated with specific diseases (*e.g.*, anemia of chronic renal failure, Fanconi's anemia, and acquired aplastic anemia). However, with the exception of the treatment of male hypogonadism, anabolic steroids are not the first-line treatment due to the availability of other preferred treatment options. DEA is not aware of any legitimate medical use or New Drug Applications (NDA) for the three substances that DEA is proposing to classify by this NPRM as anabolic steroids under the definition set forth under 21 U.S.C. 802(41)(A). Moreover, DEA has not been able to identify any chemical manufacturers currently using these substances as intermediates in their manufacturing process(es).

Adverse effects are associated with the use or abuse of anabolic steroids. These effects depend on several factors (*e.g.*, age, sex, anabolic steroid used, the amount used, and the duration of use). In early adolescents, the use of testosterone and other anabolic steroids that have estrogenic effects can cause premature closure of the growth plates in long bones resulting in a permanently stunted growth. In adolescent boys, anabolic steroid use can cause precocious sexual development. In both girls and women, anabolic steroid use induces permanent physical changes such as deepening of the voice, increased facial and body hair growth, and the lengthening of the clitoris. In men, anabolic steroid use can cause shrinkage of the testicles, decreased sperm count, and sterility. Gynecomastia (*i.e.*, enlargement of the male breast tissue) can develop with the use of those anabolic steroids with estrogenic actions. In both men and women, anabolic steroid use can damage the liver and can cause high cholesterol levels, which may increase the risk of strokes and heart attacks. Furthermore, anabolic steroid use is purported to induce psychological effects such as aggression, increased feelings of hostility, and psychological dependence and addiction. Upon abrupt termination of long-term anabolic steroid use, a withdrawal syndrome may appear including severe depression.

II. Evaluation of Statutory Factors for Classification as an Anabolic Steroid

DEA is proposing by this NPRM to classify boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione as anabolic steroids under the definition set forth under 21 U.S.C. 802(41)(A). As noted previously, a drug or hormonal substance is classified as an anabolic steroid by meeting the following four definitional requirements: (A) The

substance is chemically related to testosterone; (B) the substance is pharmacologically related to testosterone; (C) the substance is not an estrogen, progestin, or a corticosteroid; and (D) the substance is not DHEA.

A. Chemically Related to Testosterone

To classify a substance as an anabolic steroid, a substance must be chemically related to testosterone. A Structure Activity Relationship (SAR) evaluation for each of the substances compared the chemical structure of the steroid to that of testosterone, as substances with a structure similar to that of testosterone are predicted to possess comparable pharmacological and biological activity.

Boldione is also known by the following chemical name: androsta-1,4-diene-3,17-dione. DEA has determined that the chemical structure of boldione is chemically related to that of testosterone. The chemical structure of boldione differs from testosterone by only the following two chemical groups: A ketone group at carbon 17 and a double bond between the first and second carbon. The human body would be expected to metabolize the ketone group at carbon 17 into a hydroxyl group that is present on testosterone. Furthermore, the scientific literature reports that the additional double bond at carbon 1 in boldione does not significantly decrease the anabolic activity of the substance (Vida, 1969). Boldione is an anabolic steroid precursor, being metabolized by the body into boldenone (Galletti and Gardi, 1971), which is a schedule III anabolic steroid (21 U.S.C. 801(41)(A)(vi)).

Desoxymethyltestosterone (DMT) is also known by the following names: 17 α -methyl-5 α -androst-2-en-17 β -ol; and madol. DEA has determined that the chemical structure of desoxymethyltestosterone is chemically related to testosterone. The chemical structure of desoxymethyltestosterone differs from testosterone by the following four chemical features: The lack of a ketone group at the third carbon, a double bond between the second and third carbon, the lack of a double bond between the fourth and fifth carbon, and a methyl group at carbon 17. Each of these four chemical features is known through the scientific literature not to eliminate the anabolic and androgenic activity of the substance (Brueggemeir *et al.*, 2002; Vida, 1969).

19-Nor-4,9(10)-androstadienedione is also known by the following chemical names: 19-norandrosta 4,9(10)-diene-3,17-dione; and estra-4,9(10)-diene-3,17-dione. DEA has determined that the chemical structure of 19-nor-4,9(10)-androstadienedione is chemically

related to testosterone. The chemical structure of 19-nor-4,9(10)-androstadienedione differs from testosterone by the following three chemical groups: A ketone group at carbon 17, the absence of a methyl group at carbon 19, and a double-bond between the ninth and tenth carbon. The human body metabolizes the ketone group at carbon 17 into a hydroxyl group that is present on testosterone. Furthermore, the scientific literature reports that both the absence of the methyl group at carbon 19 and the additional double bond in 19-nor-4,9(10)-androstadienedione increase the anabolic activity of the substance (Vida, 1969).

B. Pharmacologically Related to Testosterone

A substance must also be pharmacologically related to testosterone (*i.e.*, produce similar biological effects) to be classified as a schedule III anabolic steroid. The pharmacology of a steroid, as related to testosterone, can be established by performing one or more of the following androgenic and anabolic activity assays: ventral prostate assay, seminal vesicle assay, levator ani assay, testicular atrophy assay, gonadotropin suppression assay, and androgen receptor binding and efficacy assays. These assays are described below.

Ventral Prostate Assay, Seminal Vesicle Assay, and Levator Ani Assay:

The classic scientific procedure for examining the effects of a steroid as compared to testosterone is to perform the ventral prostate assay, seminal vesicles assay, and levator ani assay. Certain male accessory organs (*i.e.*, the ventral prostate, seminal vesicles, and levator ani muscle) specifically need testosterone to grow and remain healthy. Upon the removal of the testes (*i.e.*, castration), the primary endogenous source of testosterone is eliminated causing the atrophy of the ventral prostate, seminal vesicles, and levator ani muscle (Eisenberg *et al.*, 1949; Nelson *et al.*, 1940; Scow, 1952; Wainman and Shipoundoff, 1941). Numerous scientific studies have demonstrated the ability of exogenous testosterone administered to rats following castration to maintain the normal weight and size of all three testosterone sensitive organs (Biskind and Meyer, 1941; Dorfman and Dorfman, 1963; Kincl and Dorfman, 1964; Nelson *et al.*, 1940; Scow, 1952; Wainman and Shipoundoff, 1941). Thus, a steroid with testosterone-like activity will also prevent the atrophy of these three testosterone-dependent organs in castrated rats.

Testicular Atrophy Assay:

Administering testosterone to non-castrated rats causes a decrease in serum levels of gonadotropins (*i.e.*, luteinizing hormone [LH] and follicle stimulating hormone [FSH]) from normal levels. Gonadotropins are pituitary hormones that affect the size and function of the testes. The suppression of these gonadotropins by excess testosterone results in a significant decrease in the size and weight of the testes (Boris *et al.*, 1970; McEuen *et al.*, 1937; Moore and Price, 1938). Accordingly, a steroid with testosterone-like activity will also significantly diminish the size and weight of the testes.

Gonadotropin Suppression Assay:

The castration of rats causes a substantial increase in the serum levels of gonadotropins (*i.e.*, LH and FSH) above normal levels due to the removal of the principal source of endogenous testosterone (Gay and Bogdanove, 1969; Swerdloff *et al.*, 1972, 1973; Swerdloff and Walsh, 1973). The administration of testosterone to castrated animals suppresses the increase in the serum levels of gonadotropins (Gay and Bogdanove, 1969; Swerdloff *et al.*, 1972; Swerdloff and Walsh, 1973; Verjans *et al.*, 1974). The administration of anabolic steroids with testosterone-like activity will also prevent this increase in serum levels of LH and FSH.

Androgen Receptor Binding and Efficacy Assay: Androgen receptor binding and efficacy assays are also used to demonstrate that the activity of a steroid is similar to that of testosterone. Testosterone produces its anabolic effects subsequent to binding to and activating the androgen receptor. Different cell-based assays can compare candidate steroids to testosterone for their ability to bind to and activate androgen receptors.

There are several different types of assays used to establish androgen receptor binding and efficacy. In one assay, C3H10T1/2 stem cells express androgen receptors and are used to assess steroids for their ability to bind and activate the androgen receptor (Jasuja *et al.*, 2005a,b; Singh *et al.*, 2003). In these stem cells, the translocation of the androgen receptor to the nucleus of the cell in the presence of the ligand (*e.g.*, testosterone or its active metabolite dihydroxytestosterone) confirms that the ligand bound to the androgen receptor and activated the downstream signaling cascade. When activated, the C3H10T1/2 stem cells differentiate into skeletal muscle cells as demonstrated by the increase in the expression of muscle specific proteins (*i.e.*, myogenic determination transcription factor

[MyoD] and myosin heavy chain [MHC]). Another assay uses human breast cancer cells genetically altered to contain a specific reporter gene (*e.g.*, luciferase gene) regulated by androgen receptor activation (Hartig *et al.*, 2002; Wilson *et al.*, 2002). The expression of a bioluminescent protein (*e.g.*, luciferase) signals both androgen receptor binding and activation.

Results of the Androgenic and Anabolic Activity Assays

In January 2006, DEA reviewed the published scientific literature for pharmacological data on the anabolic and androgenic activity of boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione using the assays described above. As discussed further below, there was sufficient information on the pharmacology of desoxymethyltestosterone in the reviewed scientific literature to determine that desoxymethyltestosterone is pharmacologically related to testosterone (*i.e.*, produces biological effects similar to those of testosterone). However, the published literature contained insufficient pharmacological data to determine whether boldione and 19-nor-4,9(10)-androstadienedione were pharmacologically related to testosterone. Consequently, as discussed further below, DEA sponsored pharmacological studies involving several different androgenic and anabolic activity assays to generate the data necessary to make this determination.

Androgenic and anabolic activity assay results indicate that boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione have similar pharmacological activity as testosterone.

Boldione

DEA sponsored a study¹ by the Veteran's Administration Puget Sound Health Care System to determine the anabolic and androgenic effects of boldione in intact and castrated rats (Matsumoto and Marck, 2006). The results of these studies were compared to the results of a study by the same laboratory using a similar protocol to characterize the androgenic and anabolic effects of testosterone (Marck *et al.*, 2003). Boldione administered to castrated male rats by silastic capsules implanted under the skin prevented atrophy of the ventral prostate, seminal vesicle, and levator ani, and the rise in serum gonadotropin (LH and FSH)

associated with castration. Boldione administration also produced testicular atrophy in intact rats. Another DEA sponsored study² at a laboratory at Boston University examined the ability of boldione to bind to the androgen receptor and to cause the differentiation of C3H10T1/2 stem cells into muscle cells (Bhasin, 2005). All of these effects caused by boldione in C3H10T1/2 stem cells were comparable to those of testosterone as established in experiments using the same or similar methodology (Singh *et al.*, 2003). Collectively, the evidence indicates that the pharmacology of boldione is similar to testosterone.

Desoxymethyltestosterone

Desoxymethyltestosterone was administered subcutaneously, orally, or intramuscularly to castrated rats (Dorfman and Kincl, 1963; Kincl and Dorfman, 1964; Nutting *et al.*, 1966). By all three routes of administration, desoxymethyltestosterone prevented the atrophy of ventral prostate, seminal vesicle, and levator ani. Desoxymethyltestosterone also induced the expression of the bioluminescent protein luciferase in CAMA-1 breast cancer cells signaling androgen receptor binding and activation (Ayotte *et al.*, 2006). Collectively, the evidence indicates that the pharmacology of desoxymethyltestosterone is similar to testosterone.

19-Nor-4,9(10)-Androstadienedione

DEA sponsored a study³ by the Veteran's Administration Puget Sound Health Care System to determine the anabolic and androgenic effects of 19-nor-4,9(10)-androstadienedione in intact and castrated rats (Matsumoto and Marck, 2006). The results of these studies were compared to the results of a study by the same laboratory using a similar protocol to characterize the androgenic and anabolic effects of testosterone (Marck *et al.*, 2003). 19-nor-4,9(10)-androstadienedione administered to castrated male rats by silastic capsules implanted under the skin prevented the atrophy of the ventral prostate, seminal vesicle, levator ani, and the rise in serum gonadotropins (LH and FSH) associated castration. Another DEA sponsored study at a laboratory at Boston University⁴

² The study by Boston University may be found at www.regulations.gov in the electronic docket associated with this rulemaking.

³ The study by the Veteran's Administration Puget Sound Health Care System may be found at www.regulations.gov in the electronic docket associated with this rulemaking.

⁴ The study by Boston University may be found at www.regulations.gov in the electronic docket associated with this rulemaking.

¹ The study by the Veteran's Administration Puget Sound Health Care System may be found at www.regulations.gov in the electronic docket associated with this rulemaking.

examined the ability of 19-nor-4,9(10)-androstadienedione to bind to the androgen receptor and to cause the differentiation of C3H10T1/2 stem cells into muscle cells (Bhasin, 2005). All of these effects caused by 19-nor-4,9(10)-androstadienedione in C3H10T1/2 stem cells were comparable to those of testosterone as established in experiments using the same or similar methodology (Singh *et al.*, 2003). Collectively, the evidence indicates that the pharmacology of 19-nor-4,9(10)-androstadienedione is similar to testosterone.

C. Not Estrogens, Progestins, and Corticosteroids

DEA has determined that boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione are unrelated to estrogens, progestins, and corticosteroids. DEA evaluated the SAR for each of the substances. The chemical structure of each substance was compared to that of estrogens, progestins, and corticosteroids because the chemical structure can be related to its pharmacological and biological activity. DEA found that the three substances lacked the necessary chemical structures to impart significant estrogenic activity (*e.g.*, aromatic A ring) (Duax *et al.*, 1988; Jordan *et al.*, 1985; Williams and Stancel, 1996), progestational activity (*e.g.*, 17 β -alkyl group) (Williams and Stancel, 1996), or corticosteroidal activity (*e.g.*, 17 β -ketone group or 11 β -hydroxyl group) (Miller *et al.*, 2002).

D. Not Dehydroepiandrosterone

Dehydroepiandrosterone, also known as DHEA, is exempt from control as an anabolic steroid by definition (21 U.S.C. 802(41)(A)). Boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione are not dehydroepiandrosterone and are therefore not exempted from control on this basis.

III. Conclusion

Therefore, based on the above, DEA concludes that boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione meet the CSA definition of "anabolic steroid" because each substance is: (A) Chemically related to testosterone; (B) pharmacologically related to testosterone; (C) not an estrogen, progestin, or a corticosteroid; and (D) not DHEA (21 U.S.C. 802(41)). All anabolic steroids are classified as schedule III controlled substances (21 U.S.C. 812). Once a substance is determined to be an anabolic steroid, DEA has no discretion regarding the

scheduling of these substances. As discussed further below, all requirements pertaining to controlled substances in schedule III would pertain to these three substances.

IV. Impact of Proposed Rule

Effect of Classifying These Substances as Anabolic Steroids

If this rulemaking is finalized as proposed, DEA will classify boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione as schedule III anabolic steroids. If classified as schedule III anabolic steroids, any person who manufactures, distributes, dispenses, imports, or exports boldione, desoxymethyltestosterone, or 19-nor-4,9(10)-androstadienedione, or who engages in research or conducts instructional activities with respect to these three substances would be required to obtain a schedule III registration in accordance with the CSA and its implementing regulations. Manufacturers and importers of these three substances would be required to register with DEA and would be permitted to distribute these substances only to other DEA registrants. Only persons registered as dispensers would be allowed to dispense these three substances to end users. The CSA defines a practitioner as "a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research" (21 U.S.C. 802(21)). At present, there are no approved medical uses for these three substances. Until a manufacturer applies to the Food and Drug Administration and gains approval for products containing these substances, no person may dispense them in response to a prescription.

Manufacture, import, export, distribution, or sale of boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione, except by DEA registrants, would become a violation of the CSA that may result in imprisonment and fines (21 U.S.C. 841 and 960). Possession of these three steroids, unless legally obtained, would also become subject to criminal penalties (21 U.S.C. 844).

In addition, under the CSA, these three substances could be imported only for medical, scientific, or other legitimate uses (21 U.S.C. 952(b)) under

an import declaration filed with DEA (21 CFR 1312.18). Importation of these substances would be illegal unless the person importing these substances is registered with DEA as an importer or researcher and files the required declaration for each shipment. An individual who purchases any of these substances directly from foreign companies and has them shipped to the U.S. will be considered to be importing even if the steroids are intended for personal use. Illegal importation of these substances would be a violation of the CSA that may result in imprisonment and fines (21 U.S.C. 960).

Requirements for Handling Substances Defined as Anabolic Steroids

Upon consideration of public comments from this NPRM, DEA may issue a final rule classifying boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione as anabolic steroids. If classified as anabolic steroids, boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione would become subject to CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importation, and exportation of a schedule III controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, or engages in research or conducts instructional activities with a substance defined as an anabolic steroid, or who desires to engage in such activities, would be required to be registered to conduct such activities with schedule III controlled substances in accordance with 21 CFR part 1301.

Security. Substances defined as anabolic steroids would be subject to schedule III-V security requirements and would be required to be manufactured, distributed, and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76 and 1301.77.

Labeling and Packaging. All labels and labeling for commercial containers of substances defined as anabolic steroids would be required to comply with requirements of 21 CFR 302.03–1302.07.

Inventory. Every registrant required to keep records and who possesses any quantity of any substance defined as an anabolic steroid is required to keep an inventory of all stocks of the substances on hand pursuant to 21 CFR 1304.03, 1304.04 and 1304.11. Every registrant who desires registration in schedule III for any substance defined as an anabolic

steroid shall conduct an inventory of all stocks of the substances on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21 CFR 1304.03, 1304.04, 1304.05, 1304.21, 1304.22, 1304.23 and 1304.26.

Prescriptions. All prescriptions for these schedule III substances or for products containing these schedule III substances would be required to be issued pursuant to 21 CFR 1306.03–1306.06 and §§ 1306.21–1306.27. All prescriptions for these schedule III compounds or for products containing these schedule III substances, if authorized for refilling, would be limited to five refills within six months of the date of issuance of the prescription.

Importation and Exportation. All importation and exportation of any substance defined as an anabolic steroid would be required to be in compliance with 21 CFR part 1312.

Criminal Liability. Any activity with any substance defined as an anabolic steroid not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act is unlawful.

Disposal of Anabolic Steroids

If this regulation is finalized as proposed, persons who possess substances that become classified as anabolic steroids and who wish to dispose of them rather than becoming registered to handle them should contact their local DEA Diversion field office for assistance in disposing of these substances legally. DEA Diversion field office will provide the person with instructions regarding the disposal. A list of local DEA Diversion field offices may be found at <http://www.deadiversion.usdoj.gov>.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612). DEA is not able to determine whether this regulation will, if promulgated as a Final Rule, not have a significant economic impact on a substantial number of small entities. As of August 2007, DEA identified 22 dietary supplements promoted for building muscle and increasing strength that are purported to contain boldione, desoxymethyltestosterone, or 19-nor-4,9(10)-androstadienedione. Four dietary supplements purport to contain boldione; nine dietary supplements purport to contain

desoxymethyltestosterone; and nine dietary supplements purport to contain 19-nor-4,9(10)-androstadienedione. All 22 dietary supplements are marketed and sold on the Internet.

The manufacturers and distributors of the 22 identified dietary supplements purported to contain boldione, desoxymethyltestosterone, or 19-nor-4,9(10)-androstadienedione also sell a variety of other dietary supplements. DEA has identified a substantial number of Internet distributors that sell these dietary supplements. However, these distributors also sell a variety of other nutritional products. Without information on the percentage of revenues derived from these dietary supplements, however, DEA is not able to determine the economic impact of the removal of these dietary supplements alone on the business of the firms. DEA has not been able to identify any chemical manufacturers that are currently using these substances as intermediates in their manufacturing process(es). DEA seeks comment on whether this regulation, if promulgated as a Final Rule, will have a significant economic impact on a substantial number of small entities.

As of August 2007, DEA identified 20 chemical manufacturers and distributors that sell at least one of the three substances addressed in this NPRM. Most of the companies are located in China and sell a variety of steroids. DEA notes that, as the vast majority of entities handling these substances are Internet based, it is virtually impossible to accurately quantify the number of persons handling these substances at any given time. Further, DEA has no information regarding the percentage of revenue these substances constitute for each handler.

DEA has identified one company based in the U.S. that is a DEA registrant that manufactures and distributes at least one of these substances as reference products for testing laboratories. DEA notes, upon placement into schedule III, these substances may be used for analytical purposes. This company is registered with DEA and is already in compliance with the CSA and DEA implementing regulations regarding the handling of schedule III substances.

Executive Order 12866

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with Executive Order 12866 section 1(b). It has been determined that this rule is a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget.

As discussed above, the effect of this rule would be to remove products containing these substances from the over-the-counter marketplace. DEA has no basis for estimating the size of the market for these products. DEA notes, however, that virtually all of the substances are imported. According to U.S. International Trade Commission data, the import value of all anabolic steroids in 2006 was \$6 million. These three substances would be a subset of those imports. The value of anabolic steroid imports for the first six months of 2007 declined by 35 percent although the quantity imported increased. The total market for these products containing these substances, therefore, is probably quite small. Moreover, DEA believes that the importation of these three substances is for illegitimate purposes.

The benefit of controlling these substances is to remove from the marketplace substances that have dangerous side effects and no legitimate medical use in treatment in the United States. As discussed in detail above, these substances can produce serious health effects in adolescents and adults. If medical uses for these substances are developed and approved, the drugs would be available as schedule III controlled substances in response to a prescription issued by a medical professional for a legitimate medical purpose. Until that time, however, this action would bar the importation, exportation, and sale of these three substances except for legitimate research or industrial uses.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Paperwork Reduction Act

This rule proposes to regulate three anabolic steroids, which are neither approved for medical use in humans nor approved for administration to cattle or other non-humans. Under this proposal, only chemical manufacturers who may use these substances as chemical intermediates for the synthesis of other steroids would be required to register

with DEA under the CSA. However, DEA has not been able to identify any chemical manufacturers that are currently using these substances as intermediates in their manufacturing process(es). Therefore, DEA is specifically seeking input from the chemical industry on any manufacturing process(es) that maybe impacted by this rulemaking. Thus, DEA does not expect this proposal to impose any additional paperwork burden on the regulated industry.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate or by the private sector, of \$120,000,000 or more (adjusted for inflation) in any one year and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1300

Chemicals, Drug traffic control.

For the reasons set out above, 21 CFR part 1300 is proposed to be amended as follows:

PART 1300—DEFINITIONS

1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

2. Section 1300.01 is amended in paragraph (b)(4) by:

A. Redesignating paragraphs (b)(4)(xiii) through (b)(4)(lx) as (b)(4)(xiv) through (b)(4)(lxi),

B. Adding a new paragraph (b)(4)(xiii),

C. Redesignating new paragraphs (b)(4)(xvii) through (b)(4)(lxi) as (b)(4)(xviii) through (b)(4)(lxii),

D. Adding new paragraph (b)(4)(xvii),

E. Redesignating new paragraphs (b)(4)(xlvi) through (b)(4)(lxii) as (b)(4)(xlviii) through (b)(4)(lxiii), and

F. Adding new paragraph (b)(4)(xlvii) to read as follows:

§ 1300.01 Definitions relating to controlled substances.

- * * * * *
- (b) * * *
- (4) * * *
- (xiii) boldione (androsta-1,4-diene-3,17-dione)
- * * * * *
- (xvii) desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17-ol) (a.k.a., madol)
- * * * * *
- (xlvii) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione)
- * * * * *

Dated: April 11, 2008.

Michele M. Leonhart,
Deputy Administrator.

List of References

- Ayotte, C., Goudreault, D., Gauthier, J., Ayotte, P., Larochelle, C., and Poirier, D. (2006). Characterization of chemical and hormonal properties of new steroid related to doping of athletes. Presented at the Cologne Workshop on Dope Analysis, June 2006.
- Bhasin, S. (2005). [Pharmacological analysis of boldione and 19-nor-4,9(10)-androstadienedione for androgenic activity using C3H10T1/2 stem cells]. Unpublished report.
- Biskind, G.R. and Meyer, M.A. (1941). The comparative androgenic potency of testosterone, methyltestosterone and testosterone propionate administered in pellet form. *Endocrinology*, 28(2): 217–221.
- Boris, A., Stevenson, R.H., and Trmal, T. (1970). Comparative androgenic, myotrophic and antigonadotrophic properties of some anabolic steroids. *Steroids*, 15(1):61–71.
- Brueggemeier, R.W., Miller, D.D., and Dalton, J.T. (2002). *Estrogen, Progestins and Androgens*. In D.A. Williams and T.L. Lemke (Eds.) *Foye's Principle of Medicinal Chemistry* (5th ed.). Philadelphia, Lippincott Williams and Wilkins.
- Dorfman, R.I. and Dorfman, A.S. (1963). The assay of subcutaneously injected androgens in the castrated rat. *ACTA Endocrinologica*, 42: 245–253.
- Dorfman, R.I. and Kincl, F.A. (1963). Relative potency of various steroids in an anabolic-androgenic assay using the castrated rat. *Endocrinology*, 72: 259–266.
- Duax, W.L., Griffin, J.F., Weeks, C.M., and Wawrzak, Z. (1988). The mechanism of action of steroid antagonists: Insight from crystallographic studies. *Journal of Steroid Biochemistry and Molecular Biology*, 31: 481–492.
- Eisenberg E, Gordan GS and Elliott HW (1949). Testosterone and tissue respiration of the castrate male rat with possible test for myotrophic activity. *Endocrinology*, 45(2): 113–119.
- Galletti, F. and Gardi, R. (1971). Metabolism of 1-dehydroandrostanes in man. *Steroids*, 18(1): 39–50.
- Gay, V.L. and Bogdanove, E.M. (1969). *Plasma and pituitary LH and FSH in the castrated rat following short-term steroid treatment. Endocrinology*, 84: 1132–1142.
- Hartig, P.C., Bobseine, K.L., Britt, B.H., Cardon, M.C., Lambright, C.R., Wilson, V.S., and Gray, L.E. (2002). Development of two androgen receptor assays using adenoviral transduction of MMTV-Luc reporter and/or hAR for endocrine screening. *Toxicological Sciences*, 66: 82–90.
- Jasuja, R., Catlin, D.H., Miller, A., Chang, Y.-C., Herbst, K.L., Starcevic, B., Artaza, J.N., Singh, R., Datta, G., Sarkissian, A., Chandsawangbhuwana, C., Baker, M., and Bhasin, S. (2005a). Tetrahydrogestrinone is an androgenic steroid that stimulates androgen receptor-mediated, myogenic differentiation in C3H10T1/2 multipotent mesenchymal cells and promotes muscle accretion in orchidectomized male rats. *Endocrinology*, 146 (10): 4472–4478.
- Jasuja, R., Ramaraj, P., Mac, R.P., Singh, A.B., Storer, T.W., Artaza, J., Miller, A., Singh, R., Taylor, W.E., Lee, M.L., Davidson, T., Sinha-Hikim, I., Gonzalez-Cadavid, N.F., and Bhasin, S. (2005b). (s-4-Androstene-3,17-dione binds androgen receptor, promotes myogenesis *in vitro*, and increases serum testosterone levels, fat-free mass, and muscle strength in hypogonadal men. *Journal of Clinical Endocrinology and Metabolism*, 90(2): 855–863.
- Jordan, V.C., Mittal, S., Gosden, B., Koch, R., and Lieberman, M.E. (1985). Structure-activity relationships of estrogen. *Environmental Health Perspectives*, 61: 91–110.
- Kincl, F.A. and Dorfman, R.I. (1964). Anabolic-androgenic potency of various steroids in a castrated rat assay. *Steroids*, 3: 109–122.
- Marck, B.T., Wolden-Hanson, T., Tolliver, J.M., Matsumoto, A.M. (2003). Use of DEXA to assess the anabolic actions of androgens on relative lean body mass and bone mineral density in orchidectomized prepubertal rats. Unpublished manuscript, Veteran's Affairs Puget Sound Health Care System, Seattle, WA.
- Matsumoto, A.M. and Marck, B.T. (2006). DEA Agreement No. DEA-04-P0007 Final Report [Analysis of the androgenic and anabolic activities of 1,4-androstadien-3,17-dione and 19-nor-4,9(10)-androstadienedione in male Sprague Dawley rats]. Unpublished report.
- McEuen, C.S., Selye, H., and Collip, J.B. (1937). Effects of testosterone on somatic growth. *Proceedings of the Society for Experimental Biology and Medicine*, 36: 390–394.
- Miller, D.D., Brueggemeier, R.W., and Dalton, J.T. (2002). Adrenocorticoids. In D.A. Williams and T.L. Lemke (Eds.) *Foye's Principle of Medicinal Chemistry* (5th ed.). Philadelphia, Lippincott Williams and Wilkins.
- Moore, C.R. and Price, D. (1938). Some effects of testosterone and testosterone-propionate in the rat. *The Anatomical Record*, 71(1):59–78.
- Nelson, D., Greene, R.R. and Wells, J.A. (1940). Variations in the effectiveness of percutaneously applied androgens in the rat. *Endocrinology*, 26: 651–655.

Nutting, E.F., Klimstra, P.D., and Counsell, R.E. (1966). Anabolic-androgenic activity of A-ring modified androstane derivatives. Part I: A comparison of parenteral activity. *ACTA Endocrinologica*, 53: 627–634.

Scow, R.O. (1952). Effect of testosterone on muscle and other tissues and on carcass composition in hypophysectomized, thyroidectomized, and gonadectomized male rats. *Endocrinology*, 51: 42–51.

Singh, R., Artaza, J.N., Taylor, W.E., Gonzalez-Cadavid, N.F., and Bhasin, S. (2003). Androgens stimulate myogenic differentiation and inhibit adipogenesis in C3H 10T1/2 pluripotent cells through an androgen receptor-mediated pathway. *Endocrinology*, 144(11): 5081–5088.

Swerdlow, R.S., Grover, P.K., Jacobs, H.S., and Bain, J. (1973). Search for a substance which selectively inhibits FSH—Effects of steroids and prostaglandins on serum FSH and LH levels. *Steroids*, 21(5): 703–722.

Swerdlow, R.S. and Walsh, P.C. (1973). Testosterone and oestradiol suppression of LH and FSH in adult male rats: Duration of castration, duration of treatment and combined treatment. *ACTA Endocrinologica*, 73: 11–21.

Swerdlow, R.S., Walsh, P.C., and Odell, W.D. (1972). Control of LH and FSH secretion in the male: Evidence that aromatization of androgens to estradiol is not required for inhibition of gonadotropin secretion. *Steroids*, 20(1): 13–22.

Verjans, H.L., Eik-Nes, K.B., Aafjes, J.H., Vels, F.J.M., and van der Molen, H.J. (1974). Effects of testosterone propionate, 5alpha-dihydrotestosterone propionate and oestradiol benzoate on serum levels of LH and FSH in the castrated adult male rat. *ACTA Endocrinologica*, 77: 643–654.

Vida, J.A. (1969). *Androgens and Anabolic Agents: Chemistry and Pharmacology*. New York: Academic Press.

Wainman, P. and Shipounoff, G.C. (1941). The effects of castration and testosterone propionate on the striated perineal musculature in the rat. *Endocrinology*, 29(6): 975–978.

Williams, C.L. and Stancel, G.M. (1996). Estrogens and Progestins. In J.G. Hardman, L.E. Limbird, P.B. Molinoff, R.W. Ruddon, A. Goodman Gilman (Eds.) *Goodman and Gilman's The Pharmacological Basis of Therapeutics* (9th ed.). New York: McGraw-Hill, 1411–1440.

Wilson, V.S., Bobseine, K., Lambright, C.R., and Gray, L.E. (2002). A novel cell line, MDA-kb2, that stably expresses an androgen- and glucocorticoid-responsive reporter for the detection of hormone receptor agonists and antagonists. *Toxicological Sciences*, 66: 69–81.

[FR Doc. E8–8842 Filed 4–24–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104946–07]

RIN 1545–BG36

Hybrid Retirement Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–104946–07) that was published in the **Federal Register** on Friday, December 28, 2007 (72 FR 73680) providing guidance relating to sections 411(a)(13) and 411(b)(5) of the Internal Revenue Code concerning certain hybrid defined benefit plans.

FOR FURTHER INFORMATION CONTACT: Lauson C. Green or Linda S. F. Marshall at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 411 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–104946–07) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–104946–07), which was the subject of FR Doc. E7–25025, is corrected as follows:

1. On page 73683, column 3, in the preamble, first paragraph of the column, line 15, the language “reasonably expected to result in a larger” is corrected to read “reasonably expected to result in a smaller”.

2. On page 73685, column 1, third paragraph of the column, line 8, the language “‘capital’ rule of section 411(b)(5)(b)(i)(II)” is corrected to read “‘capital’ rule of section 411(b)(5)(B)(i)(II)”.

3. On page 73689, column 2, line 3 from the bottom of the fifth paragraph of the column, the language “section 411(d)(6) is available for the” is corrected to read “section 411(d)(6) relief is available for the”.

PART 1—[CORRECTED]

§ 1.411(a)(13)–1 [Corrected]

4. On page 73691, column 1, § 1.411(a)(13)–1(d)(3)(ii), line 18, the language “larger annual benefit at normal” is corrected to read “smaller annual benefit at normal”.

5. On page 73691, column 2, § 1.411(a)(13)–1(d)(3)(iii)(B), line 9, the language “reasonably expected to result in a larger” is corrected to read “reasonably expected to result in a smaller”.

§ 1.411(b)(5)–1 [Corrected]

6. On page 73693, column 3, § 1.411(b)(5)–1(c)(3)(ii)(A), line 17, the language “participant under the lump sum-based” is corrected to read “participant under the lump sum-based benefit”.

7. On page 73695, column 1, § 1.411(b)(5)–1(c)(5) *Example 1.* (ii), line 17, the language “permitted to elect (with spousal consent)” is corrected to read “permitted to elect (with spousal consent if applicable)”.

8. On page 73695, column 2, § 1.411(b)(5)–1(c)(5) *Example 2.* (iii), line 5, the language “consent) payment in the same generalized” is corrected to read “consent if applicable) payment in the same generalized”.

9. On page 73695, column 3, § 1.411(b)(5)–1(c)(5) *Example 2.* (v), line 12, the language “of 5.5 percent. Thereafter, Participant’s A’s” is corrected to read “of 5.5 percent. Thereafter, Participant A’s”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–9026 Filed 4–24–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[REG–112196–07]

RIN 1545–BH64

Gross Estate; Election to Value on Alternate Valuation Date

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to the availability of the election to use the alternate valuation method under section 2032 of

the Internal Revenue Code (Code). The proposed regulations will affect estates that file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and elect to use the alternate valuation method.

DATES: Written or electronic comments and requests for a public hearing must be received by July 24, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-112196-07), Internal Revenue Service, Room 5203, 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-112196-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-112196-07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa M. Melchiorre, at (202) 622-3090; concerning submissions of comments or to request a hearing, Kelly Banks, at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Estate Tax Regulations (26 CFR part 20) under section 2032 of the Code. Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States. Section 2031(a) provides that the value of the decedent's gross estate includes the value at the time of decedent's death of all property, real or personal, tangible or intangible, wherever situated. Section 2032(a) provides that the value of the gross estate instead may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows. Property distributed, sold, exchanged, or otherwise disposed of within 6 months after the decedent's death must be valued as of the date of distribution, sale, exchange, or other disposition. I.R.C. section 2032(a)(1). Property not distributed, sold, exchanged, or otherwise disposed of within 6 months after the decedent's death must be valued as of the date that is 6 months after the decedent's death. I.R.C. section 2032(a)(2). Any interest or estate which is affected by the mere lapse of time is included at its value as of the time of death (instead of the later date), with adjustment for any difference in its value as of the later date

that is not due to the mere lapse of time. I.R.C. section 2032(a)(3).

The predecessor to section 2032 is section 302(j) of the Revenue Act of 1926, as added by section 202(a) of the Revenue Act of 1935. Revenue Act of 1935, 74 Public Law 407, 49 Stat. 1014 (1935). Section 302(j) allowed executors to elect to use a date that was one year after the date of decedent's death to value estate property. Section 302(j) contained provisions for valuing the property on the date of its sale or disposition during the alternate valuation period and for not taking into account changes in value due to a mere lapse of time. Congress enacted section 302(j) in response to "the hardships which were experienced after 1929 when market values decreased very materially between the period from the date of death and the date of distribution to the beneficiaries." 79 Cong. Rec. 14632 (1935) (statement of Mr. Samuel B. Hill). See, also, H.R. Rep. No. 74-1681, at 9 (1935); S. Rep. No. 74-1240, part 1, at 9-10 (1935); and S. Rep. No. 74-1240, part 2, at 8-9 (1935). Section 302(j) was codified as section 811(j) in the Internal Revenue Code of 1939.

In 1941, the U.S. Supreme Court addressed whether rents, dividends, and interest received and accrued during the alternate valuation period are includible in the decedent's gross estate under section 811(j). *Maass v. Higgins*, 312 U.S. 443 (1941). In that case, the Court stated that the purpose of section 811(j) is "to mitigate the hardship consequent upon shrinkage in the value of estates during the year following death. Congress enacted it in the light of the fact that, due to such shrinkages, many estates were almost obliterated by the necessity of paying a tax on the value of the assets at the date of decedent's death." Id. at 446.

In 1954, section 811(j) was recodified as section 2032. Congress considered proposals to amend section 811(j) and, again, Congress stated that, "The option to value property [on the alternate valuation date] initially was provided during the Depression of the early 1930s because by the time estate taxes were paid, property values had dropped substantially, sometimes to such an extent that the proceeds of the sale would not pay the estate tax due." H. Rep. No. 83-1337 at 90 (1954). See, also, S. Rep. No. 83-1622, at 122-123 (1954).

In 1958, § 20.2032-1 of the Estate Tax Regulations was published. This regulation restates the rule in section 2032(a)(3) and provides an example that illustrates the rule that only changes in the value of the decedent's gross estate due to market conditions, and not

changes to the value due to a mere lapse of time, are to be considered in valuing the decedent's gross estate under the alternate valuation method. See example in § 20.2032-1(f)(1).

Two judicial decisions have interpreted the language of section 2032 and its legislative history differently in determining whether post-death events other than market conditions may be taken into account under the alternate valuation method. In *Flanders v. United States*, 347 F. Supp. 95 (N.D. Cal. 1972), the district court held that the reduction in value of property included in the decedent's estate as a result of a voluntary act by the trustee, instead of as a result of market conditions, could not be taken into consideration in valuing the property under the alternate valuation method. In that case, a few months after the death of the decedent, the trustee of the trust owning decedent's undivided one-half interest in real property entered into a Land Conservation Agreement pursuant to the California Land Conservation Act of 1965. In exchange for restricting the property to agricultural uses for a period of 10 years, the trustee was allowed to reduce the assessed value of the land for purposes of paying property taxes. The estate elected to use the alternate valuation method for estate tax purposes and reported the value of the decedent's interest in the land as \$25,000. This value represented one-half of the value of the ranch after the land use restriction was placed upon it, less a lack of marketability discount.

The district court stated that, "It seems clear that Congress intended that the character of the property be established for valuation purposes at the date of death. The option to select the alternate valuation date is merely to allow an estate to pay a lesser tax if unfavorable market conditions (as distinguished from voluntary acts changing the character of the property) result in a lessening of its fair market value." Id. at 98.

In *Kohler v. Commissioner*, T.C. Memo. 2006-152, the U.S. Tax Court held that valuation discounts attributable to restrictions imposed on closely-held corporate stock pursuant to a post-death reorganization of the Kohler Company should be taken into consideration in valuing stock on the alternate valuation date. In that case, approximately two months after the death of the decedent, the Kohler Company underwent a reorganization that qualified as a tax-free reorganization under section 368(a) and, thus, was not a sale or disposition for purposes of section 2032(a)(1). The estate opted to receive new Kohler

shares that were subject to transfer restrictions. The estate elected to use the alternate valuation method under section 2032(a)(2) and took into account discounts attributable to the transfer restrictions on the stock in determining the value for Federal estate tax purposes. In the Internal Revenue Bulletin No. 2008-9 on March 3, 2008, the IRS nonacquiesced to the Tax Court opinion in *Kohler (AOD 2008-1)*.

Explanation of Provisions

The proposed regulations will amend § 20.2032-1 by restructuring paragraph (f) of this section to clarify that the election to use the alternate valuation method under section 2032 is available to estates that experience a reduction in the value of the gross estate following the date of the decedent's death due to market conditions, but not due to other post-death events. The term *market conditions* is defined in the proposed regulations and examples are provided, which are not intended to be exclusive.

Proposed Effective Date

The fourth sentence of § 20.2032-1(f)(2)(i) is applicable to decedents dying after May 1, 1999, subject to transition rules for certain incapacitated individuals. The fifth sentence of § 20.2032-1(f)(2)(i) is applicable to decedents dying after November 30, 1983, subject to transition rules for certain incapacitated individuals. The first, second, and third sentences of § 20.2032-1(f)(2)(i), § 20.2032-1(f)(2)(ii), and all but the last sentence in § 20.2032-1(f)(2) are applicable to decedent's dying after August 16, 1954. When adopted as final regulations, the rules contained in § 20.2032-1(f)(1), § 20.2032-1(f)(3), and the last sentence of § 20.2032-1(f)(2), will be made applicable to estates of decedents dying on or after April 25, 2008.

Special Analyses

It has been determined that this proposed regulation 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

Comments and Requests for a 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 also 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 may 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 hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Theresa M. Melchiorre, Office of Associate Chief Counsel (Passthroughs and Special Industries).

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

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

Par. 2. Section 20.2032-1 is amended as follows:

1. Paragraph (f)(1) is redesignated as paragraph (f)(2)(i).

2. Paragraph (f)(2) is redesignated as paragraph (f)(2)(ii).

3. Paragraph (f) introductory text is redesignated as paragraph (f)(2) introductory text and the last sentence is revised.

4. New paragraphs (f)(1) and (f)(3) are added.

5. The heading for paragraph (h) is revised and four sentences are added at the end of the paragraph.

The additions and revisions read as follows.

§ 20.2032-1 Alternate valuation.

* * * * *

(f) *Post-death market conditions and other post-death events*—(1) *In general.*

The election to use the alternate valuation method under section 2032 permits the property included in the gross estate to be valued as of the alternate valuation date to the extent that the change in value during the alternate valuation period is the result of market conditions. The term *market conditions* is defined as events outside of the control of the decedent (or the decedent's executor or trustee) or other person whose property is being valued that affect the fair market value of the property being valued. Changes in value due to mere lapse of time or to other post-death events other than market conditions will be ignored in determining the value of decedent's gross estate under the alternate valuation method.

(2) *Mere lapse of time.* * * * The application of this paragraph (f)(2) is illustrated in paragraphs (f)(2)(i) and (f)(2)(ii) of this section:

* * * * *

(3) *Post-death events*—(i) *In general.* In order to eliminate changes in value due to post-death events other than market conditions, any interest or estate affected by post-death events other than market conditions is included in a decedent's gross estate under the alternate valuation method at its value as of the date of the decedent's death, with adjustment for any change in value that is due to market conditions. The term *post-death events* includes, but is not limited to, a reorganization of an entity (for example, corporation, partnership, or limited liability company) in which the estate holds an interest, a distribution of cash or other property to the estate from such entity, or one or more distributions by the estate of a fractional interest in such entity.

(ii) *Examples.* The following examples illustrate the application of this paragraph (f)(3). In each example, decedent's (D's) estate elects to value D's gross estate under the alternate valuation method, so that the valuation date of the property included in D's gross estate as of D's date of death is either the date the property is distributed, sold, exchanged, or disposed of under section 2032(a)(1) (the date of distribution (distribution date)) or the date that is 6 months after the date of the decedent's death under section 2032(a)(2) (the six month alternate valuation date (AVD)).

Example 1. At D's death, D owned common stock in Corporation, a closely-held subchapter C corporation. At that time, the common stock was not subject to transfer restrictions. D's stock was valued at \$50X at the date of death. Two months after D's death, D's estate participated in a tax-free

reorganization of Corporation that qualified under section 368(a) with respect to which no gain or loss was recognized for income tax purposes under section 354 or 355. Pursuant to the reorganization, D's estate opted to exchange its stock for stock subject to transfer restrictions. Although the value of the stock did not change during the alternate valuation period, discounts for lack of marketability and lack of control (totaling \$20X) were applied in determining the value of the stock held by D's estate on the AVD, and D's estate reported the value of the stock on the AVD as \$30X. Because the claimed reduction in value is not attributable to market conditions, the discounts may not be taken into account in determining the value of the stock on the AVD. Accordingly, the value on the AVD is \$50X.

Example 2. The facts are the same as in *Example 1* except that the value of the stock declined from \$50X to \$40X during the alternate valuation period because of changes in market conditions during that period. D's estate may report the value of the stock as \$40X on the AVD. As in *Example 1*, however, no discounts resulting from the reorganization are allowed in computing the value on the AVD.

Example 3. At D's death, D owned property valued at \$100X. Two months after D's death, the executor of D's estate and other family members formed four limited partnerships. The estate contributed the estate's property to the partnerships in exchange for a 25% interest in each partnership. Discounts for lack of marketability and lack of control (totaling \$25X) were applied in determining the value of the estate's partnership interests, and the estate reported \$75X as the total value of the estate's partnership interests on the AVD. Because the reduction in value is not attributable to market conditions, the discounts for lack of marketability and control may not be taken into account in determining the value of the partnership interests on the AVD. The result would be the same if the limited partnerships were formed prior to D's death, and the estate transferred property into the partnerships after D's death but prior to the AVD.

Example 4. At D's death, D owned 100% of the units of a limited liability company (LLC). The executor elected the alternative valuation method. During the 6 months following D's death and in accordance with D's will, the executor made 6 distributions, each to a different residuary legatee on a different date and each of a 10% interest in the LLC. Pursuant to section 2032(a)(1), each distribution is valued on the distribution date. On the AVD, the estate held 40% of the units in the LLC. Pursuant to section 2032(a)(2), the 40% is valued on the AVD. In valuing the 10% interests distributed and the 40% interest held on the AVD, discounts for lack of control and lack of marketability were applied. The reduction in value of the units is not attributable to market conditions. Accordingly, the discounts for lack of marketability and control may not be taken into account in determining the value of the units distributed or held by the estate. The value of each 10% distribution is determined by taking 10% of the value on the distribution date of the units (100%) owned

by the estate at D's death. The value of the units held by the estate on the AVD is determined by taking 40% of the value on the AVD of all of the units (100%) owned by the estate at D's death. If because of market conditions, the units had declined in value as of each distribution date or as of the AVD, D's estate would take such reduction in value into account.

Example 5. D died owning 100% of Blackacre. D's will directs that Blackacre be divided between two trusts, 70% to Trust A for the benefit of S, D's surviving spouse, and 30% to Trust B for the benefit of C, D's surviving child. The executor of D's estate distributed a 70% interest in Blackacre to Trust A three months after D's death, and distributed a 30% interest in Blackacre to Trust B four months after D's death. On the estate tax return, the executor elected to value the estate's property under the alternate valuation method under section 2032. There was no change in the value of Blackacre during the four-month period following D's death. The 70% interest in Blackacre is to be valued as of the distribution date to Trust A, and that value is determined by taking 70% of the value of all (100%) of Blackacre as of the distribution date. The 30% interest in Blackacre is to be valued as of the distribution date to Trust B, and that value is determined by taking 30% of the value of all (100%) of Blackacre as of the distribution date. If, however, because of market conditions such as a decline in the real estate market, Blackacre's value had declined by 10% between D's date of death and the distribution date of the 30% interest, the value of the 30% interest would be determined by ascertaining 30% of the value of all (100%) of Blackacre as of the distribution date, which would equal 30% of 90% of the date of death value of Blackacre.

* * * * *

(h) *Effective/applicability date.* * * *

The fourth sentence of paragraph (f)(2)(i) of this section is applicable to decedents dying after May 1, 1999, subject to transition rules for certain incapacitated individuals. The fifth sentence of paragraph (f)(2)(i) of this section is applicable to decedents dying after November 30, 1983, subject to transition rules for certain incapacitated individuals. The first, second, and third sentences of paragraph (f)(2)(i), paragraph (f)(2)(ii), and all but the last sentence in paragraph (f)(2) of this section are applicable to decedents dying after August 16, 1954. When adopted as final regulations, the rules contained in paragraphs (f)(1), (f)(3), and the last sentence of paragraph (f)(2) of this section, will be made applicable to estates of decedents dying on or after April 25, 2008.

* * * * *

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

[FR Doc. E8-9025 Filed 4-24-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG-2008-0220]

RIN 1625-AA08

Regattas and Marine Parades; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend special local regulations for annual regattas and marine parades in the Captain of the Port Detroit zone. This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This proposed rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after regattas or marine parades.

DATES: Comments and related materials must reach the Coast Guard on or before May 27, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-0220 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) *Hand delivery:* Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

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

FOR FURTHER INFORMATION CONTACT: LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568-9580.

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://>

www.regulations.gov and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0220), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted; your submission may not be considered. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," Enter the docket number for this rulemaking (USCG-2008-0220) in the Search box, and click "Go>>". You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

SUPPLEMENTARY INFORMATION:

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Coast Guard Sector Detroit at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This proposed rule will remove the specific entries from table 1 found in 33 CFR 100.901, Great Lakes annual marine events that apply to regattas and marine parades in the Captain of the Port Detroit zone and list each regatta or marine parade as a subpart. This proposed rule will also add several regattas and marine parades not previously listed in 33 CFR part 100 and remove several events that no longer occur annually or are not regattas or marine parades.

Discussion of Proposed Rule

This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This proposed rule will establish restrictions upon and control the movement of vessels through a specified area immediately prior to, during, and immediately after regattas or marine parades.

The Captain of the Port Detroit will cause notice of enforcement of the special local regulations established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Detroit will issue a Broadcast Notice to Mariners notifying the public when enforcement of the special local regulations is terminated.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office

of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of these special local regulations will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. These special local regulations will only be enforced immediately before and during the time the marine events are occurring. Furthermore, these special local regulations have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the special local regulations. The Coast Guard expects insignificant adverse impact to mariners from the activation of these special local regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in the areas designated as special local regulations in paragraphs (4) through (13) during the dates and times the special local regulations are being enforced.

These special local regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. The special local regulations in this proposed rule would be in effect for short periods of time, and only once per year. The special local regulations have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see

ADDRESSES) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568–9580. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we nevertheless discuss its effects elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these safety zones and fishing rights protection need not be incompatible. We have also determined that this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15

U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary “Environmental Analysis Check List” supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows: 33 U.S.C. 1233.

§ 100.901 [Amended]

2. Amend § 100.901 Table 1 as follows:

a. Under the heading “Group Detroit, MI” remove the entries: Bay City Fireworks Display, Detroit APBA Gold Cup Race, Buick Watersports Weekend, Cleveland National Air Show, International Bay City River Roar, International Freedom Festival Fireworks, International Freedom Festival Tug Across the River, Parade of

Lights, Port Clinton Offshore Grand Prix, Port Huron to Mackinac Island Race, Thunder on the River Hydroplane Race, Toledo 4th of July Fireworks, and Toledo Labor Day Fireworks;

b. Remove the heading "Group Detroit, MI".

§ 100.902 [Removed and Reserved]

3. Remove and reserve § 100.902.

4. Add § 100.911 to read as follows:

§ 100.911 Bay City Airshow, Bay City, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Saginaw River bound on the south by a line extending from a point of land on the western shore at position 43°32.2' N; 083°53.3' W, east to a point of land on the eastern shore located at position 43°32.2' N; 083°53.2' W, and bounded on the north by a line extending from a point of land on the western shore at position 43°33.4' N; 083°54.5' W, east to a point of land on the eastern shore located at position 43°33.4' N; 083°54.3' W. (NAD 83). This area is south of Middle Ground Island near Clements Municipal Airport.

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective date:* Two days during the second week in August. The exact dates and times for this event will be determined annually.

5. Add § 100.912 to read as follows:

§ 100.912 Detroit Belle Isle Grand Prix, Detroit, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Detroit River near Belle Isle, bounded by a line extending from a point of land on the southern shore of Belle Isle located at position 42°20'00" N; 082°59'45" W, to 50 yards offshore at position 42°19'57"; 082°59'43", and continuing at a distance of 50 yards around the western end of Belle Isle to the Belle Isle Bridge, maintaining a constant distance of 50 yards from the shoreline and terminating at position 42°20'28"; 082°59'43"; on the northern side of Belle Isle, adjacent to a point on land at position 42°20'24" N; 082°59'48" W (NAD 83). This area wraps around the downstream end of Belle Isle.

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The last weekend in August. The exact dates and times for this event will be determined annually.

6. Add § 100.913 to read as follows:

§ 100.913 ACORA Garwood Classic Offshore Race, Algonac, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of St. Clair River's North Channel, Algonac, Michigan, bounded by a north/south line beginning at a point of land adjacent to Allen Boats, Algonac, MI (position 42°37'05" N, 082°33'34" W) extending to a point of land on Harsens Island (position 42°36'49" N, 082°33'34" W) extending east along the shoreline of Harsens Island to north/south line beginning at position 42°37'16" N, 082°31'11" W (approx. 500 ft west of the Russell Island buoy) extending north to a point at position 42°37' 28" N, 082°31' 11" W (approx. 300 ft offshore from the Russell Boat Club), then west along the shoreline of Algonac, MI stopping at the point of origin. (NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The first weekend in August. The exact dates and times for this event will be determined annually.

7. Add § 100.914 to read as follows:

§ 100.914 Trenton Rotary Roar on the River, Trenton, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Detroit River, Trenton, Michigan, bounded by an east/west line beginning at a point of land at the northern end of Elizabeth Park in Trenton, MI, located at position 42°8.2' N; 083°10.6' W, extending east to a point near the center of the Trenton Channel located at position 42°8.2' N; 083°10.4' W, extending south along a north/south line to a point at the Grosse Ile Parkway Bridge located at position 42°7.7' N; 083°10.5' W, extending west along a line bordering the Grosse Ile Parkway Bridge to a point on land located at position 42°7.7' N; 083°10.7' W, and along the shoreline to the point of origin. (NAD 83). This area is in the Trenton Channel between Trenton and Grosse Isle, MI.

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The third week in July. The exact dates and times for this event will be determined annually.

8. Add § 100.915 to read as follows:

§ 100.915 St. Clair River Classic Offshore Race, St. Clair, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the St. Clair River, St. Clair, Michigan, bounded by latitude 42°52'00" N to the north; latitude 42°49'00" N to the south; the shoreline of the St. Clair River on the west; and the international boundary line on the east (NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The last week in July. The exact dates and times for this event will be determined annually.

9. Add § 100.916 to read as follows:

§ 100.916 Chris Craft Silver Cup Races, Algonac, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the St. Clair River, North Channel, Algonac, Michigan, bounded on the north by a line starting at the northern end of Russel Island at position 42°37.0' N; 082°31.4' W extending across the channel to Algonac to a point at position 42°37.4' N; 082°31.5' W, and bounded on the south by a line starting north of Grande Point Cut on Russel Island at position 42°36.3' N; 082°32.5' W extending across the channel to Algonac to a point at position 42°36.5' N; 082°32.6' W. (NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The third week in August. The exact dates and times for this event will be determined annually.

10. Add § 100.917 to read as follows:

§ 100.917 The Old Club Cannonade, Harsens Island, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of Lake St. Clair in an area bound by the coordinates starting at the cannon firing position located at 42°32.5' N; 082°40.1' W extending west to the Old Channel Light located at position 42°32.5' N; 082°41.6' W angling northeast to position 42°33.5' N; 082°40.6' W then angling southeast to the point of origin creating a triangle shaped safety zone. (NAD 83). This area is near the southern end of Harsens Island in Muscamoot Bay.

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area

without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The third week in October. The exact dates and times for this event will be determined annually.

11. Add § 100.918 to read as follows:

§ 100.918 Detroit APBA Gold Cup, Detroit, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Detroit River, Belle Isle, Michigan, bound on the west by the Belle Isle Bridge (position 42°20'20" N, 083°00'00" W to 42°20'24" N, 083°59'45" W), and on the east by a north-south line drawn through Waterworks Intake Crib Light (Light List Number 8350; position 42°21'06" N, 082°58'00" W) (NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The first or second week in June. The exact dates and times for this event will be determined annually.

12. Add § 100.919 to read as follows:

§ 100.919 International Bay City River Roar, Bay City, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Saginaw River bounded on the north by the Liberty Bridge, located at 43°36.3' N, 083°53.4' W, and bounded on the south by the Veterans Memorial Bridge, located at 43°35.8' N, 083°53.6' W. (NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The third or fourth week in June. The exact dates and times for this event will be determined annually.

13. Add § 100.920 to read as follows:

§ 100.920 Tug Across the River, Detroit, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Detroit River, Detroit, Michigan, bounded on the south by the International boundary, on the west by 083°03' W, on the east by 083°02' W, and on the north by the U.S. shoreline (DATUM: NAD 83). This position is located on the Detroit River in front of Hart Plaza, Detroit, MI.

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area

without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The third or fourth week in June. The exact dates and times for this event will be determined annually.

Dated: April 4, 2008.

John E. Crowley, Jr.,

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

[FR Doc. E8-8864 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2008-0306; FRL-8558-7]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM-10; Revision of Designation; Redesignation of the San Joaquin Valley Air Basin PM-10 Nonattainment Area to Attainment; Approval of PM-10 Maintenance Plan for the San Joaquin Valley Air Basin; Approval of Commitments for the East Kern PM-10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State of California's request to revise the designation for the San Joaquin Valley (SJV) serious nonattainment area for particulate matter of ten microns or less (PM-10) (SJV nonattainment area) by splitting the area into two separate nonattainment areas: The San Joaquin Valley Air Basin serious PM-10 nonattainment area and the East Kern serious PM-10 nonattainment area. EPA is also proposing to redesignate the SJVAB nonattainment area to attainment for the PM-10 national ambient air quality standard (NAAQS) and proposing to approve the PM-10 maintenance plan, motor vehicle emissions budgets and conformity trading mechanism for the area. EPA is also proposing to exclude from use in determining that the area has attained the standard two exceedances that EPA has concluded were caused by exceptional events that occurred on July 4, 2007 and January 4, 2008. Finally, EPA is proposing to approve enforceable commitments by the Kern County Air Pollution Control District and the California Air Resources Board to install a PM-10 monitor in the East Kern nonattainment area and to address

Clean Air Act requirements under section 189(d) as necessary for the area.

DATES: Any comments must arrive by May 27, 2008.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2008-0306, by one of the following methods:

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

2. *E-mail:* lo.doris@epa.gov.

3. *Mail or deliver:* Doris Lo (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

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

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

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972-3959, lo.doris@epa.gov.

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

Table of Contents

- I. Background
- II. Summary of EPA's Proposed Actions
- III. Proposed Revised Boundary Redesignation

- A. State's Submittal
- B. EPA's Evaluation of Request to Revise Boundary Designation
- IV. Proposed Redesignation of the SJV Air Basin to Attainment for the PM-10 Standard and Approval of PM-10 Maintenance Plan
 - A. EPA has determined that the area has attained the NAAQS
 - B. The applicable implementation plan has been fully approved by EPA under section 110(k) of the CAA
 - C. EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions
 - D. The State has met all applicable requirements for the area under section 110 and Part D of the CAA
- 1. Basic SIP Requirements under CAA Section 110
- 2. SIP Requirements under Part D
- E. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA
 - 1. An attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS
 - 2. A demonstration of maintenance of the NAAQS for 10 years after redesignation
 - 3. Verification of continued attainment through operation of an appropriate air quality monitoring network
 - 4. Contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area
- F. Transportation conformity and motor vehicle emissions budgets
 - 1. CARB Methodology for Estimating PM-10 in the Emissions Budgets
 - 2. Adequacy of the 2007 Plan's Budgets
 - 3. Trading Mechanism
- V. Proposed Commitments for East Kern
- VI. Proposed Actions
- VII. Statutory and Executive Order Reviews

I. Background

On May 26, 2004, EPA approved the serious area PM-10 plan for the SJV nonattainment area, "2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller" submitted by the State on August 19, 2003 and amendments to that plan submitted on December 30, 2003 (collectively, 2003 Plan). See 69 FR 30006; 40 CFR 81.305. This plan provided for, among other things, the implementation of best available control measures (BACM). In addition, since the SJV nonattainment area had failed to meet its original serious area attainment deadline of December 31, 2001, the State was required under section 189(d) of the Clean Air Act (CAA or the Act) to submit a plan that provided for an annual reduction in PM-10 or PM-10 precursors of not less than five percent until attainment. A detailed discussion of the history of PM-10 planning in the SJV nonattainment area and of EPA's approval of the 2003 Plan can be found

in its proposed and final actions and the associated dockets. 69 FR 5412 (February 4, 2004); 69 FR 30006.

On October 30, 2006, EPA determined that the SJV nonattainment area had attained the 24-hour PM-10 standard¹ based on air quality data from 2003 through 2005. In this action we noted that there were several exceedances of the PM-10 standard that were likely due to exceptional events which EPA would address in subsequent actions. 71 FR 63642. Subsequently EPA issued a final action affirming that the PM-10 standard has been attained in the SJV nonattainment area based on air quality data from 2004 through 2006. 73 FR 14687 (March 19, 2008).

On November 16, 2007, the State submitted to EPA the "2007 PM10 Maintenance Plan and Request for Redesignation," September 20, 2007, for the San Joaquin Valley Air Pollution Control District (SJVAPCD or the District) (2007 Plan).² On January 31, 2008, the State submitted a request to split the existing SJV serious PM-10 nonattainment area into two separate nonattainment areas: (1) The San Joaquin Valley Air Basin and (2) the western portion of the Kern County Air Pollution Control District (KCAPCD). Letter from James N. Goldstene, California Air Resources Board (CARB), to Deborah Jordan, EPA, with attachments, January 31, 2008 (Goldstene letter).

On February 29, 2008, the State submitted enforceable commitments by CARB and the KCAPCD to monitor for PM-10 in the western portion of the KCAPCD and to address CAA State Implementation Plan (SIP) requirements for this area as necessary. Letter from James N. Goldstene, CARB, to Wayne Natri, EPA, with enclosures, February 29, 2008.

Finally, on January 23, 2008, the State submitted to EPA the "Exceptional Event Documentation, PM10, Fireworks, Bakersfield, CA, July 4, 2007" and on

¹ The level of the national primary 24-hour ambient air quality standard for particulate matter is 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above $150 \mu\text{g}/\text{m}^3$, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. See 40 CFR 50.6.

² The SJVAPCD District adopted the 2007 Plan on September 20, 2007 and submitted it to the State on September 21, 2007. The State " * * * updated the attainment inventory * * * to reflect emission reductions achieved by ARB adopted measures that had not been accounted for" before submitting the 2007 Plan to EPA on November 16, 2007. (Staff Report, Analysis of the San Joaquin Valley 2007 PM10 Maintenance Plan, Air Resources Board, Release Date: October 12, 2007 (ARB Staff Report), pp. 7-8 and Appendix B). Thus the applicable emissions inventories in the 2007 Plan are found in the ARB Staff Report.

April 15, 2008, the State submitted to EPA the "Natural Event Documentation, Bakersfield, California, January 4, 2008."

II. Summary of EPA's Proposed Actions

First, EPA is proposing to grant the State's request to split the existing SJV nonattainment area into two separate nonattainment areas. EPA is then proposing to grant the State's request to redesignate the portion of the SJV nonattainment area located in the San Joaquin Valley Air Basin to attainment for the PM-10 standard and to approve the PM-10 maintenance plan, motor vehicle emissions budgets and conformity trading mechanism for the area. EPA is also proposing to exclude from use in determining that the area has attained the PM-10 standard data showing exceedances caused by exceptional events that occurred on July 4, 2007 and January 4, 2008. Finally, EPA is proposing to approve commitments by CARB and the KCAPCD to monitor for PM-10 in the western portion of the KCAPCD and to address CAA SIP requirements for the area as necessary.

III. Proposed Revised Boundary Designation

A. State's Submittal

As stated above, on January 31, 2008, the State submitted a request to EPA to split the existing SJV PM-10 nonattainment area into two separate nonattainment areas: (1) The San Joaquin Valley Air Basin and (2) the western portion of the KCAPCD. The State's submittal states that "[t]his change will address the inconsistency between California's adopted air basin boundary for the San Joaquin Valley and the boundary U.S. EPA is using for PM10 planning." The State's submittal includes information about jurisdiction, geography, population and degree of urbanization, employment and traffic/commuting patterns, and emissions and air quality which supports the revised boundary designation. See Goldstene letter.

B. EPA's Evaluation of Request To Revise Boundary Designation

The existing SJV nonattainment area includes the entire counties of San Joaquin, Fresno, Kings, Madera, Merced, Stanislaus and Tulare and part of Kern County. The part of Kern County in the existing SJV nonattainment area is a region that straddles the Sierra Nevada and Tehachapi mountains and is located in two separate air basins: the SJV Air Basin and the Mojave Desert Air Basin (MDAB). The dividing line between

these two air basins coincides with the jurisdictional boundary between the KCAPCD and the SJVAPCD. This dividing line also coincides with the boundary that we are today proposing to draw between the two nonattainment areas which we are proposing to designate as the SJV Air Basin (SJVAB) PM-10 nonattainment area and the East Kern PM-10 nonattainment area.³ Thus, if we finalize the revision to the boundary designation, the SJVAB nonattainment area will include only those areas that are in the SJV Air Basin (i.e., all of the seven counties mentioned above and the part of Kern County that is under the jurisdiction of the SJVAPCD) and the East Kern PM-10 nonattainment area will include the part of Kern County that is currently in the existing SJV nonattainment area, is in the MDAB and is under the jurisdiction of the KCAPCD.⁴ Together, these two new PM-10 nonattainment areas will cover the same geographic area as the original SJV PM-10 nonattainment area.

Under section 107(d)(3)(D) of the CAA, the Governor of any state may, on the Governor's own motion, submit to EPA a revised designation of any area or portion thereof within the state.⁵ EPA is required to approve or deny a submittal of a revised designation within 18 months of receipt. The type of revised designation that the State of California submitted on January 31, 2008 involves a boundary change only and does not involve a change in status (e.g., from "nonattainment," to "attainment" or "unclassifiable") of any area.

In determining whether to approve or deny a state's submittal of a request for a revised boundary designation under section 107(d)(3)(D), EPA uses the same factors Congress directed EPA to consider when the Agency initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include "air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate." In addition, because the State's revised designation involves nonattainment areas, we also take into account CAA section 107(d)(1)(A), which provides that nonattainment areas are to include the geographic area that does not meet, or

that contributes to ambient air quality in a nearby area that does not meet, the NAAQS for a given pollutant.

California has provided a compelling technical justification as to why the proposed SJVAB and East Kern nonattainment areas should be designated as separate PM-10 planning areas. A summary of the State's reasoning follows:

Jurisdiction. The proposed SJVAB area is under the jurisdiction of the SJVAPCD and the proposed East Kern area is under the jurisdiction of the KCAPCD. The proposed revised designation will align the boundary along these jurisdictional lines. This realignment will make the air quality planning and implementation process more efficient and straightforward since the local air pollution control agencies, SJVAPCD and KCAPCD, can only adopt and implement plans and rules in the area for which they have jurisdiction.

Geography. The East Kern area is in the MDAB, a different air basin than the SJVAB area; it is separated from the SJVAB area by the Sierra Nevada and Tehachapi Mountain Ranges at elevations up to 7,500 feet. The Kern River Valley and the Cummings Valley in the East Kern area are located at approximately 2600 feet and 3800 feet, respectively. These elevations are comparable to other areas in the MDAB and much higher than the average elevation in the western portion of Kern County in the SJVAB which is between 450 and 500 feet. Eastern Kern County, which includes the proposed East Kern nonattainment area, is a vast arid desert while the SJVAB portion of Kern County is part of the urbanized, agricultural, and industrial SJV. The mountains surrounding the SJVAB form a bowl trapping air pollutants in the SJVAB, but the East Kern area is located above the inversion layer which traps air pollutants in the SJVAB and thus, experiences different weather from the SJVAB.

Population and Degree of Urbanization. There are no major or fast growing population centers in eastern Kern County. Eastern Kern County covers approximately 3800 square miles, with a total population of approximately 131,000 (in 2005) and a low population density of approximately 35 persons per square mile. In the last decade (1995–2005), population increased by 15,000 persons. The Kern River Valley and Cummings Valley, which are in the East Kern area, are sparsely populated; the greater Lake Isabella region in the Kern River Valley has approximately 15,000 inhabitants; and the west Tehachapi area in the Cummings Valley has approximately

13,000 inhabitants. In contrast, the western portion of Kern County in the SJVAB extends over 4400 square miles, includes the urban Bakersfield area, housed 640,000 persons (in 2005), and has a population density of approximately 145 persons per square mile, which is four times the population density of eastern Kern County. In the last decade, the total population in western Kern County grew by 136,000 persons, nine times the population growth in eastern Kern County.

Employment and Traffic/Commuting Patterns. Eastern Kern County, which includes the proposed East Kern nonattainment area, is not strongly integrated economically with western Kern County. People tend to live and work in eastern Kern County, and because of its geographic isolation there is no convenient commute to cities outside the region. The economy of western Kern is largely based on the oil and agricultural industries. The primary employer in eastern Kern County is the Tehachapi State Prison. Due to the geographic isolation, there is no convenient commute to cities outside the area. In 2005, vehicles traveled approximately 5.1 million miles per day throughout eastern Kern County. In contrast, in western Kern County vehicles traveled approximately 19.8 million miles per day, close to 4 times the average travel in eastern Kern County. Also, eastern Kern residents are not dependent on western Kern for economic activities such as employment, shopping, or other services. There are no significant commute patterns from eastern Kern County into the SJVAB, the MDAB, or the South Coast Air Basin or vice versa.

Emissions. There are only a handful of major emission sources in eastern Kern County, which includes the proposed East Kern area, and projected source and industrial growth is minimal. Total primary PM-10 emissions as well as nitrogen oxide emissions (NO_x), the main precursor of secondary PM-10 in the area, are declining. Major sources of primary PM-10 include the Tehachapi State Prison (11.5 tons per year (tpy) in 2005), followed by two aggregate operations (9.7 tpy and 8.5 tpy); the two largest NO_x sources are the Tehachapi State Prison (12.8 tpy) and two natural gas pumps that lift water to Tehachapi (14.8 tpy and 12.2 tpy). In contrast, western Kern County houses 35 major sources of primary PM-10 with emissions over 10 tpy and 47 major sources of NO_x with emissions over 10 tpy. Compared to the entire SJV PM-10 nonattainment area, sources in all of eastern Kern County contributed only eight percent of the direct PM-10

³ We are proposing to call the new area "East Kern" because it is the eastern part of Kern County that is currently within the existing SJV nonattainment area.

⁴ The KCAPCD's jurisdiction also includes the remaining part of Kern County which extends eastward beyond the proposed East Kern area.

⁵ Boundary changes are an inherent part of a designation or redesignation of an area under the CAA. See CAA section 107(d)(1)(B)(ii).

emissions and eight percent of the NO_x emissions in 2005.

Air Quality. The chemical composition of PM-10 in eastern Kern County, which includes the proposed East Kern area, differs significantly from the PM-10 chemical composition in the SJVAB area. While dust is the main component of PM-10 in eastern Kern

County, NO_x has been determined to be the only significant precursor for the SJVAB area. 69 FR 30006. Currently there is no Federal Reference Method (FRM) or Federal Equivalent Method (FEM) monitoring of PM-10 in the East Kern area. However, there is an Interagency Monitoring of Protected Visual Environments (IMPROVE)

monitor located in the Kern River Valley. This IMPROVE monitor has, since February 2000, consistently measured PM-10 concentrations far below the PM-10 standard. A summary of the maximum PM-10 daily values at the IMPROVE monitor is provided in Table 1 below.

TABLE 1.—SUMMARY OF MAXIMUM PM-10 DAILY VALUES FOR THE DOMELANDS IMPROVE MONITOR (µg/m³)

Year	1st max	2nd max	3rd max	4th max
2001	33	33	32	32
2002	109	53	49	49
2003	66	42	37	37
2004	52	50	47	45
2005	21	14	6	5
2006	39	36	35	34

Source: IMPROVE Web site, <http://vista.cira.colostate.edu/improve/Default.htm>

Based on the factors set forth above, EPA has considered the State's request in accordance with the criteria listed in CAA section 107(d)(3)(A). We find that the State has sufficiently demonstrated that the SJVAB and East Kern should be separate nonattainment areas because they lie in separate air basins, are under different local jurisdictions, have different population densities and growth levels, do not share commute patterns, have different emissions sources and have different types of air pollutants. Pursuant to CAA section 107(d)(3)(D), EPA is therefore proposing to approve the State's request to revise the boundary designation of the existing SJV PM-10 nonattainment area by splitting the area into two separate PM-10 nonattainment areas, the SJVAB and East Kern.

As explained below, we are further proposing to redesignate the SJVAB to attainment for PM-10. Pending further air quality monitoring and until such time as the East Kern nonattainment area meets the CAA requirements for redesignation, the East Kern area would be classified as a serious PM-10 nonattainment area. Thus the East Kern nonattainment area would retain the classification and nonattainment designation that applied to it when it was part of the SJV nonattainment area and would likewise retain the attainment determination applicable to

that area. In order to address the serious area PM-10 statutory requirements, KCAPCD and CARB have made the enforceable commitments discussed in section V. below.

IV. Proposed Redesignation of the SJVAB to Attainment for the PM-10 Standard

On November 16, 2007, the State submitted to EPA the 2007 Plan which addresses PM-10 maintenance plan requirements and includes a discussion of how the SJVAB (i.e., the portion of the current nonattainment area under the jurisdiction of the SJVAPCD) meets the CAA redesignation requirements.

Section 107(d)(3)(E) of the CAA states that an area can be redesignated to attainment if the following conditions are met:

(1) EPA has determined that the area has attained the NAAQS.

(2) The applicable implementation plan has been fully approved by EPA under section 110(k) of the CAA.

(3) EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

(4) The State has met all applicable requirements for the area under section 110 and Part D of the CAA.

(5) EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

These requirements are discussed in more detail in a September 4, 1992 EPA Memorandum, "Procedures for Processing Request to Redesignate Areas to Attainment, John Calcagni, Director, Air Quality Management Division" (Calcagni memo). We discuss how these requirements are met for the SJVAB in detail below.

A. EPA Has Determined That the Area Has Attained the NAAQS

The Calcagni memo states that there are two components involved in meeting this requirement. The first component relies on an analysis of quality-assured ambient air quality data and an ambient air monitoring network that is representative of the area of highest concentrations. For PM-10 in the SJVAB, EPA has reviewed the ambient air quality data and determined and affirmed that the PM-10 NAAQS has been attained for the years 2003 through 2006. See 71 FR 40952, 71 FR 63642, 72 FR 49046 and 73 FR 14687. These determinations also discuss the adequacy of the monitoring network for the SJVAB.

EPA has also evaluated the air quality data in EPA's Air Quality System (AQS) database for 2007 and through February 2008. This data has been included in the docket for this proposed rule. A summary of the 2005–2007 data is provided in Table 2 below.

TABLE 2.—SUMMARY OF 2005–2007 PM-10 ATTAINMENT STATISTICS
[Based on Federal Reference Method PM-10 monitors]

Monitoring site	Observed three year 24-hour maximum (µg/m ³)	Estimated 24-hour exceedance days	Attainment status
Fresno-Drummond	132	0	Attainment.
Fresno-1st Street	117	0	Attainment.

TABLE 2.—SUMMARY OF 2005–2007 PM–10 ATTAINMENT STATISTICS—Continued

[Based on Federal Reference Method PM–10 monitors]

Monitoring site	Observed three year 24- hour maximum ($\mu\text{g}/\text{m}^3$)	Estimated 24- hour exceed- ance days	Attainment status
Clovis	116	0	Attainment.
Bakersfield-Golden State Highway	154	0	Attainment.
Bakersfield-California Ave	153	0	Attainment.
Oildale	145	0	Attainment.
Corcoran	140	0	Attainment.
Hanford	142	0	Attainment.
Merced	94	0	Attainment.
Stockton-Hazelton	82	0	Attainment.
Stockton-Wagner	69	0	Attainment.
Modesto	96	0	Attainment.
Turlock	97	0	Attainment.
Visalia	141	0	Attainment.

Source: EPA Air Quality System (AQS) Database.

One exceedance of the PM–10 standard was recorded at the Bakersfield-Golden FEM⁶ on July 4, 2007. The State has flagged this exceedance as being caused by an exceptional event, fourth of July fireworks celebrations. EPA has reviewed the documentation for this event and has concurred with the State's request. Letter from Wayne Nastri, EPA, to Mary D. Nichols, California Environmental Protection Agency, April 21, 2008. For 2008, one exceedance of the PM–10 standard was recorded also at the Bakersfield-Golden federal equivalent monitor⁷ on January 4. The State has flagged this exceedance as being caused by an exceptional event, high winds. EPA has reviewed the documentation for this event and has concurred with the State's request. Letter from Wayne Nastri, EPA, to Mary D. Nichols, California Environmental Protection Agency, April 21, 2008.

Under EPA's Exceptional Events Rule, the Agency may exclude data from regulatory determinations related to exceedances or violations of the NAAQS if the state adequately demonstrates that an exceptional event caused the exceedance or violation. 40 CFR Sections 50.1, 50.14. Therefore, for the reasons set forth in the concurrence letters, EPA is proposing to exclude data showing exceedances on July 4, 2007 and January 4, 2008 in determining

whether the SJVAB has continued to attain the PM–10 standard in 2007 and through February 2008. The concurrence letters explain how the State has met its burden to demonstrate that these exceedances qualify as exceptional events. Thus, EPA believes that according to the ambient air monitoring data for the SJVAB, the PM–10 NAAQS has been attained.

The second component that may be included in the showing that a PM–10 area has met the requirement that the NAAQS has been attained involves an analysis using air quality modeling. This component is addressed under the maintenance plan requirements discussion below.

B. The Applicable Implementation Plan Has Been Fully Approved by EPA Under Section 110(k) of the CAA

The Calcagni memo states that the SIP for the area must be fully approved under section 110(k) of the CAA and must satisfy all requirements that apply to the area. Section 107(d)(3)(E)(ii). As stated above, on August 19, 2003 and December 30, 2003, the State submitted the 2003 Plan. This plan addressed all applicable requirements for the SJV serious PM–10 nonattainment area. On May 24, 2004, EPA approved all components of the 2003 Plan except for the plan's contingency measures. EPA may rely on prior SIP approvals in approving a redesignation request. See Calcagni memo, p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 526 (6th Cir. 2001). The contingency measure requirement under CAA section 172(c)(9) was subsequently suspended on October 30, 2006 pursuant to EPA's determination of attainment under its Clean Data Policy.

See 71 FR 63642, 63663. Thus, since contingency measures are no longer a required element for the SJVAB, all applicable requirements have been approved under 110(k) of the CAA. See also section IV.D. below.

C. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

The Calcagni memo states that the state must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable, (CAA section 107(d)(3)(E)(iii)) and the improvement should not be a result of temporary reductions (e.g., economic downturns or shutdowns) or unusually favorable meteorology. In making this showing, the state should estimate the emission reductions from adopted and implemented Federal, State and local control measures, and consider the emission rates, production capacities, and other related information to show that the air quality improvements are the result of implemented controls.

The 2007 Plan provides a discussion and comparison of the air quality, meteorology and emissions trends since 1990. See 2007 Plan, pp. 23–28. First, the 2007 Plan discusses the significant improvements in PM–10 air quality since 1990, noting that from 1990 to 1992 there were 33 estimated exceedance days, from 1998 to 2000 there were 5.9 exceedance days and from 2002 to 2004 there were 2.9 exceedance days. Id. Next the 2007 Plan states that this improvement has occurred while air quality plans and regulations have been adopted and notes that in the late 1980's, before the adoption of plans and regulations, “* * * it was not uncommon to have 50

⁶ The Bakersfield-Golden monitoring site includes a special purpose FEM known as a Tapered Element Oscillating Microbalance (TEOM) continuous automated analyzer. The exceedances on July 4, 2007 and January 4, 2008 were recorded on the TEOM. Data are collected at the site using both a TEOM, which provides continuous PM–10 data for public reporting purposes, and a high-volume FRM. The FRM operates at a less than everyday schedule, as allowed by EPA regulations, and was not operating on July 4, 2007 or January 4, 2008.

⁷ See footnote 6 above.

or more estimated annual exceedances of the 24-hour PM₁₀ standard [with] peak measurements well above 250 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), and annual averages of 80 $\mu\text{g}/\text{m}^3$." Id.

The 2007 Plan also states that since 1990 the Valley has experienced rapid economic growth, citing to increases in population and vehicle miles traveled (2007 Plan, p. 26, Figure 3), while at the same time the PM₁₀ and PM₁₀ precursor emissions were decreasing (2007 Plan, p. 26, Figure 4). The 2007 Plan also did not find any major sector-wide shutdowns, identifying at most "* * * about 2 tons per day of PM₁₀ reductions from shutdowns during the attainment period of interest." 2007 Plan, p. 25. Thus, it does not appear that the air quality improvements were due to any economic downturns or shutdowns.

The 2007 Plan also provides an analysis of the meteorological conditions, including wind speeds, precipitation, temperature and atmospheric stability, to determine if there were any favorable meteorological conditions that may have led to the improvement in air quality during 2003–2006. 2007 Plan, p. 27 and Appendix C. The 2007 Plan found that compared to long-term averages, the period from 2003 to 2006 had: No variation in average annual wind speeds; a higher than average level of precipitation with two dry years (2003 and 2004) and two wet years (2005 and 2006); warmer than average temperatures; and a lower than average stability level. The higher than average precipitation would favor lower PM₁₀ levels, but it is important to note that 2003 and 2004 were in fact dry years, ranking 98th and 122nd in wetness over a period of 128 years (1878 to 2006). The higher than average temperature could have increased the potential for high PM₁₀ levels, but the higher stability level could have decreased the potential by providing more dispersion. The 2007 Plan concludes that these analyses indicate that there is no consistent pattern to show that there was favorable meteorology leading to the improvement in PM₁₀ levels during 2003 to 2006. Id.

The 2007 Plan further states that the SJVAPCD has adopted over 500 new rules and amendments since 1992, many of which are for the purpose of reducing PM₁₀ or PM₁₀ precursor emissions. The 2007 Plan shows that all of the rules and commitments in the 2003 Plan have been adopted by the SJVAPCD and many of them have been approved by EPA and are thus federally enforceable. The SJVAPCD has adopted rules which control NO_x and PM₁₀

emissions from cotton gins, boilers, steam generators, and process heaters, agricultural sources, dryers, dehydrators and ovens, glass melting furnaces, fugitive dust sources, open burning and other source categories. 2007 Plan, p. 27 and Appendix B. In addition, the State has adopted measures to meet its commitments in the 2003 Plan to achieve 10 tons per day (tpd) of NO_x reductions and 0.5 tpd of PM₁₀ reductions. 2007 Plan, p. 17. The air quality improvements described above can be attributed to the reductions in NO_x and PM₁₀ emissions achieved by these measures.

The 2007 Plan shows decreases in the emissions inventories for the SJVAB from approximately 1000 tpd in 2000 to approximately 900 tpd in 2005 and to approximately 800 tpd in 2010. ARB Staff Report, Appendix B. As discussed further in Section E.1. below, the emissions inventories are a summary of all source categories in the SJVAB and are developed based on information about emission rates, production capacities, and other source-related information. The emissions inventories in the 2007 Plan also include reductions from adopted and implemented Federal, State and local control measures. ARB Staff Report, Appendix B.

EPA believes that the 2007 Plan has demonstrated that the improvement in PM₁₀ air quality for the SJVAB is a result of permanent and enforceable reductions in emissions and the improvement is not a result of temporary reductions or unusually favorable meteorology. The fact that, as discussed above, there were no economic downturns, shutdowns or meteorology impacting air quality and that the number of exceedance days and the estimated emissions have decreased over time while the population and vehicle miles traveled in the SJVAB have increased shows that the improvement in air quality can reasonably be attributed to the adoption of air quality plans and regulations during this time.

D. The State Has Met All Applicable Requirements for the Area Under Section 110 and Part D of the CAA

The Calcagni memo states that a state must meet those requirements of section 110 and part D of the CAA that were applicable prior to the submittal of the redesignation request. CAA section 107(d)(3)(E)(v).

1. Basic SIP Requirements Under CAA Section 110

The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to,

the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirement for Prevention of Significant Deterioration (PSD); provisions for the implementation of part D requirements for New Source Review (NSR) permit programs; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

On numerous occasions over the past 35 years, CARB and the SJVAPCD have submitted and we have approved provisions addressing the basic CAA section 110 provisions. There are no outstanding or disapproved applicable section 110 SIP submittals with respect to the State and the SJVAPCD.⁸ We propose to conclude that CARB and SJVAPCD have met all SIP requirements for the SJVAB area applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements).

Moreover, we note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with CAA section 107(d)(3)(E)(ii). Thus, for example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of

⁸ The applicable California SIP for the SJV nonattainment area can be found at: <http://yosemite.epa.gov/r9/r9sips.nsf/Casips?readform&count=100&state=California>.

redesignation. The State will still be subject to these requirements after the SJVAB area is redesignated. The section 110 and part D requirements, which are linked to a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of the conformity SIP requirement for redesignations. See Reading, Pennsylvania proposed and final rulemakings at 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking at 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking at 60 FR 62748 (December 7, 1995). See also the discussion of this issue in the Cincinnati redesignation at 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation at 66 FR 50399 (October 19, 2001). EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation.

2. SIP Requirements Under Part D

Subparts 1 and 4 of part D, title 1 of the CAA contain air quality planning requirements for PM-10 nonattainment areas. Subpart 1 of part D contains general requirements for areas designated as nonattainment. Subpart 4 of part D contains specific planning and scheduling requirements for particulate matter nonattainment areas. Subpart 4 of part D, section 189(a), (b) and (c) requirements apply to moderate and serious PM-10 nonattainment areas and 189(d) applies to areas which failed to attain by their serious area deadline. These requirements include: (1) An approved permit program for construction of new and modified major stationary sources; (2) provisions to ensure that reasonably available control technology (RACT) and reasonably available control measures (RACM) are implemented; (3) provisions to ensure that best available control measures (BACM) are implemented; (4) quantitative milestones to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by the applicable attainment date; (5) provisions to ensure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determined that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area; and (6) a demonstration of attainment and an annual PM-10 or PM-10 precursor reduction of not less than five percent

from the most recent emission inventory until attainment.

In addition to these specific requirements for serious PM-10 nonattainment areas, nonattainment areas must also meet the general planning requirements in subpart 1, section 172(c). These requirements include, among other things, provisions for the implementation of RACT, RFP, emissions inventories, and contingency measures.

For the SJVAB, EPA determined that these requirements were met in its approval of the 2003 Plan with the exception of the contingency measure requirement that was subsequently suspended by the determination of attainment in accordance with EPA's Clean Data Policy and the NSR permit program for construction of new and modified major stationary sources. 69 FR 30006 and 71 FR 63642.

EPA fully approved SJVAPCD NSR rules 2020 and 2201 on May 17, 2004 (69 FR 27837). Recently we proposed to: (1) Correct aspects of that approval, and (2) approve revisions to the NSR rules that explicitly exempt certain small or minor agricultural sources from permitting requirements. 73 FR 9260 (February 20, 2008). In this proposed rulemaking, we stated that “we believe that the adoption of the proposed revisions in place of the SIP as proposed to be corrected would not result in any change in emissions, any change in air quality, or any change in the area's ability to attain or maintain the NAAQS. Accordingly, we conclude that this SIP revision, if approved, will not interfere with any applicable requirements for attainment and reasonable further progress or any other applicable requirement of the CAA and is approvable under section 110(l).” 73 FR 9265.

Although the SJVAPCD NSR program has been approved, and we have proposed approval of revisions to the rule, we also note that final approval of the NSR revisions is not a necessary prerequisite to finalizing our proposed approval of the State's redesignation request. EPA has determined in past redesignations that a NSR program does not have to be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D NSR Requirements or Areas Requesting Redesignation to Attainment.” See the more detailed explanations in the following redesignation rulemakings: Detroit, MI

(60 FR 12467–12468, March 7, 1996); Cleveland-Akron-Lorain, OH (61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996).

The requirements of the PSD program will apply once the area has been redesignated. Thus, new major sources with significant PM-10 emissions and major modifications of PM-10 at major sources as defined under 40 CFR 52.21 will be required to obtain a PSD permit. Currently, EPA is the PSD permitting authority in the SJVAB under a Federal implementation plan. See 40 CFR 52.270. However, the SJVAPCD can implement the Federal PSD program through a delegation agreement with EPA or, assuming that the SJVAPCD makes necessary modifications to its PSD rules, under an EPA-approved rule.

With respect to the conformity requirement, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects “conform” to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (“transportation conformity”) as well as to other Federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265f 3d 426 (6th Cir. 2001), upholding this interpretation. See, also, 60 FR 62748 (December 7, 1995).

Thus, EPA concludes that the State has met all requirements applicable under section 110 and part D for the SJVAB for purposes of redesignation. CAA Section 107(d)(3)(E)(v).

E. EPA Has Fully Approved a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the CAA

Section 175A of the CAA provides the requirements for maintenance plans. These requirements are further clarified in the Calcagni memo. The provisions to be included in maintenance plans are:

(1) An attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS;

(2) A demonstration of maintenance of the NAAQS for 10 years after redesignation;

(3) Verification of continued attainment through operation of an appropriate air quality monitoring network; and

(4) Contingency provisions that EPA deems necessary to assure that the State will promptly correct any violation of the NAAQS that occurs after redesignation of the area. We discuss how these requirements are met for the SJVAB below.

1. An Attainment Emissions Inventory To Identify the Level of Emissions in the Area Sufficient To Attain the NAAQS

Section 172(c)(3) of the CAA requires all plan submittals to include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area. In demonstrating maintenance in accordance with CAA section 175A and the Calcagni memo, the state should

provide an attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS. Where the state has made an adequate demonstration that air quality has improved as a result of the SIP, the attainment inventory will generally be an inventory of actual emissions at the time the area attained the standard. EPA's primary guidance in evaluating these inventories is the document entitled, "PM-10 Emissions Inventory Requirements," EPA, OAQPS, EPA-454/R-94-033 (September 1994) which can be found at: <http://www.epa.gov/ttn/chief/eidocs/pm10eir.pdf>.

The 2007 Plan includes detailed emissions inventories for NO_x, directly emitted PM-10, volatile organic compounds (VOC) and oxides of sulfur (SO_x).⁹ The emissions inventories are projected from a 2002 baseyear inventory because it was the most comprehensive inventory available. The baseyear inventory meets the CAA requirement for a comprehensive, accurate and current inventory and is

used as the basis for forecasting future year inventories.

The 2007 Plan includes projected inventories for 2005, 2010 and 2020 for NO_x, PM-10, VOC and SO_x. The baseyear and projected year inventories all include a detailed breakdown of the stationary and mobile source emissions categories. The emissions for each of the categories are estimated based on the best available information on number of sources, size of sources, growth, control measures, emissions factors, and other criteria.

The 2007 Plan selects the 2005 PM-10 and NO_x inventories as the attainment emission inventories because the SJV nonattainment area first attained the PM-10 standard during 2003–2005 (and continues to attain the standard through February 2008). 2007 Plan, pp. 5–6. The 2007 Plan also includes inventories for VOC and SO_x; however, EPA has determined that NO_x is the only significant PM-10 precursor for the SJV nonattainment area and thus the proposed SJVAB. 69 FR 30006. Table 3 summarizes the 2007 Plan's NO_x and PM-10 emissions.

TABLE 3.—ANNUAL PM-10 AND NO_x EMISSIONS (TONS PER DAY) 2007 PLAN (ARB STAFF REPORT, APPENDIX B)

	2005	2010	2020
PM-10	284	282	290
NO _x	606	521	328

The NO_x emission inventory continues to be reduced substantially in the future. While the PM-10 emission inventory is projected to increase slightly in 2020, we believe the increase is insignificant when compared to the substantial NO_x decreases. See 2007 Plan, pp. 5–6 and Appendix B of the ARB Staff Report.

EPA believes that the selection of 2005 for the attainment year inventory and 2020 for the maintenance year inventory is appropriate since the SJVAB was determined to have attained the PM-10 NAAQS in 2005. We have reviewed the 2007 Plan's attainment year and maintenance year emissions inventories and determined that they are accurate and comprehensive and meet the requirements of EPA guidance and the CAA.

2. A Demonstration of Maintenance of the NAAQS for 10 Years After Redesignation

Section 175A of the CAA requires a demonstration of maintenance of the NAAQS for 10 years after designation. A state may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future anticipated mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, the showing should be based on the same level of modeling used for the attainment demonstration required as part of the approved attainment plan.

Consistent with EPA's modeling guidance (The Guideline on Air Quality Models (GAQM), 40 CFR part 51, Appendix W and the PM-10 SIP Development Guideline (PMSDG), EPA 450/2-86-001, June 1987), the 2003

Plan's attainment demonstration was based on the use of two receptor models: Chemical Mass Balance (CMB) and rollback. 69 FR 5412, 5424–5425 and 69 FR 30006. The 2007 Plan also uses CMB and rollback to demonstrate maintenance of the 24-hour PM-10 standard until 2020.¹⁰ See 2007 Plan, pp. 6–11. The results of the modeling show that all monitoring sites in the SJVAB nonattainment area will be below the NAAQS in 2020, with the highest projected value of 134 µg/m³ at Bakersfield-Golden and Corcoran. See 2007 Plan, Table 2.

In addition to the modeling for the maintenance plan, the 2007 Plan shows that total annual emissions of NO_x will decrease from 606 tpd in 2005 to 521 tpd in 2010 and 328 tpd in 2020 and total annual emissions of PM-10 will decrease from 284 tpd in 2005 to 282 tpd in 2010 and slightly increase to 290 tpd in 2020. As discussed above, the emissions inventories meet EPA

⁹ The 2007 Plan's emissions inventories are found in Appendix B of the ARB Staff Report. As mentioned above and in the ARB Staff Report, the State *** updated the attainment inventory *** to reflect emission reductions achieved by

ARB adopted measures that had not been accounted for" before submitting the 2007 Plan to EPA on November 16, 2007.

¹⁰ The 2007 Plan also includes a maintenance demonstration for the annual PM-10 standard;

however, the annual PM-10 standard was revoked effective December 18, 2006. 71 FR 61144 (October 17, 2006). Therefore we do not address this demonstration here.

requirements and the general decline in inventories provides assurance that the SJVAB will maintain its attainment levels through 2020.

Based on our review of the information presented in the 2007 Plan, we believe that the State has met EPA requirements for demonstrating maintenance of the PM-10 standard for the SJVAB.

3. Verification of Continued Attainment Through Operation of an Appropriate Air Quality Monitoring Network

In demonstrating maintenance, continued attainment of the NAAQS can be verified through operation of an appropriate air quality monitoring network. The Calcagni memo states that the maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. The memo also states that states should ensure that they have the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. Finally, the memo states that the state submittal should indicate how it will track the progress of the maintenance plan (e.g., with periodic emissions inventory updates or modeling input updates) and monitor the triggers for contingency measures.

In the 2007 Plan the SJVAPCD commits to continued operation of its air quality monitoring network for verification of attainment. See 2007 Plan, pp. 12–13. The SJVAPCD's authority to continue operating after redesignation to attainment is provided for in the California Health and Safety Code sections 40150 and 40161. *Id.* at 15. The SJVAPCD also plans to verify continued attainment of the PM-10 standard through an annual report to its Board which will include, among other things, tracking of adoption and implementation of control measures, tracking of air quality data and comparison of predicted versus current emissions reductions estimates. *Id.* As discussed further below, since the SJVAPCD has selected a contingency measure trigger that is based on ambient air quality levels, the continued operation of the monitoring network and tracking of its data will provide adequate notice of when contingency measures are needed.

4. Contingency Provisions to Promptly Correct Any Violation of the NAAQS That Occurs After Redesignation of the Area

Contingency provisions are required under section 175A of the CAA. These contingency measures are distinguished from those generally required for

nonattainment areas under section 172(c)(9) in that they are not required to be fully adopted measures that will take effect without further action by the State in order for the maintenance plan to be approved. The Calcagni memo states that the contingency provisions of the maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the state. The memo also states that the contingency provisions should identify indicators or triggers which will be used to determine when the contingency measures need to be implemented. While the memo suggests inventory or monitoring indicators, it states that contingency provisions will be evaluated on a case-by-case basis. Finally, the Calcagni memo states that the contingency provisions must require the state to implement all measures contained in the part D nonattainment plan for the area prior to redesignation.

The 2007 Plan selects an action level or trigger based on an exceedance of the PM-10 NAAQS of 155 $\mu\text{g}/\text{m}^3$.¹¹ See 2007 Plan, p. 16. In addition, the District may also consider other factors such as a succession of values just below but near the level of the PM-10 standard. *Id.* EPA believes that an exceedance of 155 $\mu\text{g}/\text{m}^3$ is an appropriate trigger level. The SJVAB has several continuous PM-10 monitors, and a single measurement of 155 $\mu\text{g}/\text{m}^3$ at one of these monitors would not constitute a violation of the PM-10 NAAQS. Even if a measurement of 155 $\mu\text{g}/\text{m}^3$ is recorded at a one-in-six day FEM, a violation is not necessarily being recorded as the State might need to evaluate the possibility that the measurement is due to an exceptional event.

The 2007 Plan states that if the SJVAB monitors an exceedance of 155 $\mu\text{g}/\text{m}^3$, the District commits to take appropriate action within 18 months of the exceedance date. This action will first involve a determination of whether the exceedance was due to an exceptional event in accordance with EPA's Exceptional Events Rule and an analysis of what caused the exceedance and the necessary controls to address it. *Id.* If the exceedance is not due to an exceptional event, the District commits

¹¹ An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 $\mu\text{g}/\text{m}^3$) after rounding to the nearest 10 $\mu\text{g}/\text{m}^3$ (i.e., values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 $\mu\text{g}/\text{m}^3$ would not be an exceedance since it would be rounded to 150 $\mu\text{g}/\text{m}^3$ whereas a recorded value of 155 $\mu\text{g}/\text{m}^3$ would be an exceedance since it would be rounded to 160 $\mu\text{g}/\text{m}^3$. See 40 CFR part 50, appendix K, section 1.0.

to determine the possible causes of the exceedance and to determine if emissions reductions from adopted measures that are not needed to maintain the PM-10 NAAQS are available to serve as contingency measures. These measures can be found in the SJVAPCD's 2007 Ozone Plan (April 30, 2007) and the SJVAPCD's Proposed 2008 PM2.5 Plan (March 13, 2008) and include more stringent controls on open burning, gas turbines, boilers, glass melting, residential water heaters, wood burning fireplaces and heaters and commercial charbroiling. See Table 6–1 of SJVAPCD's 2007 Ozone Plan and Table 6–3 of SJVAPCD's Proposed 2008 PM2.5 Plan.

If there are no reductions available from adopted measures, the District commits in the 2007 Plan to proceed with identifying control measures from feasibility studies such as those found in its 2007 Ozone Plan and Proposed 2008 PM2.5 Plan (see Table 6–2 of 2007 Ozone Plan and Table 6–5 of Proposed PM2.5 Plan) and prioritize measures most relevant for reducing PM-10 emissions. 2007 Plan, pp. 16–17. The SJVAPCD has also provided clarification that if additional control measures are necessary, the SJVAPCD will adopt and implement the control measures within the 18-month timeframe for appropriate action. Letter from Seyed Sadredin, SJVAPCD, to Deborah Jordan, EPA, April 17, 2008.

Finally, the 2007 Plan states that the State, District and local governments have adopted and implemented all measures in the 2003 Plan. 2007 Plan, p. 17 and Appendix B.

Based on the discussion above and EPA's review of the 2007 Plan, we believe the plan adequately addresses the contingency measure requirement under section 175A of the CAA.

Conclusion

Based on our review of the 2007 Plan, and for the reasons discussed above, we conclude that the CAA section 107(d)(3)(E) requirements for redesignation to attainment and an approvable maintenance plan for the SJVAB have been met. We are therefore proposing to approve the 2007 Plan as meeting the requirements of section 175A of the CAA and proposing to redesignate the SJVAB nonattainment area to attainment for the PM-10 NAAQS.

F. Transportation Conformity and Motor Vehicle Emissions Budgets

Under section 176(c) of the CAA, transportation plans, programs and projects in the nonattainment or maintenance areas that are funded or

approved under title 23 U.S.C. and the Federal Transit Laws (49 U.S.C. Chapter 53) must conform to the applicable SIP. In short, a transportation plan and program are deemed to conform to the applicable SIP if the emissions resulting from the implementation of that transportation plan and program are less than or equal to the motor vehicle emissions budget (MVEB) established in the SIP for the attainment year, maintenance year and other analysis years. See, generally, 40 CFR part 93.

The 2007 Plan provides for attainment year MVEBs for 2005 and maintenance year MVEBs for 2020.¹² The 2005 attainment year MVEBs will replace the current MVEBs for 2008 and 2010 from the 2003 Plan. See 40 CFR 93.118(a).

Before an emissions budget in a submitted SIP revision may be used in a conformity determination, we must first determine that it is adequate. The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in the preamble to revisions to EPA's conformity regulations. 69 FR 40004 (July 1, 2004). Applicability of emission trading between conformity budgets for conformity purposes is described in 40 CFR 93.124(b).

1. CARB Methodology for Estimating PM-10 in the Emissions Budgets

CARB's mobile source emission model, EMFAC2007, was used to estimate direct PM-10 and NO_x emissions from motor vehicles in the 2007 Plan. EMFAC2007 was approved by EPA on January 18, 2007 (72 FR 733464), for use in SIPs and transportation conformity analyses. EMFAC2007 produces emissions for a wide range of motor vehicles (passenger cars, trucks, motorcycles, buses and

motor homes) for calendar years out to 2040. Particulate emissions include tire and brake wear as well as vehicle exhaust and evaporative emissions.

The methodology used in the 2007 Plan to estimate fugitive dust (e.g., paved and unpaved road emissions) is consistent with the methods previously approved in EPA's action on the 2003 Plan. 69 FR 30006 and 69 FR 5412, 5414. No further action is required to approve these methodologies for use in future transportation conformity determinations in the SJVAB.

2. Adequacy of the 2007 Plan's Budgets

The 2007 Plan includes county by county subarea motor vehicle emissions budgets for 2005 and 2020 for direct PM-10 and NO_x. The 2007 Plan budgets are first summarized in Table 6, "Revised Motor Vehicle Emission Budgets for the Attainment Year, (tons per average annual day)," and in Table 7, "Motor Vehicle Emission Budgets for Maintenance of PM10 NAAQS, (tons per average annual day)," of the 2007 Plan; however, these estimates were updated by CARB, based on updated vehicle activity data, and the updated budgets were included in the ARB Staff Report (p. 12) as part of the 2007 Plan submittal to EPA. Thus, the budgets found on page 12 of ARB Staff Report supercede the budgets in Tables 6 and 7 of the locally adopted 2007 Plan. See November 16, 2007 submittal letter from James N. Goldstene, CARB, to Wayne Natri, EPA, enclosure "V. Updated transportation conformity budgets and supporting documentation." Table 4 below reflects the updated and submitted transportation conformity budgets for the 2007 Plan. The direct PM-10 budgets include emissions of re-entrained dust from motor vehicle travel on paved and unpaved roads, vehicular exhaust, vehicle brake and tire wear, and emissions from highway and transit

project construction. The emissions budgets for NO_x include only exhaust from on-road vehicles. Since the 2007 Plan does not consider VOC to be a significant contributor to the PM-10 nonattainment problem, in accordance with 40 CFR 93.102(b)(2)(iii), no VOC budgets are included. Additional details regarding the budgets are presented in the 2007 Plan, Appendix D, "Detailed Conformity Calculations."

Based on our evaluation of the criteria outlined in section 93.118(e)(4) of the conformity rule, EPA proposes to find the PM-10 and NO_x motor vehicle emissions budgets contained in the 2007 Plan (and in Table 4 below) adequate and proposes to approve them. EPA proposes to approve the budgets because they come from a SIP which EPA concludes demonstrates timely attainment and maintenance and the budgets are consistent with all of the control measures assumed in the attainment demonstration and maintenance plan. We also find adequate and propose to approve the individual county level subarea budgets for NO_x and PM-10, as shown in Table 4 below, consistent with section 93.124(d), which allows for a nonattainment area with more than one Metropolitan Planning Organization (MPO) to establish subarea emission budgets for each MPO or make a collective conformity determination for the entire nonattainment area. Note that, if an individual MPO cannot show conformity to its individual county budget, then the remaining MPOs in the SJVAB cannot make any new conformity determinations.¹³ If approved, the 2005 and 2020 motor vehicle emissions budgets must be used for transportation conformity purposes. As mentioned earlier, the county subarea motor vehicle emissions budgets that EPA is proposing to approve are listed in Table 4 below.

TABLE 4.—MOTOR VEHICLE EMISSIONS SUBAREA BUDGETS (TONS PER DAY) 2007 PM-10 PLAN *

County	2005		2020	
	PM-10	NO _x	PM-10	NO _x
Fresno	13.5	59.2	16.1	23.2
Kern **	12.1	88.3	14.7	39.5
Kings	3.1	16.7	3.6	6.8
Madera	3.6	13.9	4.7	6.5
Merced	6.2	39.2	6.5	13.9
San Joaquin	9.1	42.6	10.6	16.7
Stanislaus	5.6	29.7	6.7	10.7

¹² See footnotes 2 and 9 above.

¹³ CAA section 176(c) states that conformity applies to SIPs in nonattainment and maintenance areas, rather than individual metropolitan planning areas within a single state. When subarea budgets area created for each MPO, the sum of the subarea

budgets equals the total amount of emissions the area can have from the transportation sector and still attain and maintain the NAAQS. When one subarea lapses, then the other MPOs cannot show that their planned transportation activities would conform to the SIP for the whole area until the lapse

is resolved. See "Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards" (EPA 420-B-04-012).

TABLE 4.—MOTOR VEHICLE EMISSIONS SUBAREA BUDGETS (TONS PER DAY) 2007 PM–10 PLAN *—Continued

County	2005		2020	
	PM–10	NO _x	PM–10	NO _x
Tulare	7.3	25.1	9.3	10.1
Total	60.5	314.7	72.2	127.4

* The budgets are based on attainment and maintenance of the 24-hour PM–10 NAAQS.

** MVEBs in Table 2 are only for the SJVAB portion of Kern County.

3. Trading Mechanism

Transportation conformity is demonstrated for each county in the SJVAB when emissions for both PM–10 and NO_x are estimated to be below the motor vehicle emission budgets for each pollutant for all analysis years. However, for analysis years beyond 2010, in our prior approval of the 2003 Plan, we approved a trading mechanism that allows emissions to be traded from NO_x to PM–10 budgets. 69 FR 30006 and 69 FR 5412, 5414.

The trading mechanism specified that if, after including reductions from additional measures, the direct PM–10 budget still cannot be met, an MPO could adjust (*i.e.*, increase) its PM–10 subarea budget by trading from its NO_x budget. This trade from the NO_x subarea budget to the PM–10 subarea budget can only occur if the estimated emissions of NO_x from the planned transportation network are less than the NO_x subarea budget for a given analysis year. The 1.5 tpd NO_x to 1 tpd PM–10 ratio would be used, as follows, to determine the NO_x reductions needed to offset the excess direct PM–10 emissions:

(PM–10 estimate—PM–10 budget) * 1.5
= tpd of NO_x reductions needed to
offset excess PM–10

A subarea has demonstrated conformity if, after trading, the estimates of NO_x and PM–10 emissions from the planned transportation network are at or below the adjusted NO_x and direct PM–10 budgets. For every analysis year, and in each subsequent conformity determination, the transportation agency must repeat these steps to determine whether the budgets can be met, or whether they need to be adjusted using this trading mechanism.

The 2007 Plan requests that this trading mechanism remain unchanged, but available for use after 2005, the revised attainment year. Since the first analysis year, for conformity purposes, will be 2010, EPA is proposing to continue to approve use of the trading mechanism for conformity analysis years after 2005. As stated in the 2003 Plan approval (69 FR 5412, 5414–5417; 69 FR 30006), EPA continues to believe

that trading mechanisms cannot be reviewed through the adequacy process, and instead need full EPA approval before they can be used.

V. Proposed Commitments for East Kern

In order to address CAA requirements for the East Kern nonattainment area, the State submitted on February 29, 2008 enforceable commitments to install a FRM/FEM in East Kern and if a violation is recorded to submit the appropriate SIP. Specifically, the State submitted a resolution approved by the Governing Board of the KCAPCD on February 27, 2008 committing to, with assistance from the State, install a FRM/FEM. Kern County Air Pollution Control Board Resolution 2008–001–02. Further, the resolution states that the KCAPCD will develop for submittal through the State to EPA, a serious nonattainment area SIP that meets the requirements of CAA section 189 in the event of a violation of the PM–10 standard. Id. On March 3, 2008, CARB's Executive Officer issued Executive Order S–08–004 approving as a SIP revision the KCAPCD commitments and committing to submit a SIP addressing section 189 in the event that the area violates the PM–10 standard. Given the low concentrations recorded at the IMPROVE monitor and the relatively minimal expected growth, we believe this is a reasonable approach for the area.

VI. Proposed Actions

Based on our review of the State's request, EPA believes the State has addressed all the necessary requirements for a revised designation and is proposing to approve the State's request under section 107(d)(3)(D) to revise the designation for the SJV PM–10 nonattainment area by splitting the area into two separate serious PM–10 nonattainment areas, the SJVAB PM–10 nonattainment area and the East Kern PM–10 nonattainment area. Also, based on EPA's review of the 2007 Plan submitted by the State, EPA believes that the CAA requirements under section 107(d)(3)(E) for redesignations and section 175A for maintenance plans

have been met for the SJVAB and EPA is therefore proposing to redesignate the newly created serious SJVAB nonattainment area to attainment for the PM–10 NAAQS and to approve the SJVAPCD's PM–10 maintenance plan, budgets and conformity trading mechanism for the area. EPA is also proposing to exclude from use in determining that the SJVAB has attained the PM–10 NAAQS two exceedances that it has concluded were caused by exceptional events on July 4, 2007 and January 4, 2008. Finally, EPA is proposing to approve commitments from KCAPCD and CARB to install a FRM/FED in the newly created East Kern serious PM–10 nonattainment area and to address section 189(d) CAA requirements for it in the event the FRM/FED records a violation of the PM–10 standard.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely proposes to approve a revised boundary designation, a redesignation to attainment for the SJVAB, a maintenance plan for the SJVAB, motor vehicle emissions budgets and conformity trading mechanism for the area and commitments for East Kern, all of which are either requested or submitted by the State, and does not impose any additional requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duty, 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).

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” Seven Indian tribes have reservations located within the boundaries of the proposed SJVAB. EPA plans to consult with representatives of the seven Tribes and will continue to work with the Tribes, as provided for in Executive Order 13175. Accordingly, EPA has addressed Executive Order 13175 to the extent that it applies to this action. This proposed 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 proposed action merely proposes to approve requests or submittals from the State and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today’s action involves proposed approvals of a revised boundary designation, a redesignation to attainment for the SJVAB, a maintenance plan for the SJVAB, motor vehicle emissions budgets and conformity trading mechanism for the area and commitments for East Kern. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Parts 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: April 21, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8-9139 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 79

[EPA-HQ-OAR-2007-0071; FRL-8557-7]

RIN 2060-AN94

Regulation of Fuels and Fuel Additives: Revised Definition of Substantially Similar Rule for Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interpretive rule.

SUMMARY: EPA is proposing to revise an interpretive rule defining the term “substantially similar” for unleaded gasoline as that phrase is used in section 211(f) of the Clean Air Act (the Act). To meet the current definition, fuel or fuel additives must possess, at the time of manufacture, all of the physical and chemical characteristics of an unleaded gasoline as specified in ASTM Standard D 4814-88 for at least one of the Seasonal and Geographical Volatility Classes specified in the standard. EPA proposes to amend the definition to allow some additional flexibility for the vapor/liquid ratio specification for fuel introduced into commerce in the state of Alaska. In the “Rules and Regulations” section of this **Federal Register**, we are amending the “substantially similar” definition as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received by May 27, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0071, by mail to Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T,

1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Jaimee Dong, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Office of Air and Radiation, Environmental Protection Agency, Mail Code 6406J, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: (202) 343-9672; fax number: (202) 343-2800; e-mail address: Dong.Jaimee@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to revise the “substantially similar” interpretive rule. EPA is not statutorily obligated to conduct notice and comment rulemaking when amending this interpretive rule. *See APA section 553(b)(A); CAA section 307(d)*. However, as it has done when previously amending this rule, EPA desires to provide an opportunity for the public to comment on this amendment. We have published a direct final rule amending the “substantially similar” interpretive rule in the “Rules and Regulations” section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production or importation of unleaded gasoline for use in Alaska. Categories and entities affected by this action include:

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry	484220	4212	Gasoline Carriers.
	484230	4213	

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action; however, other types of entities not listed in the table could also be affected. To determine whether your entity is affected by this action, you should examine the applicability criteria of Parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
 - Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
 - Make sure to submit your comments by the comment period deadline identified.
3. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided by 40 CFR Part 2.

III. Statutory Background

Section 211(f)(1) of the Act makes it unlawful for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. An EPA interpretive rule, published at 46 FR 38582 (July 28, 1981) and amended at 56 FR 5352 (February 11, 1991), defines the term “substantially similar” for unleaded gasoline. Under this definition, unleaded gasoline that meets several conditions, including complying with the physical and chemical specifications of ASTM Standard D 4814–88 for at least one of the Seasonal and Geographical Volatility classes specified in the standard, is considered substantially similar. Further conditions are described in the interpretive rule and its amendment.

IV. Need for Action

Discussions with an Alaskan refiner have highlighted the need for an amendment to the definition of “substantially similar” for unleaded gasoline. Currently, manufacturers of gasoline for Alaska may not use a temperature below 41 degrees Celsius when testing the vapor-liquid (V/L) ratio of the fuel and still be within the current definition of “substantially similar.” This amendment would allow manufacturers producing unleaded

gasoline for use only in Alaska during the winter months to use a minimum test temperature of 35 degrees Celsius when testing for a maximum V/L ratio of 20 instead of requiring a V/L test temperature of 41 degrees Celsius.

ASTM D 2533 is a test method that covers a procedure for measuring the volume of vapor formed at atmospheric pressure from a given volume of gasoline. The ratio of these volumes is expressed as the V/L ratio of the gasoline at the temperature of the test. The tendency of a fuel to vaporize in common automobile fuel systems is indicated by the V/L ratio of that fuel at conditions approximating those in critical parts of the fuel system. Allowing a lower test temperature means that the vapor fraction of the fuel may be higher.

The extreme cold of Alaska during the winter months increases the risk that engines using typical gasoline blends will suffer from difficulty in cold starting. A higher vapor fraction improves mixing of the fuel with air, which in turn improves cold starting. Because the automotive fuel system is closed, the lower test temperature of 35 degrees Celsius compared to 41 degrees Celsius in the winter months is unlikely to significantly increase evaporative emissions. In addition, Alaska presently does not possess ozone non-attainment areas, most likely due to the cold temperatures observed in Alaska. Therefore, in the Agency’s judgment, the impact on emissions would not be significant and this increased flexibility will allow refiners to provide a fuel more suitable to the climatic conditions of Alaska.

EPA invites comment from all interested parties on this proposed interpretive rule revision.

V. Statutory and Executive Order Reviews

See Section V in the direct final rule amending the “substantially similar” interpretive rule in the “Rules and Regulations” section of this **Federal Register** for a discussion of the applicable statutes and executive orders.

Dated: April 17, 2008.

Stephen L. Johnson,
Administrator.

For the reasons set forth above, EPA proposes to amend the definition of substantially similar as follows:

Definition—Substantially Similar

EPA will treat a fuel or fuel additive for general use in light-duty vehicles manufactured after model year 1974 as substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year vehicle or engine, under section 206 of the Act, i.e.,

“substantially similar,” if the following criteria are met.

(1) The fuel must contain carbon, hydrogen, and oxygen, nitrogen, and/or sulfur, exclusively,¹ in the form of some combination of the following:

- (a) Hydrocarbons;
- (b) Aliphatic ethers;
- (c) Aliphatic alcohols other than methanol;
- (d) (i) Up to 0.3 percent methanol by volume;

(ii) Up to 2.75 percent methanol by volume with an equal volume of butanol, or higher molecular weight alcohol;

(e) A fuel additive² at a concentration of no more than 0.25 percent by weight which contributes no more than 15 ppm sulfur by weight to the fuel.

(2) The fuel must contain no more than 2.0 percent oxygen by weight, except fuels containing aliphatic ethers and/or alcohols (excluding methanol) must contain no more than 2.7 percent oxygen by weight.

(3) The fuel must possess, at the time of manufacture, all of the physical and

contamination, or remains naturally, after processing of the fuel is completed.

² For the purposes of this interpretive rule, the term “fuel additive” refers only to that part of the additive package which is not hydrocarbon.

chemical characteristics of an unleaded gasoline as specified in ASTM Standard D 4814–88 for at least one of the Seasonal and Geographical Volatility Classes specified in the standard, with the exception of fuel introduced into commerce in the state of Alaska. For fuel introduced into commerce in the state of Alaska, all of the requirements of this section (3) apply, with the exception of the test temperature for a maximum Vapor/Liquid Ratio (V/L) of 20, which shall be a minimum of 35°C (95°F) for the period from September 16 through May 31.

(4) The fuel additive must contain only carbon, hydrogen, and any one or all of the following elements: Oxygen, nitrogen, and/or sulfur.³

[FR Doc. E8–8945 Filed 4–24–08; 8:45 am]

BILLING CODE 6560–50–P

¹ Impurities which produce gaseous combustion products (i.e., products which exist as a gas at Standard Temperature and Pressure) may be present in the fuel at trace levels. An impurity is that substance which is present through

³ Impurities which produce gaseous combustion products may be present in the fuel additive at trace levels.

Notices

Federal Register

Vol. 73, No. 81

Friday, April 25, 2008

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 22, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Public Television Digital Transition Grant Program.

OMB Control Number: 0572-0134.

Summary of Collection: The Omnibus Appropriations Act (Pub. L. 108-7) provided grant funds in the Distance Learning and Telemedicine Grant Program budget, the Consolidated Appropriations Act (Pub. L. 108-199) and the Consolidated Appropriations Act, 2005 (Pub. L. 108-447) provided additional funds for public broadcasting systems to meet the digital transition. As part of the nation's transition to digital television, the Federal Communications Commission required all television broadcasters to initiate the broadcast of a digital television signal and to cease analog television broadcasts on February 18, 2009. The Rural Utilities Service (RUS) will develop and issue requirements for the grant program to finance the conversion of television services from analog to digital broadcasting for public television stations serving rural areas.

Need and Use of the Information: Applicants will submit grant applications to RUS for review. The information will consist of the following: Standard Form (SF) 424, "Application for Federal Assistance, executive summary, evidence of eligibility and compliance with other Federal statutes and any other supporting documentation. RUS will use the information to score and rank applications for funding. Scoring will consist of three categories: rurality; per capita income; and special disadvantaging factors facing the station's transition plans. If this information is not collected, there would be no basis for awarding grant funding.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 950.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8-9084 Filed 4-24-08; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Qualified Products List for Water Enhancers

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, Qualified Products List for Water Enhancers.

DATES: Comments must be received in writing on or before June 24, 2008 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Victoria Henderson, Branch Director, Equipment and Chemicals, USDA Forest Service, National Interagency Fire Center, 3833 S. Development Avenue, Boise, Idaho 83705.

Comments also may be submitted via facsimile to (208) 387-5971 or by e-mail to: thenderson@fs.fed.us.

The public may inspect comments received at the National Interagency Fire Center (NIFC), Jack Wilson Building, in Boise, Idaho, Monday through Friday between 10 a.m. to 3 p.m. Visitors are encouraged to call ahead to (208) 387-5348 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Les Holsapple, Missoula Technology and Development Center (MTDC), (406) 829-6761, or Cecilia Johnson, MTDC, (406) 329-4819, or Tory Henderson, NIFC, (208) 387-5348. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Qualified Products List for Water Enhancers.

OMB Number: 0596-0182.

Expiration Date of Approval: December 31, 2008.

Type of Request: Extension with no revision.

Abstract: The Forest Service needs to have available adequate types and quantities of qualified fire chemical products to accomplish fire

management activities safely, efficiently, and effectively. To accomplish this objective, the Agency needs to evaluate and pre-approve commercial water enhancer products. Products must meet specification standards identified and maintained by Forest Service Missoula Technology and Development Center (MTDC) staff. The MTDC staff utilizes the *List of Known and Suspected Carcinogens* and the Environmental Protection Agency's *List of Highly Hazardous Materials* in analyzing these products. A risk analysis may also be required.

MTDC employees consider the following to determine whether products are safe for use by Forest Service employees and Federal cooperators:

- Products must not include ingredients that create an enhanced risk in typical use to either the firefighters or the public.
- Effects are based upon acute toxicity determinations of the products and a review of lists of known and suspected carcinogens.
- The safety of the firefighters equipment, either ground-based or aircraft (i.e., uniform corrosion tests, intergranular).
- Safety to the environment in terms of aquatic environments (fish and clean water) and terrestrial environments (wildlife and plants)—risk determinations identify products that do not enhance risk to those environments in typical use.

- Acute toxicity concerns.
- Efficiency is evaluated based upon such items as (1) the range of mix ratios of concentrate products with water appropriate for storage and handling in typical wildland fire operations to provide products that are storable and/or can be kept available on fire equipment, and (2) can be mixed and used with readily available equipment and facilities.

- Effectiveness tests for these products are based upon those products ability to reduce fire spread and intensity even after the water carrier has evaporated away.

The information submitted by manufacturers on two forms: The Confidential Disclosure Sheets and Technical Data Sheets sent to experienced staff at the MTDC, located in Missoula, Montana. These forms are available in either electronic form via e-mail or paper copies, and the manufacturers may submit them to the MTDC in either form.

This information includes listings of specific individual ingredients and the quantity of these ingredients in the formulation of the products,

identification of the specific sources of supply for each ingredient, and the specific mixing and hydration requirements of gum-thickened products. If a risk analysis is determined to be necessary, the FS will request the manufacturer to send a copy of the product labeling. In these cases, a third party assesses specific levels of products or ingredients expected to occur in typical application relative to human and environmental health. Once the manufacturers (and/or their suppliers) have submitted their information and payment for the analysis and evaluation, the MTDC staff will begin to test these water enhancer products safety, efficiency, and effectiveness.

The collection of this information for each product submitted for evaluation is necessary due to the (1) length of time necessary to test the water enhancer products and perform the analysis/evaluation of those products, which takes over a year, and (2) the FS need to ensure the safety, effectiveness, and efficiency of retardant products prior to their use.

If this information is not collected and water enhancer products are not analyzed and evaluated on an on-going basis, our ability to solicit and award water enhancer contracts in a timely manner would not be possible.

Estimate of Annual Burden: 4.5 hours.

Type of Respondents: Businesses

(manufacturers and suppliers).
Estimated Annual Number of Respondents: 3.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 40.5 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will

be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: April 17, 2008.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E8-9174 Filed 4-24-08; 8:45 am]

BILLING CODE 3410-11-P

ARCTIC RESEARCH COMMISSION

Meetings

Notice is hereby given that the U.S. Arctic Research Commission will hold its 86th meeting in Arlington, VA and Washington, DC on May 12-15, 2008. The Business Session, open to the public, will convene at 2 p.m. Monday, May 12, 2008 in Arlington, VA. An Executive Session will follow adjournment of the Business Session.

The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 85th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703-525-0111 or TDD 703-306-0090.

John Farrell,

Executive Director.

[FR Doc. E8-8964 Filed 4-24-08; 8:45 am]

BILLING CODE 7555-01-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or

have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

DATES: *Effective Date:* May 25, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION:

Additions

On February 29, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 11092) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. The action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Fan Folded Self-Stick Note

NSN: 7530-00-NIB-0851—Value Pack with Dispenser.

NPA: Association for the Blind & Visually Impaired-Goodwill Ind. of Greater Rochester, Rochester, NY.

Coverage: A-List for the total Government requirement as specified by the General Services Administration.

Contracting Activity: General Services Administration, Federal Supply Services, Region 2, New York, NY.

Steering Wheel

NSN: 2530-00-277-2689.

NPA: Opportunities, Inc. of Jefferson County, Fort Atkinson, WI.

Coverage: C-List for the requirement of the Defense Supply Center Columbus, Columbus, OH.

Contracting Activity: Defense Supply Center Columbus, Columbus, OH.

Deletion

On February 29, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 11092) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, U.S. Federal Building and U.S. Post Office, 304 N. 8th, Boise, ID.

NPA: Western Idaho Training Company, Inc., Caldwell, ID.

Contracting Activity: General Services Administration, Public Buildings Service, Region 10.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.
[FR Doc. E8-9051 Filed 4-24-08; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: May 25, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

For Further Information or to Submit Comments Contact: Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Bag, Fecal Incontinent

NSN: 6530-00-NSH-0045—Large.

NPA: Work, Inc., Santa Barbara, CA.

Coverage: C-List for the requirement of the Department of Veterans Affairs, National Acquisition Center, Hines, IL.

Contracting Activity: Department of Veterans Affairs, National Acquisition Center, Hines, IL.

Services

Service Type/Location: Custodial & Grounds Maintenance, U.S. Federal Building and Courthouse—St. Croix, 3013 Estate Golden Rock, Christiansted, U.S. Virgin Islands.

NPA: The Corporate Source, Inc., New York, NY.

Contracting Activity: General Services Administration, Caribbean Property Management Center, Hato Rey, PR.

Service Type/Location: Custodial & Grounds Maintenance, U.S. Federal Building and Courthouse—St. Thomas, 5500 Veterans Drive, St. Thomas, U.S. Virgin Islands.

NPA: The Corporate Source, Inc., New York, NY.

Contracting Activity: General Services Administration, Caribbean Property Management Center, Hato Rey, PR.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. E8-9050 Filed 4-24-08; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-863]

Notice of Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review and New Shipper Review: Honey from the People's Republic of China

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

EFFECTIVE DATE: April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Bobby Wong or Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC 20230; telephone: (202) 482-0409 and (202) 482-4031, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") published the preliminary results of the aligned antidumping duty administrative review and new shipper review on honey from the People's Republic of China on January 16, 2008. *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 2890 (January 16, 2008).

Extension of Time Limits for Final Results

Pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

The Department has extended the deadline for parties to submit briefs in order to address several issues raised by interested parties. As a result of these extensions and the complex issues raised in this review segment, including honey valuation, the Department has determined that it is not practicable to complete the aligned administrative review and new shipper review within the current time limit.

Section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations allow the Department to extend the deadline for the final results of a review to a maximum of 180 days from the date on which the notice of the preliminary results was published. For the reasons noted above, the Department is extending the time limit for the completion of these final results from the current deadline of May 15, 2008 until no later than July 14, 2008, which is 180 days from the date on which the notice of the preliminary results was published.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8-9143 Filed 4-24-08; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-583-816)

Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Notice of Amended Final Results Pursuant to Final Court Decision

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

SUMMARY: On April 6, 2006, in *Alloy Piping Products, Inc., Flowline Division, et al. v. United States*, Slip Op. 06-47, ("Alloy Piping II"), the Court of International Trade ("CIT") affirmed the Department of Commerce's (the "Department") Final Results of Determination Pursuant to Remand ("Remand Results"), dated August 16, 2004, and entered a judgment order. This litigation related to the Department's review of the antidumping order on certain stainless steel butt-weld pipe fittings from Taiwan, covering the period of review ("POR") June 1, 1998, through May 31, 1999. See *Certain Stainless Steel Butt-Weld Pipe Fittings Final Results of Antidumping Duty Administrative Review*, 65 FR 81827, 81828 (December 27, 2000) ("Final Results"). On June 5, 2006, Ta Chen Stainless Steel Pipe, Ltd. ("Ta Chen") appealed the CIT's decision to the Court of Appeals for the Federal Circuit ("CAFC"). On September 21, 2006, the CAFC dismissed the appeal pursuant to the parties' dismissal agreement. See *Ta Chen Stainless Steel Pipe, Ltd., v. United States*, 208 Fed. Appx. 818, 2006 U.S. App. LEXIS 24777 (Fed. Cir. 2006) ("Ta Chen Stainless Steel"). Because *Alloy Piping II* constitutes a final and conclusive court decision in this action, we are amending the final results of review in this proceeding and we will instruct U.S. Customs and Border Protection ("CBP") to liquidate entries subject to this review.

DATES: EFFECTIVE DATE: April 25, 2008.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Operations,

Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-3208.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Following publication of the *Final Results*, Ta Chen filed a lawsuit with the CIT challenging the Department's findings. In *Alloy Piping v. United States*, Slip Op. 04-46 (CIT 2004) ("Alloy Piping I"), the CIT remanded the Department's final results to permit it: (1) to reconsider the factual and legal basis for its determination concerning the alleged reimbursement agreement; (2) to reconsider its calculation of constructed export price ("CEP") profit; and (3) the opportunity to fully articulate the reasoning underlying its findings, conclusions and determination on the remanded issues.

The Department complied with the CIT's remand instructions and issued its *Remand Results* on August 16, 2004. See *Remand Results*. In the *Remand Results*, the Department reconsidered its decision concerning the reimbursement agreement and determined that the reimbursement agreement, in light of the new information submitted by Ta Chen on May 18, 2004, did not apply for the June 1, 1998, through May 31, 1999, period, but was instead limited to the 1992-1994 period. The Department also reconsidered its CEP profit calculation and determined that the CEP profit equation is symmetric with regard to the imputed interest expenses such that the imputed interest expenses in the "Total U.S. Expenses" numerator are in fact reflected in recognized financial expenses in the "Total Expenses" denominator and the "Total Actual Profit" multiplier. Thus, the Department did not change Ta Chen's CEP profit. As a result of the remand determination, the antidumping duty rate for Ta Chen was decreased from 12.84 to 6.42 percent. The CIT did not receive comments from any interested parties regarding the Department's *Remand Results*.

On April 6, 2006, the CIT affirmed the Department's findings in the *Remand Results*. Specifically, the CIT affirmed the Department's finding that Ta Chen did not reimburse antidumping duties during the POR and the Department's decision not to change Ta Chen's CEP profit calculation. See *Alloy Piping II*. On April 18, 2006, consistent with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's

decision was "not in harmony" with the *Final Results*. See *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Notice of Court Decision and Suspension of Liquidation*, 71 FR 19873 (April 18, 2006).

On June 5, 2006, Ta Chen appealed the CIT's decision to the CAFC. On September 21, 2006, in *Ta Chen Stainless Steel*, the CAFC dismissed the appeal pursuant to the parties' dismissal agreement. Because *Alloy Piping II* constitutes a final and conclusive court decision in this action, we are amending our final results of review and we will instruct CBP to liquidate entries subject to this review.

AMENDED FINAL RESULTS

Because no further appeals have been filed and there is now a final and conclusive decision in the court proceeding, we are amending the final results of administrative review of the antidumping order on certain stainless steel butt-weld pipe fittings from Taiwan for the period of June 1, 1998, through May 31, 1999. The revised weight-averaged dumping margin is as follows:

Company	Final Margin	Amended Final Margin
Ta Chen... ..	12.84	6.42

ASSESSMENT RATES

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates. Where the importer-specific assessment rate is above *de minimis* on an *ad valorem* basis, calculated by dividing the dumping margins found on examined subject merchandise by the estimated entered value, we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is *de minimis* (i.e., less than 0.5 percent *ad valorem*). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of these amended final results of review.

This notice is issued and published in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended.

Dated: April 18, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-9142 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Implementation of Grants to Manufacturers of Certain Worsted Wool Fabrics Established Under Title IV of the Miscellaneous Trade and Technical Corrections Act of 2004

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice Announcing the Availability of Grant Funds.

SUMMARY: This Notice announces the availability of grant funds in calendar year 2008 for U.S. manufacturers of certain worsted wool fabrics. The purpose of this notice is to provide the general public with a single source of program and application information related to the worsted wool grant offerings and it contains the information about the program required to be published in the **Federal Register**.

DATES: Applications by eligible U.S. producers of certain worsted wool fabrics must be received or postmarked by 5:00 p.m. Eastern Daylight Standard Time on May 27, 2008. Applications received after the closing date and time will not be considered.

ADDRESSES: Applications must be submitted to the Eastern Hemisphere, Office of Textiles and Apparel, Room 3001, U.S. Department of Commerce, Washington, DC 20230, (202) 482-4058.

FOR FURTHER INFORMATION CONTACT: Jim Bennett, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Electronic Access: The full funding opportunity announcement for the worsted wool fabrics program is available through FedGrants at <http://www.grants.gov>. The Catalog of Federal Domestic Assistance (CFDA) Number is 11.113, Special Projects.

Statutory Authority: Section 4002(c)(6) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108-429, 118 Stat. 2603) (the "Act"). The Act was amended pursuant to Section 1633 of the Pension Protection Act of 2006 (Public Law 109-280), which extended the availability of grant funds through 2009 and modified the eligibility criteria.

Program Description: Section 4002(c)(6)(A) of the Act authorizes the Secretary of Commerce to provide grants to persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000, and 2001, manufacturers of two categories of worsted wool fabrics. The first category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters greater than 18.5 micron (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); the total amount of available funds is \$2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.11. The second category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters of 18.5 micron or less (HTS heading 9902.51.15, previously HTS heading 9902.51.12); the total amount of available funds is \$2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.15.

Funding Availability: The Secretary of Commerce is authorized under section 4002(c)(6)(A) of the Act to provide grants to manufacturers of certain worsted wool fabrics. Funding for the worsted wool fabrics grant program will be provided by the Department of the Treasury from amounts in the Wool Apparel Manufacturers Trust Fund (the "Trust Fund"). The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.11 shall be \$2,666,000 in calendar year 2008. The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.15 shall also be \$2,666,000 in calendar year 2008.

Eligibility Criteria: Eligible applicants for the worsted wool fabric program include persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000 and 2001, manufacturers of worsted wool fabric in the United States of the kind described in HTS 9902.51.11 or 9902.51.15. Section 1633(b)(1)(C) of the Pension Protection Act of 2006 provides that only manufacturers who weave worsted wool fabric in the United States as of the date of application shall be eligible for grant funds. Any manufacturer who becomes a successor-of-interest to a manufacturer of the worsted wool fabrics described in HTS 9902.51.11 or HTS 9902.51.15 during 1999, 2000 or 2001 because of

reorganization or otherwise, shall be eligible to apply for such grants.

Applications to Receive Allocations: Applicants must provide: (1) Company name, address, contact and phone number; (2) Federal tax identification number; (3) the name and address of each plant or location in the United States where worsted wool fabrics of the kind described in HTS 9902.51.11 or HTS 9902.51.15 was woven by the applicant in 1999, 2000 and 2001; (4) the name and address of each plant or location in the United States where the applicant is weaving worsted wool fabrics of the kind described in HTS 9902.51.11 and or HTS 9902.51.15 as of the date of application; (5) the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.15, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001; and (6) the value of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.15, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001. This data must indicate actual production (not estimates) of worsted wool fabric of the kind described in HTS 9902.51.11 or 9902.51.15.

At the conclusion of the application, the applicant must attest that "all information contained in the application is complete and correct and no false claims, statements, or representations have been made." Applicants should be aware that, generally, pursuant to 31 U.S.C. 3729, persons providing a false or fraudulent claim, and, pursuant to 18 U.S.C. 1001, persons making materially false statements or representations, are subject to civil or criminal penalties, respectively.

Information that is marked "business confidential" will be protected from disclosure to the full extent permitted by law.

Other Application Requirements: Complete applications must include the following forms and documents: CD-346, Applicant for Funding Assistance; CD-511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; SF-424, Application for Federal Assistance; and SF-424B, Assurances - Non-Construction Programs. The CD forms are available via web site: <http://www.osec.doc.gov/forms/direct.htm>. The SF forms are available via web site: http://www.whitehouse.gov/omb/grants/grants_forms.html.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The

use of Standard Forms 269, 424, 424A, 424B, SF-LLL, and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0039, 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Allocation Procedures: Section 4002(c)(6)(A) of the Act requires that each grant be allocated among eligible applicants on the basis of the percentage of each manufacturers' production of the fabric described in HTS 9902.51.11 or HTS 9902.51.15 for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all manufacturers who qualify for such grants. Following the closing date of the receipt of applications, the Department shall calculate the appropriate allocation of the allotted funds among eligible applicants in accordance with the statutory procedures. Award decisions shall be final and not subject to appeal or protest.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

Administrative and National Policy Requirements: Department of Commerce Pre-Award Notifications for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

It has been determined that this notice is not significant for purposes of E.O. 12866.

Administrative Procedure/Regulatory Flexibility: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 USC 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 USC 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 USC 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: April 21, 2008.

R. Matthew Priest,
Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E8-9098 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration****A-570-922****Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China****AGENCY:** Import Administration, International Trade Administration, Department of Commerce.**EFFECTIVE DATE:** April 25, 2008.**SUMMARY:** The Department of Commerce (the "Department") preliminary determines that raw flexible magnets ("magnets") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated dumping margins for this investigation are listed in the "Preliminary Determination Margins" section of this notice.**FOR FURTHER INFORMATION CONTACT:** Melissa Blackledge or Shawn Higgins; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3518 or (202) 482-0679, respectively.**SUPPLEMENTARY INFORMATION:****Case History**

On September 21, 2007, the Department received a petition concerning imports of magnets from the PRC and Taiwan filed in proper form by Magnum Magnetics Corporation ("Petitioner"). On October 4, 2007, in response to a supplemental questionnaire issued by the Department on September 27, 2008, Petitioner submitted a revised version of the petition's margin calculations. *See* "Petitioner's Response to Questionnaire Received on September 27, 2007 in Investigation No. A-570-922," ("Pre-initiation Supplemental Response") (October 4, 2007). The Department initiated antidumping duty investigations of magnets from the PRC and Taiwan on October 11, 2007. *See* *Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan*, 72 FR 59071 (October 18, 2007) ("Initiation Notice"). On November 5, 2007, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material

injury by reason of imports of magnets from the PRC and Taiwan. *See* *Raw Flexible Magnets from China and Taiwan, Investigation Nos. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary)*, 72 FR 63629 (November 9, 2007).

On November 1, 2007, the Department selected Polyflex Magnets Ltd. ("Polyflex") and Qualita Magnetics Ltd. ("Qualita"), as the mandatory respondents in this investigation based upon U.S. Customs and Border Protection ("CBP") entry data. *See* Memorandum from Abdelali Elouaradia, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary, "Respondent Selection Memorandum," dated November 1, 2007.

On November 1, 2007, the Department issued shipment questionnaires and sections A, C, and D of its antidumping duty questionnaire to the mandatory respondents. On November 9, 2007, Polyflex and Qualita submitted timely responses to the shipment questionnaires. Polyflex confirmed that it exported subject merchandise to the United States during the period of investigation ("POI"). Qualita reported that it did not export such merchandise to the United States during the POI. In November and December 2007, the Department issued shipment questionnaires to additional companies identified as large exporters by CBP entry data. The Department was able to determine through public means that four companies, Logimag Limited ("Logimag"), Marketa International, Ltd. ("Marketa"), Ningbo Magnetics Factory Ltd. ("Ningbo"), and Sinomag Technology Co., Ltd. ("Sinomag"), exported magnets. Ningbo and Sinomag reported that they did not export subject merchandise to the United States during the POI. Logimag and Marketa did not respond to the Department's original shipment letter or our second inquiries.

Polyflex submitted timely responses to sections A, C, and D of the Department's antidumping duty questionnaire during December 2007 and January 2008. The Department received comments from Petitioner and issued supplemental questionnaires to Polyflex in December 2007 and January 2008. On January 10, 2008, Polyflex submitted a timely response to the section A supplemental questionnaire. However, Polyflex did not respond to the sections C and D supplemental questionnaires.

In January 2008, the Department released to interested parties a memorandum from the Department's Office of Policy that listed potential surrogate countries and invited interested parties to comment on

surrogate country and factor value selection. *See* Memorandum from Carole Showers, Acting Director, Office of Policy, to Mark Manning, Program Manager, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Raw Flexible Magnets from the People's Republic of China (PRC): Request for a List of Surrogate Countries," dated January 14, 2008 ("Office of Policy Surrogate Country Memorandum"). No party responded to the Department's invitation to comment on surrogate country selection. However, on February 4, 2008, Petitioner submitted comments on surrogate values. All of the surrogate value data submitted by Petitioner are from India.

On January 16, 2008, Petitioner requested a 50-day extension of the preliminary determination in this investigation. On January 31, 2008, the Department published the postponement of the preliminary determination. *See* *Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Raw Flexible Magnets from the People's Republic of China*, 73 FR 5794 (January 31, 2008). On February 13, 2008, the Department published a correction to the above-referenced notice. *See* *Notice of Correction of Postponement of Preliminary Determination of Antidumping Duty Investigation: Raw Flexible Magnets from the People's Republic of China*, 73 FR 8291 (February 13, 2008). On February 12, 2008, Polyflex withdrew from participating in the investigation. *See* Letter from Garvey Schubert Barer to the Department of Commerce, regarding "Raw Flexible Magnets from the People's Republic of China: Notice of Withdrawal," dated February 12, 2008 ("Polyflex Withdrawal Letter").

On December 14, 2007, the Department received a timely separate rate application from Guangzhou Newlife Magnet Co., Ltd. ("Newlife"). The Department issued supplemental questionnaires to Newlife and received timely responses in February and March 2008.

On April 11, 2008, Petitioner submitted comments on magnetic photo pockets and the application of adverse facts available ("AFA") in calculating dumping margins. *See* "Raw Flexible Magnets from the People's Republic of China: Comments on Scope and Adverse Facts Available," (April 11, 2008).

Period of Investigation

The POI is January 1, 2007, through June 30, 2007. This period comprises the two most recently completed fiscal

quarters prior to the month in which the petition was filed (*i.e.*, September 2007). See 19 CFR 351.204(b)(1).

Scope of the Investigation

The products covered by this investigation are certain flexible magnet sheeting, strips, and profile shapes. Subject flexible magnet sheeting, strips, and profile shapes are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized. Subject flexible magnet sheeting, strips, and profile shapes are capable of being permanently magnetized, but may be imported in either magnetized or unmagnetized (including demagnetized) condition. Subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color. Subject merchandise may be uncoated or may be coated with an adhesive or any other coating or combination of coatings. Subject merchandise is within the scope of this investigation whether it is in rolls, coils, sheets, or pieces, and regardless of physical dimensions or packaging, including specialty packaging such as digital printer cartridges.

Specifically excluded from the scope of this investigation is retail printed flexible magnet sheeting, defined as flexible magnet sheeting (including individual magnets) that is laminated with paper, plastic or other material, if such paper, plastic or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnet sheeting if the printing concerned consists of only: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet sheeting; manufacturing or use instructions (*e.g.*, "print this side up," "this side up," "laminated here"); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use, such as

application of laminate) or on any other covering that is removed from the flexible magnet sheeting prior or subsequent to final printing and before use; non-permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet sheeting to be re-printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of the subject merchandise that are not specifically excluded are included in this scope. The products subject to the investigation are currently classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS subheadings are provided only for convenience and customs purposes, however, and the written description of the scope of this proceeding is dispositive.

Scope Comments

In accordance with the Preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (Preamble)), in our *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On November 7, 2007, SH Industries, a U.S. importer of subject merchandise, argued that magnetic photo pockets, which are flexible magnets with clear plastic material fused to the magnet to form a pocket into which photographs and other items may be inserted for display, should be excluded from the scope of the antidumping and countervailing duty investigations on raw flexible magnets from the People's Republic of China and Taiwan. On November 13, 2007, the petitioner filed a response to the request by SH Industries, arguing that magnetic photo pockets are properly within the scope of the investigations. On April 11, 2008, the petitioner submitted additional arguments concerning this issue. Because we received this letter only four business days before the statutory deadline for this preliminary determination, we did not have an opportunity to consider it prior to issuance of this preliminary determination.

We invite interested parties to submit comments on the petitioner's April 11, 2008, submission and to present evidence concerning the meaning of the terms "sheeting, strips, and profiles" as those terms are used within the

industry. Additionally, because the scope language also states that "subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color," we encourage interested parties to comment on whether the plastic photo pocket fused to the flexible magnet satisfies this description.

Finally, interested parties may submit information that would be relevant in an analysis conducted pursuant to section 351.225(k)(2) of our regulations. The Department deadline for such comments will be 14 days after the publication of this notice. Rebuttal comments must be filed within five days thereafter. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy ("NME") country. In accordance with section 771(18)(c)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation involving an NME country this single rate unless an exporter can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls,

e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). Rather, the test focuses on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and Section 351.107(d) of the Department's regulations. In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

In this case, Polyflex has withdrawn from participating in the investigation. Since Polyflex's withdrawal has prevented the Department from asking additional supplemental questions on its separate rate status, and prevents the Department from verifying its responses, the Department has no basis upon which to grant Polyflex a separate rate. Although Polyflex remains a mandatory respondent, the Department considers Polyflex part of the PRC-wide entity because it failed to demonstrate that it qualifies for a separate rate.

Newlife submitted a timely separate rates application. In its application, Newlife stated that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether this company can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In its application, it provided company-specific information to

demonstrate that it operates independently of *de jure* and *de facto* government control, and therefore is entitled to a separate rate.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR 20588 at Comment 1.

The evidence provided by Newlife supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with Newlife's business and export licenses, and (2) the existence of legislative enactments decentralizing control of companies. See "Supplemental Separate Rate Questionnaire Response of Guangzhou Newlife Magnet Electricity Co., Ltd." (February 22, 2008). Therefore, the Department has preliminarily found a *de jure* absence of government control over Newlife's export activities.

B. Absence of De Facto Control

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The evidence provided by Newlife supports a preliminary finding of *de facto* absence of governmental control based on the following: (1) Newlife sets

export prices independent of the government and without the approval of a government authority; (2) Newlife has the authority to negotiate and sign contracts and other agreements; (3) Newlife has autonomy from the government regarding the selection of management; and (4) Newlife retains proceeds from sales and makes independent decisions regarding the disposition of profits or financing of losses. Therefore, the Department has preliminarily found a *de facto* absence of government control over Newlife's export activities.

The evidence placed on the record of this investigation by Newlife preliminarily demonstrates an absence of *de jure* and *de facto* government control with respect to Newlife's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

In determining what rate to assign companies receiving separate rates, the Department's normal practice is to weight-average the individually calculated margins from the mandatory respondents. See section 735(c)(5)(A). If, however, the estimated weighted average margins for all individually investigated respondents are *de minimis* or based entirely on AFA, the Department may use any reasonable method. See section 735(c)(5)(B). In this investigation, the only other margin is the PRC-wide entity margin which is based on AFA. See "Adverse Facts Available" section below. Because the rate for all individually investigated respondents is based on AFA and the only other information on the record concerning dumping rates is contained in the petition, we have relied on information from the petition to determine a rate to be applied to the respondent that has demonstrated entitlement to a separate rate. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271 (November 28, 2007) (citing *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527–28 (February 4, 2000) and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999)). See also *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479 (February 4, 2008). Therefore, in this case, we have assigned to Newlife the

simple average of the margins alleged in the petition, *i.e.*, 105.00 percent. *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Raw Flexible Magnets from the People's Republic of China (PRC): Calculation of Margin Applied to Separate Rate Applicant," dated April 18, 2008 ("Separate Rate Calculation Memorandum").

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On February 12, 2008, counsel for Polyflex informed the Department that it would not continue participation in the instant investigation. *See* Polyflex Withdrawal Letter. Because Polyflex ceased participation in the instant investigation prior to submitting responses to the Department's sections C and D supplemental questionnaires, the Department was unable to obtain information necessary to complete the investigation. Furthermore, by ending its participation, Polyflex denied the

Department the ability to ask additional section A supplemental questions, and conduct its verification of Polyflex's responses. Verification is integral to the Department's analysis because it allows the Department to validate that it is relying upon accurate information and calculating dumping margins as accurately as possible. By withdrawing from the investigation, and thereby not allowing verification, Polyflex prevented the Department from corroborating its reported information, including separate rates information, and significantly impeded the proceeding. Moreover, by not allowing verification, Polyflex failed to demonstrate that it operates free of government control and that it is entitled to a separate rate. Therefore, we find that Polyflex is part of the PRC-wide entity. Moreover, because the PRC-wide entity, including Polyflex, failed to respond to our questionnaires, we find that the use of facts available, pursuant to sections 776(a)(2)(A), (C), and (D), is appropriate in determining the applicable dumping margin for the PRC-wide entity.

The Department attempted to identify additional mandatory respondents by issuing shipment letters to Marketa and Logimag on November 15, 2007, and November 29, 2007, respectively. The Department issued a second shipment questionnaire to Marketa on November 28, 2007, and to Logimag on December 12, 2007. These companies did not respond to the Department's requests for information. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate. Since the PRC-wide entity withheld information requested by the Department, we find that the use of facts available is appropriate to determine the PRC-wide rate, pursuant to section 776(a)(2)(A) of the Act. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Final*

Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation, 65 FR 5510, 5518 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997); *Crawfish Processors Alliance v. United States*, 343 F. Supp. 2d 1242 (CIT 2004) (approving use of AFA when respondent refused to participate in verification); *see also Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("SAA"). Polyflex's withdrawal from participation, non-cooperation in submitting requested information, and the fact that its withdrawal prevents the Department from conducting verification, constitute a failure to cooperate by not acting to the best of its ability to comply with requests for information in accordance with section 776(b) of the Act. Concerning the PRC exporters that refused to respond to the Department's shipment letters, because these exporters failed to respond to the Department's request for information, the Department concludes that these companies have failed to cooperate to the best of their abilities. Since Polyflex and the other PRC exporters did not receive separate rates, the Department considers all of these companies as part of the PRC-wide entity. Therefore, the Department preliminarily finds that the PRC-wide entity has not cooperated to the best of its ability. In selecting from among the facts available, an adverse inference is appropriate, pursuant to section 776(b) of the Act.

Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less*

Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at "Facts Available". In this case, as adverse facts available, the Department has selected the highest margin alleged in the petition, 185.28 percent.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. See *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000); see, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996).

To corroborate the 105.00 and 185.28 percent margins used as facts available for Newlife and as adverse facts available for the PRC-wide entity, respectively, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. See "Import Administration AD Investigation Initiation Checklist: Raw Flexible Magnets from the People's Republic of China," ("Initiation Checklist") (October 11, 2007). We examined evidence supporting the calculations in the petition and the Pre-initiation Supplemental Response to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and NV in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations. See *id.* We received no comments as to the

relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition for purposes of initiation are reliable for the purpose of being selected as the facts available and adverse facts available rates assigned to Newlife and the PRC-wide entity, respectively.

Preliminary Determination Margins

The Department has determined that the following preliminary dumping margins exist for the POI:

Manufacturer/Exporter	Margin (Percent)
Guangzhou Newlife Magnet Co., Ltd. ¹	105.00
PRC-wide Entity (including Polyflex)	185.28

¹ Newlife both manufactures and exports subject merchandise.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days after the date of publication of these preliminary results.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of raw flexible magnets from the PRC, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of

sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of magnets, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Submission of New Factual Information

19 CFR 351.301(b)(1) states that new factual information must be submitted no later than seven days before the date on which verification is to commence.² The Department will not verify Polyflex's responses because it has withdrawn from participating in this investigation, as discussed above in the Adverse Facts Available section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Instead, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

Public Comment

Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a disk containing the public version of those comments.

Any interested party may request a hearing within 21 days of publication of this notice. See 19 CFR 351.310(c). Interested parties that wish to request a hearing or to participate if one is

² In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs.

Unless the deadline is extended pursuant to section 735(a)(2) of the Act, the Department will make its final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

Dated: April 18, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-9099 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-583-842)

Notice of Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan

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

EFFECTIVE DATE: April 25, 2008.

SUMMARY: We preliminarily determine that imports of raw flexible magnets from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Catherine Cartos or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1757 and (202) 482-4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2007, the Department of Commerce (the Department) published in the **Federal Register** the initiation of an antidumping investigation on raw flexible magnets from Taiwan. See *Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's*

Republic of China and Taiwan, 72 FR 59071 (October 18, 2007) (*Initiation Notice*). In accordance with the Preamble to the Department's regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (Preamble)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On November 5, 2007, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of raw flexible magnets from the People's Republic of China and Taiwan. See *Raw Flexible Magnets from China and Taiwan*, 72 FR 63629 (November 9, 2007).

On December 11, 2007, we selected Kin Fong Magnets Co., Ltd. (Kin Fong), Magruba Flexible Magnets Co., Ltd. (Magruba), and JASDI Magnet Co., Ltd. (JASDI), as the mandatory respondents in this investigation. See the Memorandum from Laurie Parkhill to Stephen J. Claeys entitled "Antidumping Duty Investigation on Raw Flexible Magnets from Taiwan - Selection of Respondents," December 11, 2007.

On March 13, 2008, the petitioner alleged that JASDI made home-market sales of raw flexible magnets at prices below the cost of production during the period of investigation. On March 26, 2008, we initiated an investigation to determine whether JASDI made home-market sales of raw flexible magnets at prices below the cost of production during the period of investigation. See Memorandum from Richard Rimlinger to Laurie Parkhill entitled "Raw Flexible Magnets from Taiwan: Request to Initiate Cost Investigation of JASDI Magnet Co., Ltd.," dated March 26, 2008.

Period of Investigation

The period of investigation is July 1, 2006, through June 30, 2007.

Scope of Investigation

The products covered by this investigation are certain flexible magnet sheeting, strips, and profile shapes. Subject flexible magnet sheeting, strips, and profile shapes are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material

(commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized. Subject flexible magnet sheeting, strips, and profile shapes are capable of being permanently magnetized, but may be imported in either magnetized or unmagnetized (including demagnetized) condition. Subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic, or other material, which paper, plastic, or other material may be of any composition and/or color. Subject merchandise may be uncoated or may be coated with an adhesive or any other coating or combination of coatings. Subject merchandise is within the scope of this investigation whether it is in rolls, coils, sheets, or pieces and regardless of physical dimensions or packaging, including specialty packaging such as digital printer cartridges.

Specifically excluded from the scope of this investigation is retail printed flexible magnet sheeting, defined as flexible magnet sheeting (including individual magnets) that is laminated with paper, plastic or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnet sheeting if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet sheeting; manufacturing or use instructions (e.g., "print this side up," "this side up," "lamine here"); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use, such as application of laminate) or on any other covering that is removed from the flexible magnet sheeting prior or subsequent to final printing and before use; non-permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet sheeting to be re-printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope. The products subject to the investigation are currently

classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided only for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

On November 7, 2007, SH Industries, a U.S. importer of subject merchandise, argued that magnetic photo pockets, which are flexible magnets with clear plastic material fused to the magnet to form a pocket into which photographs and other items may be inserted for display, should be excluded from the scope of the antidumping and countervailing duty investigations on raw flexible magnets from the People's Republic of China and Taiwan. On November 13, 2007, the petitioner filed a response to the request by SH Industries, arguing that magnetic photo pockets are properly within the scope of the investigations. On April 11, 2008, the petitioner submitted additional argument concerning this issue. Because we received this letter only four business days before the statutory deadline for this preliminary determination, we did not have an opportunity to consider it prior to issuance of this preliminary determination.

We invite interested parties to submit comments on the petitioner's April 11, 2008, submission and to present evidence concerning the meaning of the terms "sheeting, strips, and profiles" as those terms are used within the industry. Additionally, because the scope language also states that "subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color," we encourage interested parties to comment on whether the plastic photo pocket fused to the flexible magnet satisfies this description.

Finally, interested parties may submit information that would be relevant in an analysis conducted pursuant to section 351.225(k)(2) of our regulations. The deadline for such comments will be 14 days after the publication of this notice. Rebuttal comments must be filed within five days thereafter. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Issuance of Questionnaire

On December 11, 2007, we issued Sections A, B, C, D, and E¹ of the antidumping questionnaire to Kin Fong, Magruba, and JASDI. We received a timely response from JASDI. We did not receive a response from Kin Fong or Magruba by the close of business on January 2, 2008, the established deadline for Section A of our questionnaire. On January 8, 2008, we sent Kin Fong and Magruba a letter notifying them that we had not received a response to our Section A questionnaire. In our January 8, 2008, letters to Kin Fong and Magruba, we also informed them that any submissions that were not filed in accordance with 19 CFR 351.303 and 304 of our regulations would be deemed untimely filed pursuant to 19 CFR 351.302 and that we may use facts otherwise available for Kin Fong's and Magruba's antidumping margin in this investigation pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

We have not received any response to our questionnaire or any other communication from Kin Fong since we issued the questionnaire to it. Magruba made attempts to respond to our January 8, 2008, letter claiming that it had not made sales during the POI as we discuss below. Although JASDI responded to Sections A, B, and C of our antidumping questionnaire initially, it did not respond to our March 11, 2008, supplemental questionnaire. Additionally, even though we informed JASDI that we had initiated an investigation to determine whether JASDI made sales of raw flexible magnets in Taiwan at prices that were below the cost of production and requested that JASDI respond to Section D of our antidumping questionnaire by April 10, 2008, JASDI did not respond to our request.

Finally, the Department rejected JASDI's request to withhold certain information from disclosure under the administrative protective order (APO). The Department requested that JASDI

resubmit this information, protected under the APO. Due to timing issues, the Department also requested written authorization to share this information protected under the terms of the APO with the petitioners. JASDI did not resubmit the information as requested and did not respond to the Department's request for authorization to release the information under the APO.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to Kin Fong, Magruba, and JASDI.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, Kin Fong, Magruba, and JASDI did not provide essential information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, Kin Fong and Magruba failed to respond to all of our questionnaires, thereby withholding information that is necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Act. Also, because JASDI failed to

¹ Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all of the company's home-market sales of the foreign like product or, if the home market is not viable, of sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information of the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further-manufacturing activities.

respond to Section D of our questionnaire and to supplement its section A, B, and C responses, we preliminarily find that the information submitted is not verifiable, that it is incomplete and cannot serve as a reliable basis for reaching our determination, and that we cannot use the information without undue difficulties. Specifically, despite our initiation of a cost investigation, we have no information on the record regarding JASDI's cost of production. Additionally, in our supplemental questionnaire we requested additional information necessary for us to make our determination. Thus, with respect to our preliminary determination, pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Act, we have based the antidumping margin on facts otherwise available for Kin Fong, Magruba, and JASDI.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From Mexico*, 69 FR 59892 (October 6, 2004).

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol.1 (1994) at 870 (SAA). Further, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

Kin Fong

With respect to Kin Fong, although the Department provided it with notice informing it of the consequences of its failure to respond adequately to the Department's questionnaire in this case pursuant to section 782(d) of the Act, Kin Fong did not respond to the

questionnaire. This constitutes a failure on the part of Kin Fong to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Because Kin Fong did not provide the information requested, section 782(e) of the Act is not applicable. Based on the above, the Department has preliminarily determined that Kin Fong failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

Magruba

With respect to Magruba, although the Department provided it with notice informing it of the consequences of its failure to respond adequately to the questionnaire in this case pursuant to section 782(d) of the Act, Magruba did not file a proper response to the questionnaire.

On December 11, 2007, we sent Magruba a questionnaire. The response to Section A of our questionnaire was due on January 2, 2008. The response to sections B through D of our questionnaire was due on January 22, 2008. Because Magruba did not submit a Section A questionnaire response by the due date, we sent Magruba a follow-up letter on January 8, 2008, in which we repeated the consequences of its failure to respond adequately to our questionnaire.

On January 9, 2008, Magruba transmitted to the Department a letter in which it claimed it did not sell subject merchandise to the United States during the POI. Magruba did not file its January 9, 2008, letter in accordance to our regulations. On January 19, 2008, we sent Magruba a letter in which we identified the filing, service, and certification deficiencies of Magruba's January 9, 2008, submission. Namely, Magruba did not mail the letter to the Department of Commerce in accordance with 19 CFR 351.303(b) but faxed and e-mailed the letter, which are not acceptable methods for filing purposes. In addition, Magruba did not file the requisite number of copies in accordance with 19 CFR 351.303(c), did not provide the proper specifications on its cover letter in accordance with 19 CFR 351.303(d)(2)(v), did not include a certification that it served a copy of its submission on interested parties in

accordance with 19 CFR 351.303(f), and, finally, did not include a certificate of accuracy in accordance with 19 CFR 351.303(g). Also in our January 19, 2008, letter we enclosed a copy of the pertinent regulations (19 CFR 351.303) and a copy of the public service list. Finally, in our January 19, 2008, letter we informed Magruba that we had placed a copy of its January 9, 2008, on the record but requested that Magruba refile its January 9, 2008, letter in accordance with 19 CFR 351.303 by the close of business on January 22, 2008. We emphasized that, if Magruba did not file future submissions within the set deadline and in accordance with our regulations, we would reject the submission which may result in our use of adverse facts available. Magruba did not refile its January 9, 2008, letter.

On January 18, 2008, the petitioner filed comments on Magruba's January 9, 2008, letter. The petitioner claimed that Magruba had in fact made sales of subject merchandise to the United States during the POI and supported its claim with import data sourced from the "PIERS" database.

On February 19, 2008, Magruba faxed and e-mailed a second letter to the Department repeating the same filing, service, and certification deficiencies of its January 9, 2008, letter. The February 19, 2008, letter had different content than the January 8, 2008, letter and thus was not an attempt to refile the January 9, 2008, letter. On March 3, 2008, we sent a letter to Magruba in which we rejected its February 19, 2008, letter due to its filing deficiencies. In the letter we identified the deficiencies and again included a copy of the pertinent regulations and public service list. We allowed Magruba a chance to remedy the deficiencies and refile its February 19, 2008, letter by March 10, 2008. Magruba did not refile the letter.

Information we obtained from the U.S. Customs and Border Protection (CBP) supports the petitioner's allegation that entries of subject merchandise from Magruba entered the United States during the POI. *See* Memorandum from Catherine Cartsos through Richard Rimlinger to the File, Less-Than-Fair-Value Investigation On Raw Magnets from Taiwan: Customs and Border Protection Entry Data for Magruba Flexible Magnets Co., Ltd., dated April 18, 2008 (Magruba CBP Data Memorandum).

Magruba did not respond to our questionnaire. Even if Magruba believed that it did not sell merchandise covered by the scope of the investigation to the United States during the POI, Magruba still should have submitted a questionnaire response in which it

could have argued before us its position and provide factual support to its argument. Magruba chose not to do so. When Magruba did attempt to communicate with the Department, it failed to follow the regulatory filing requirements. Moreover, Magruba failed to resubmit its defective submissions twice in accordance with the Department's instructions. Although Magruba contends in its January 9, 2008, letter that it had no shipments of subject merchandise, information on the record supports the petitioner's claim that Magruba did indeed sell subject merchandise to the United States during the POI. Accordingly we preliminarily find that Magruba failed to cooperate to the best of its ability and therefore it is appropriate to apply an adverse inference in selecting from among the facts available.

JASDI

As explained above, JASDI failed to provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, JASDI withheld information concerning its sales practices and cost-of-production information, which is necessary for reaching the applicable determination. See section 776(a)(2)(A) of the Act. These actions constitute a failure on the part of JASDI to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Accordingly, the Department has preliminarily determined that JASDI failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine From India*, 72 FR 62827 (November 7, 2007) (unchanged in *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Glycine From India*, 72 FR 62826 (November 7, 2007)), and *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008).

Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability by complying with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other

information placed on the record. See also 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). In this case, because we are unable to calculate a margin for Kin Fong, Magruba, and JASDI and because an adverse inference is warranted, we have assigned to these firms a margin of 38.03 percent, the highest margin alleged in the petition. See *Antidumping Duty Petition on Raw Flexible Magnets from the People's Republic of China and Taiwan* (September 21, 2007) and its September 27, 2007, October 1, 2007, October 9, 2007, October 10, 2007, and October 11, 2007, supplements (collectively *Petition*) filed on behalf of Magnum Magnetics Corporation (the petitioner).

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The SAA clarifies that "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department

will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the *Petition* during our pre-initiation analysis and for purposes of this preliminary determination. See *Antidumping Duty Investigation Initiation Checklist: Raw Flexible Magnets from Taiwan* (October 18, 2007) (Taiwan Initiation Checklist). We also examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition*. In addition, we examined the key elements of the constructed export-price (CEP) and normal-value calculations used in the *Petition* to derive antidumping margins. Our examination also included information from various independent sources provided either in the *Petition* or, based on our requests, in supplements to the *Petition*. These data corroborate key elements of the CEP and normal-value calculations.

The petitioner calculated CEP using two price offers from the U.S. affiliated reseller of JASDI, a Taiwanese producer of raw flexible magnets. The petitioner provided an affidavit from the employee who obtained the price offers. The petitioner deducted amounts for foreign inland-freight costs, international freight costs, U.S. inland-freight costs, U.S. operating expenses (as indirect selling expenses), inventory carrying costs, and CEP profit. The petitioner used publicly available data, such as import statistics from the Bureau of Census, to estimate charges for freight expenses and marine-insurance expenses. Due to the payment terms described in the price offers, the petitioner made no adjustments for imputed credit expense. See *Taiwan Initiation Checklist* at 6. We obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*. Based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices corroborated.

With respect to normal value, the petitioner calculated normal value using six price quotes, obtained by a market

researcher, from JASDI, the Taiwanese producer of the subject merchandise. The petitioner did not make any adjustment for packing because the packing expenses were included in the price quotes and, therefore, the petitioner was unable to quantify the exact difference in packing materials and costs. In addition, because of the sale and payment terms described in the price quote, the petitioner made no adjustments for freight or imputed credit expense. See *Taiwan Initiation Checklist* at 6. We consider the petitioner's calculation of normal value to be corroborated because the calculations relied on actual price quotes obtained from a Taiwanese respondent manufacturer of subject merchandise.

Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the *Petition* by examining source documents as well as publicly available information, we preliminarily determine that the margins in the *Petition* are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a "rational relationship" to the respondent's "commercial practices" and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed that the calculation of margins in the *Petition* reflects commercial practices of the particular industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information.

As such, we preliminarily determine that the highest margin in the *Petition*, which we determined during our pre-initiation analysis was based on adequate and accurate information and

which we have corroborated for purposes of this preliminary determination, is relevant as the AFA rate for Kin Fong, Magruba, and JASDI in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving Kin Fong, Magruba, and JASDI there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be relevant to these firms in this investigation, we have corroborated the AFA rate "to the extent practicable." See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, "pursuant to the to the extent practicable" language the corroboration requirement itself is not mandatory when not feasible"). Therefore, we find that the estimated margin of 38.03 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to Kin Fong, Magruba, and JASDI, we have applied the margin rate of 38.03 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice*.

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the all-others rate, the simple average of the margins in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from the Republic of Korea*, 72 FR 67275 (November 28, 2007); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271 (November 28, 2007). Consistent with our practice we calculated a simple average of the rates in the *Petition*, as listed in the *Initiation*

Notice, and assigned this rate to all other manufacturers/exporters. For details of these calculations, see the memorandum from Catherine Cartos to File entitled "Antidumping Duty Investigation on Raw Flexible Magnets from Taiwan - Analysis Memo for All-Others Rate," dated April 18, 2008.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of raw flexible magnets from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer or Exporter	Margin (percent)
Kin Fong	38.03
Magruba	38.03
JASDI	38.03
All Others	31.20

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than 30 days after the publication of this notice. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested

party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See 19 CFR 351.310(d)(1). Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. See 19 CFR 351.310(c). Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will not be conducting verifications of Kin Fong, Magruba, and JASDI because they have failed to file responses to all of our questionnaires, as discussed above in the Use of Facts Available section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

We will make our final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 18, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8-9141 Filed 4-24-08; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-886

Polyethylene Retail Carrier Bags from the Peoples' Republic of China; Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4081 and (202) 482-5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the Department of Commerce ("Department") published a notice of initiation of administrative review of the antidumping duty order on polyethylene retail carrier bags from the Peoples' Republic of China ("PRC"). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 54428 (September 25, 2007). The period of review is August 1, 2006, through July 31, 2007. The preliminary results of this administrative review are currently due no later than May 2, 2008.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department determines that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because this review involves examining a number of complex issues related to the factors of production and surrogate values. The Department requires additional time to issue and analyze supplemental questionnaires regarding these issues. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completing the preliminary results of this administrative review until August 30, 2008, which is 365 days from the last day of the anniversary month of the date of publication of the order. However, August 30, 2008, falls on a Saturday and September 1, 2008, is a federal holiday. It is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to*

the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary results is now no later than September 2, 2008. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 18, 2008.

Stephen J. Claeys,
Deputy Assistant Secretary for Import Administration.

[FR Doc. E8-9096 Filed 4-24-08; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. The Department received a timely request to revoke in part the antidumping duty order on Certain Tissue Paper Products from the People's Republic of China with respect to one exporter.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating

administrative reviews of the following
antidumping and countervailing duty
orders and findings. We intend to issue
the final results of these reviews not
later than March 31, 2009.

	Period to be reviewed
Antidumping Duty Proceedings	
BRAZIL: Certain Hot-Rolled Carbon Steel Flat Products A-351-828 Companhia Siderurgica Nacional. Companhia Siderurgica de Tubarao.	3/1/07-2/29/08
BRAZIL: Certain Orange Juice A-351-840 Fischer S.A. Comercio, Industria, and Agricultura (successor-in-interest to Fischer S/A Agroindustria). Sucocitrico Cutrale Ltda.	3/1/07-2/29/08
GERMANY: Brass Sheet and Strip A-428-602 Wieland-Werke AG.	3/1/07-2/29/08
THAILAND: Circular Welded Carbon Steel Pipes and Tubes A-549-502 Saha Thai Steel Pipe Company, Ltd.	3/1/07-2/29/08
THE PEOPLE'S REPUBLIC OF CHINA: Certain Tissue Paper Products ¹ A-570-894 Foshan Sansico Co., Ltd. Guilin Qifeng Paper Co., Ltd. Max Fortune Industrial Limited/Max Fortune (FETDE) Paper Products Co., Ltd. PT Grafitendo Ciptaprima. PT Printec Perkasa. PT Printec Perkasa II. PT Sansico Utama. Sansico Asia Pacific Limited. Vietnam Quijiang Paper Co., Ltd.	3/1/07-2/29/08
THE PEOPLE'S REPUBLIC OF CHINA: Glycine ² A-570-836 A.H.A. International Company, Ltd. Amol Biotech Limited. Antai Bio-Tech Co. Limited. Baoding Mantong Fine Chemistry Co., Ltd. Beijing Jian Li Pharmaceutical Company. Degussa Rexim (Nanning). Du-Hope International Group. Hua Yip Company Inc. Hubei guangji Pharmaceutical Co. Huzhou New Century International Trade Co. Jizhou City Huayang Chemical Company, Ltd. Jiangxi Ansun Chemical Technology. Nantong Dongchang Chemical Industry Corp. Nantong Weifu Foreign Trade Co., Ltd. Pudong Trans USA, Inc. Qingdao Samin Chemical Company, Ltd. Santec Chemicals Corporation. Schenker China Ltd. Shanghai Freeman Lifescience Co., Ltd. Sinosweet Co., Ltd. Suzhou Everich Imp. & Exp. Co., Ltd. Taigene Global Enterprises Ltd. Tianjin Tiancheng Pharmaceutical Co. Wenda Co., Ltd.	3/1/07-2/29/08

¹ If one of the above-named companies does not qualify for a separate rate, all other rate, all other exporters of Certain Tissue Paper Products from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this new review as part of the single PRC entity of which the named exporters are a part.

² If one of the above-named companies does not qualify for a separate rate, all other exporters of Glycine from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section

351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is

sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings*:

Documents Submission Procedures; APO Procedures (73 FR 3634). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (e.g., the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1765(a)), and 19 CFR 351.221(c)(1)(i).

Dated: April 21, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8-9123 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH46

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by David Beutel and Laura Skrobe of the University of Rhode Island (URI) contains all of the required information and warrants further consideration. The EFP would enable researchers to test an experimental net that uses very large mesh panels to increase escapement of cod relative to haddock by granting exemption from the Gulf of Maine (GOM) Rolling Closure Areas II and III. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Assistant Regional Administrator

proposes to recommend that an EFP be issued that would allow two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 12, 2008.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: DA8-066@noaa.gov. Include in the subject line "Comments on Eliminator Trawl EFP."

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Eliminator Trawl EFP."

- Fax: (978) 281-9135.

FOR FURTHER INFORMATION CONTACT:

Douglas Potts, Fishery Management Specialist, 978-281-9341.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted on April 2, 2008, by David Beutel and Laura Skrobe for a project entitled "Exploring Bycatch Reduction in the Haddock Fishery Through the Use of the Eliminator Trawl with Fishing Vessels in the 250 to 550 Horsepower Range" funded under the Northeast Region Cooperative Research Partnership Program. The study would conduct field testing of a new net design, referred to as the Eliminator Trawl, specifically scaled for vessels with 250 to 550 horsepower engines. This trawl net is equipped with very large mesh in selected portions of the body to increase escapement of cod and flatfish while retaining haddock. The original Eliminator Trawl, currently being considered as an additional gear in special programs in the NE multispecies fishery, is not designed to allow smaller powered vessels to utilize this net.

The EFP would exempt two vessels from the seasonal GOM Rolling Closure Areas II and III, as specified at 50 CFR 648.81(f)(1)(ii) and (iii), while conducting research trips. These closure areas are believed to provide the mix of species needed, while still being close enough to shore for the safe operation of these smaller vessels. The goal of the research is to demonstrate the efficiency of this net design to selectively target haddock. The applicants intend that, if

sufficiently effective, the gear be proposed by the New England Fishery Management Council for use in existing Special Access Programs (SAPs) or for the development of a new SAP in the study area.

Research trips would be conducted within 30-minute squares 132 and 133 and the vessels would conduct side-by-side tows. One vessel would fish with the experimental trawl and the other with a standard legal groundfish trawl. The experimental trawl net employs graduated webbing starting with 5 foot (1.524 m) meshes and ending with the legal minimum 6-inch (15.24-cm) mesh size in the body and 6.5-inch (16.51-cm) mesh in the codend. Each vessel would conduct four to six 1-hour tows per day over six days between the start of the EFP and May 30, 2008, and again between April 1 and May 30, 2009. The researchers believe the best mix of haddock, Atlantic cod, and flounders would be present in this area during this period. Overall, the total expected catch from both the experimental and commercial trawls would be:

Species	Estimated Catch
Atlantic Cod	14,400 lb (6,531.7 kg)
Haddock	30,000 lb (13,607.8 kg)
American Plaice	400 lb (181.4 kg)
Yellowtail Flounder	10 lb (4.5 kg)

Based on other previous research conducted in the proposed area and season, the researchers estimate that the vessels would catch less than 50 lb (22.7 kg) each of other regulated groundfish species, white hake, winter flounder, witch flounder, windowpane flounder, redfish, and pollock. The vessels would be charged A days-at-sea (DAS) during the research trips and would be subject to applicable size and possession limits. Undersized, or otherwise protected fish, would not be retained or landed. Legal sized fish would be landed and sold under normal NE multispecies DAS and other applicable regulations.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 22, 2008.

Emily H. Menashes

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

[FR Doc. E8-9048 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH38

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments

SUMMARY: The Regional Administrator, Southwest Region, NMFS has made a preliminary determination that an application for an Exempted Fishing Permit (EFP) warrants further consideration. The application was submitted to NMFS by a California-based commercial fisherman requesting an exemption for a single vessel from the longline fishing prohibitions within the U.S. Exclusive Economic Zone (EEZ) off the West Coast during the 2008 fishing year beginning mid-September 2008, or, if administrative delays occur, during the 2009 fishing year beginning mid-September 2009. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). However, further review and consultation is necessary before a final determination is made to issue the EFP. Therefore, NMFS proposes to review the EFP and requests public comment on the application. The application is available for review on the NMFS Southwest Region website: <https://swr.nmfs.noaa.gov/>.

DATES: Comments must be received by May 27, 2008.

ADDRESSES: You may submit comments on this notice, identified by "RIN 0648-XH38" by any of the following methods:

- E-mail: LonglineEFP.SWR@noaa.gov. Include the RIN in the subject line of the message.

- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

- Fax: (562) 980-4047.

FOR FURTHER INFORMATION CONTACT:

Mark Helvey, Southwest Region, NMFS, (562) 980-4040.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted to the Pacific Fisheries Management Council (Council) by Peter Dupuy, a commercial fishing vessel owner, in March 2008. EFPs for fishing under the HMS FMP are governed by 50 CFR 600.745 and 660.718. The EFP would exempt a single vessel from following the gear and fishing restrictions at 50 CFR 660.712(a) implementing the HMS FMP that prohibit owners and operators of vessels registered for use of longline gear from using longline gear to fish for or target HMS within the U.S. EEZ. The applicant applied for the EFP with the intent to conduct an exploratory test fishery with a single vessel to gather information on the economic viability and environmental effects, including the potential impacts to protected species and non-target finfish interactions, of fishing for swordfish in the West Coast EEZ.

At its April 2008 meeting, the Council, with advice from its HMS Management Team and HMS Advisory Subpanel, adopted a preferred alternative for the EFP and forwarded that alternative to NMFS, recommending that the agency review the proposed EFP and, if consistent with Federal law, issue the permit. The Council recommended that the applicant be subject to a cap of one short-finned pilot whale and 12 striped marlin, and a prohibition for fishing off the State of Washington. The Council recommended that the fishery be managed through limits on the amount of incidental take of protected species that may be exposed to and adversely affected by this action. The limits will be established based upon Section 7 consultations under the Endangered Species Act by NMFS for marine mammals and sea turtles, and by the U. S. Fish and Wildlife Service for seabirds. If any one of the limits set by these consultations is reached by the fishery authorized by the EFP, the permit would be immediately revoked. The EFP would require 100 percent NMFS observer coverage. The Council's recommendations, described above, would be established as permit conditions.

If approved, the EFP would authorize a single vessel to longline fish in the EEZ off of Oregon and California. Under the proposed terms and conditions of the EFP, the vessel would target swordfish utilizing shallow-set longline gear which is set at a shallower depth

(<100 m) than deep-set longline gear which is typically set in the deeper thermocline zone (~300-400 m) for tunas. The applicant would be allowed a maximum of four trips between September and December, 2008, or between September and December, 2009, and a maximum of 14 sets per trip. Fishing would neither be allowed within 50 nautical miles of the coastline nor within the Southern California Bight. The Bight is defined in general terms as coastal waters from Point Conception in the north to just past San Diego in the south, and extending offshore of San Nicolas Island (Channel Islands National Marine Sanctuary waters would be excluded from the fishing area). The mainline may not exceed 100 km and no more than 1,200 hooks may be deployed per set. The applicant would be required to use 18/0 circle hooks with a 10° offset and mackerel or mackerel-type bait (as described at 50 CFR 665.33(f) and (g), respectively). To reduce potential interactions with seabirds, gear could not be set until one hour after local sunset and must be fully deployed before local sunrise. A certain percentage of the deployed gear would be required to be outfitted with time/depth recorders to measure fishing depth; the percentage would be determined by NMFS based on the amount of data needed to extrapolate the depth of all the hooks. The applicant would be required to use a NMFS-certified shark de-hooking device to improve the post-release survivability of incidentally captured sharks.

Aside from the exemptions described above, the vessel fishing under the EFP would be subject to all other regulations implementing the HMS FMP, including measures to protect sea turtles, marine mammals, and seabirds.

The EFP application would be effective for 2008 or 2009 only. In accordance with NOAA Administrative Order 216-6, an appropriate National Environmental Policy Act document will be completed prior to the issuance of the EFP. A draft Environmental Assessment on the EFP was presented to the Council and public in April 2008. Further review and consultation is necessary before a final determination is made to issue the EFP. As required in Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), NMFS will engage in formal consultation to determine if the proposed action is likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Dated: April 22, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E8-9049 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG85

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the Gulf of Maine Research Institute (GMRI) contains all of the required information and warrants further consideration. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Monkfish Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow 11 commercial fishing vessels to conduct compensation fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. This EFP, which would enable vessels to harvest monkfish granted through the Monkfish Research Set-Aside (RSA) Program, would grant exemptions from the monkfish days-at-sea (DAS) possession limits in the Southern Fishery Management Area.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 12, 2008.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: DA8-081@noaa.gov. Include in the subject line "Comments on GMRI Monkfish EFP."

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on GMRI monkfish EFP, DA8-081."

- Fax: (978) 281-9135.

FOR FURTHER INFORMATION CONTACT:

Emily Bryant, Fishery Management Specialist, 978-281-9244.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by GMRI on March 21, 2008, for a project funded under the New England and Mid-Atlantic Fishery Management Councils' Monkfish RSA Program. The project itself will evaluate the discard of monkfish caught as bycatch on Northeast (NE) multispecies DAS and directed monkfish trips. Research trips will be covered under a separate EFP. This EFP would grant an exemption from monkfish possession limits to 11 vessels for the purpose of harvesting RSA to fund this research project (i.e. compensation fishing). Funds generated by the compensation fishing will be used to pay for vessel charters, technical and sampling equipment, as well as salaries and stipends for principal investigators and industry collaborators.

The research portion of this project will occur over the course of 1 year and will utilize boat- and port-based data collection programs to estimate and compare monkfish discards between boats trawling for NE multispecies in the DAS program and directed monkfish trips in the Gulf of Maine. The boat-based program will utilize the Study Fleet electronic logbook and independent at-sea sampling, and will be complemented with port-based sampling of retained and otherwise discarded monkfish. The research would be covered under the programmatic Study Fleet EFP. More information regarding the exemptions requested for this EFP can be found in the **Federal Register** notice that published on March 25, 2008 (73 FR 15739).

Compensation fishing for this research will occur from May 2008 through April 2009. The 11 fishing industry collaborators will have access to 139 Monkfish DAS that will be awarded to the project through the Monkfish RSA Program. These vessels must be able to land at least 2,500 lb (1,134 kg) of whole monkfish (730 lb (331 kg) tail weight) per trip to achieve

the goal of \$3,000 per RSA DAS. In order to achieve this target catch, these fishing activities would require an exemption from monkfish DAS possession limits at § 648.94(b)(2). This exemption would provide these 11 vessels with the flexibility they need to generate sufficient income to meet projected costs, while minimizing operating expenses, of the research activity. Based on the awarded 139 DAS, this would require a total catch of 347,500 lb (157,623 kg) of whole monkfish (104,669 lb (47,477 kg) tail weight). Operating under this total landings cap, compensation fishing would continue until the required goal of 347,500 lb (157,623 kg) of whole monkfish is met, or until the awarded DAS have been fully utilized, which ever occurs first. Aside from this exemption, fishing activity will be conducted under normal commercial practices.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited. If the research project is terminated for any reason prior to completion, any unused funds collected from catch sold to pay for research expenses may be refunded to NOAA.

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

Dated: April 22, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E8-9047 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 080411558-8559-01]

Draft Revision of the NOAA Hurricane Forecasting Improvement Project Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and request for public comment.

SUMMARY: NOAA publishes this notice to announce the availability of the draft NOAA Hurricane Forecasting

Improvement Project Plan for public comment. The Plan has been written to document NOAA's commitment to work with its partners in hurricane research and development to improve its capabilities to forecast hurricanes.

DATES: Comments on this draft document must be submitted by 5 p.m. EDT on May 27, 2008.

ADDRESSES: The draft NOAA Hurricane Forecasting Improvement Project Plan will be available on the NOAA Research Council Web site at <http://www.nrc.noaa.gov/HFIPDraftPlan.html>.

The public is encouraged to submit comments electronically to noaa.review.hfip_plan@noaa.gov. For individuals who do not have access to the internet, comments may be submitted by mail to: NOAA Research, c/o Mr. Roger Pierce, Silver Spring Metro Center Bldg. 3, Room 11412, R/PPE, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Pierce, Silver Spring Metro Center Bldg. 3, Room 11314, R/PPE, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone 301-734-1062, Fax: 301-713-0158, E-mail:

roger.pierce@noaa.gov), during normal business hours of 9 a.m. to 5 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: NOAA is publishing this notice to announce the availability of the draft NOAA Hurricane Forecasting Improvement Project Plan for public comment. The NOAA is seeking public comment from all interested parties. The NOAA Hurricane Forecasting Improvement Project Plan draft is being issued for comment only and is not intended for interim use. Suggested changes will be incorporated where appropriate, and the final document will be posted on a NOAA Web site.

The NOAA Hurricane Forecasting Improvement Project Plan is being developed to reflect the evolution of NOAA's research activities and priorities. The draft NOAA Hurricane Forecasting Improvement Project Plan is consistent with the NOAA Science Advisory Board, Hurricane Intensity Research Working Group recommendations and other recent internal and external reports on hurricanes.

The draft NOAA Hurricane Forecasting Improvement Project Plan frames research in NOAA within the context of societal needs and by working with other government and academic organizations working on critical environmental challenges, particularly those associated with hurricanes, facing the United States

today and in the future. This plan states NOAA's priority research areas, such as Hurricane Intensity forecast improvements, improvements in high performance computing, use of new data, for the short term and the milestones by which NOAA intends to measure progress within these areas. Significant topics addressed in the NOAA Hurricane Forecasting Improvement Project Plan include the importance of transition of research to application, the recognition of the value of transformational research, and the engagement and alignment of inter-agency and the larger scientific community efforts toward finding solutions to the challenges posed to improve hurricane forecasts.

NOAA welcomes all comments on the content of the draft NOAA Hurricane Forecasting Improvement Project Plan. We also request comments on any inconsistencies perceived within the document and possible omissions of important topics or issues. For any shortcoming noted within the draft document, please propose specific remedies.

Please follow these instructions for preparing and submitting comments. Using the format guidance described below will facilitate the processing of reviewer comments and assure that all comments are appropriately considered. Overview comments should be provided first. Comments that are specific to particular pages, paragraphs, or lines of the section should follow any overview comments and should identify the page numbers to which they apply. Please number each page of your comments.

Dated: April 21, 2008.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E8-9062 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH09

Marine Mammals; File No. 774-1714

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that NMFS, Southwest Fisheries Science Center (SWFSC) (Jeremy Rusin,

Principal Investigator), Protected Resources Division, 8604 La Jolla Shores Dr., La Jolla, CA 92037 has been issued an amendment to scientific research Permit No. 774-1714-06.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

Amy Hapeman or Carrie Hubbard, (301)713-2289.

SUPPLEMENTARY INFORMATION: On March 12, 2007, notice was published in the **Federal Register** (72 FR 10986) that an amendment of Permit No. 774-1714, issued June 30, 2004 (68 FR 57673), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

Permit No. 774-1714-07 authorizes the SWFSC to conduct research on seven pinniped species, 55 cetacean species, and five sea turtle species in the Pacific, Indian, Atlantic, Arctic and Southern Oceans. The permit authorizes Level B harassment during aerial and vessel surveys for photo-identification/photogrammetry, incidental harassment, collection of sloughed skin, and salvage of carcasses and parts; Level A harassment for capture, biopsy sampling, and tagging activities; and the import/export of specimens. This amendment: (1) reorganizes the take table to reflect annual takes instead of 5-year cumulative takes; (2) increases the number of animals harassed during aerial and vessel surveys, biopsy sampled, and/or tagged for several cetacean species; (3) collapses authorized takes of six cetacean stocks to the species level; (4) adds Antarctic minke whales (*Balaenoptera bonaerensis*) to species that may be harassed during aerial and vessel surveys for photo-id and biopsy sampled; (5) adds four new cetacean categories for animals that are observed but not identifiable during surveys; (6) adds 14 cetacean species/stocks to those that may be harassed/sampled in the Southern Ocean; and (7) authorizes the satellite tagging of 50 non-endangered killer whales (*Orcinus orca*) in Antarctic

waters annually. The amended permit is valid until it expires on June 30, 2009.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562)980-4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814-4700; phone (808)944-2200; fax (808)973-2941.

Dated: April 21, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8-9114 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 06480-XH24

South Atlantic Fishery Management Council; Public Meetings; Modification of E-mail Addresses

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

ACTION: Modification of e-mail addresses published in the document entitled "South Atlantic Fishery Management Council; Public Meetings", which

published in the **Federal Register** on April 17, 2008.

SUMMARY: The South Atlantic Fishery Management Council has modified email addresses for submitting public hearing comments for Amendment 16 to the Snapper Grouper Fishery Management Plan and for the Comprehensive Ecosystem Amendment. See **SUPPLEMENTARY INFORMATION** for specific details.

DATES: The public comment period for these amendments are open until 5 p.m., May 16, 2008.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston SC 29405. Copies of the public hearing documents are available from Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843)571-4366 or toll free at (866)SAFMC-10.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone (843)571-4366 or toll free 866/SAFMC-10; FAX 843/769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: On April 17, 2008, NMFS published notification of public hearings and scoping meetings to be held from May 7 through May 15, 2008. The open period for written comments for these meetings ends at 5 p.m. on May 16, 2008. The e-mail addresses for comments regarding the Snapper Grouper Amendment 16 and the e-mail address for the Comprehensive Ecosystem Amendment were not listed correctly. The correct e-mail addresses are as follows:

For the Snapper Grouper Amendment 16, the e-mail address is SGAmend16@safmc.net

For the Comprehensive Ecosystem Amendment, the e-mail address is FEPCEA@safmc.net

All other information in the April 17, 2008, document (FR Doc. E8-8286) remains unchanged.

Dated: April 22, 2008.

William D. Chappell,

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

[FR Doc. E8-9117 Filed 4-24-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-C-2008-0017]

Public Advisory Committees

AGENCY: United States Patent and Trademark Office.

ACTION: Notice and request for nominations.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the "Act"), Pub. L. 106-113, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters (now codified at 35 U.S.C. 5). The USPTO is requesting nominations for three (3) members to each Public Advisory Committee for terms of three years that begin from date of appointment.

DATES: Nominations must be postmarked or electronically transmitted on or before May 30, 2008.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resumé to Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313-1450; by electronic mail to:

PPACnominations@uspto.gov for the Patent Public Advisory Committee or TPACnominations@uspto.gov for the Trademark Patent Public Advisory Committee; by facsimile transmission marked to the Chief of Staff's attention at (571) 273-0464, or by mail marked to the Chief of Staff's attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313-1450.

FOR FURTHER INFORMATION CONTACT: Eleanor K. Meltzer, Chief of Staff, by facsimile transmission marked to her attention at (571) 273-0464, or by mail marked to her attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313-1450.

SUPPLEMENTARY INFORMATION: The Advisory Committees' duties include:

- Review and advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO.

Members of the Patent and Trademark Public Advisory Committees are appointed by and serve at the pleasure of the Secretary of Commerce for three (3)-year terms.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the "Secretary"). The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO, both large and small entity applicants in proportion to the number of such applications filed. The Committees must include members who have "substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation." 35 U.S.C. 5(b)(3). In the case of the Patent Public Advisory Committee, at least twenty-five (25) percent of the members must represent "small business concerns, independent inventors, and nonprofit organizations," and at least one member must represent the independent inventor community. 35 U.S.C. 5(b)(2). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO.

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of three years from date of appointment. As required by the Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5,

United States Code. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code. The USPTO will provide the necessary administrative support, including technical assistance, for the Committees.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be Special Government Employees within the meaning of Section 202 of title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than sixty days during each calendar year:

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the Chair to consider an agenda set by the Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential matters. Nominees must also have the ability to participate in Committee business through the Internet.

Procedures for Submitting Nominations

Submit resumés for nomination for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Chief of Staff to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark

Office, utilizing the addresses provided above.

Dated: April 21, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E8-9120 Filed 4-24-08; 8:45 am]

BILLING CODE 6330-01-P

DEPARTMENT OF THE DEFENSE

Office of the Secretary of Defense

Missile Defense Advisory Committee Meeting Cancellation

AGENCY: Department of Defense; Missile Defense Agency.

ACTION: Notice of cancelled meeting.

SUMMARY: Due to the last minute unavailability of a quorum, the Missile Defense Advisory Committee meeting scheduled for Wednesday, April 2 and Thursday, April 3, 2008, from 8 a.m. to 5 p.m. was cancelled. At this date, neither the Department of Defense nor the committee's Designated Federal Officer has plans to reschedule the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Al Bready, Designated Federal Officer at mdac@mda.mil, phone/voice mail 703-695-6438, or mail at 7100 Defense Pentagon, Washington, DC 20301-7100.

SUPPLEMENTARY INFORMATION: The Department of Defense announced this closed meeting in a notice that was published in the **Federal Register** (73 FR 15495) dated March 24, 2008.

Dated: April 18, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8-9086 Filed 4-24-08; 8:45 am]

BILLING CODE 5001-06-P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, May 14, 2008. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Independence Seaport Museum at Penn's Landing, 211 South Columbus Boulevard and Walnut Street, Philadelphia, Pennsylvania.

The conference among the commissioners and staff will begin at 10:30 a.m. Topics of discussion will include: Update on a request for proposal for the Reassessment Study to be undertaken in accordance with the Decree Parties' Agreement of September 26, 2007; and presentation by Lori Dillard Rech, President of the Independence Seaport Museum. Because of the large number of dockets scheduled for public hearing on May 14, in a departure from the customary schedule, the portion of the business meeting consisting of the hearing on Project Review applications will be held at approximately 11:15 a.m., immediately following the morning conference session. At the conclusion of the hearing on Project Review applications, there will be a break for lunch. The business meeting will resume at 1:30 p.m.

1. *Valley Township D-88-31 CP-3*. An application for the renewal of a ground water withdrawal project to continue withdrawal of 4.5 million gallons per thirty days (mg/30 days) to supply the applicant's public water supply distribution system from existing Wells Nos. V1, V2 and V4. The project is located in the Precambrian Gabbroic Gneiss Formation in the Brandywine Creek Watershed in Valley Township, Chester County, Pennsylvania.

2. *Monroe Township Municipal Utilities Authority D-93-9 CP-2*. An application for the renewal of a ground water withdrawal project to continue withdrawal of 25.92 mg/30 days from existing Wells Nos. 9 and 10 to supply the portion of the applicant's public water supply distribution system that is located in the Delaware River Basin. The project is located in the Kirkwood Cohansey Aquifer in the Scotland Run Watershed in Monroe Township, Gloucester County, New Jersey, in New Jersey Critical Water Supply Area 2.

3. *Borough of Milford D-68-100 CP-2*. An application to upgrade the applicant's wastewater treatment plant (WWTP) to provide improved nutrient removal. No increase in the approved 0.4 mgd WWTP capacity is proposed. The project is located off Carpenter Street in Milford Borough, Hunterdon County, New Jersey and discharges to Spring Mills Creek, approximately 0.1 mile upstream from its confluence with Lower Delaware River Special Protection Waters. The project is also within the Lower Delaware River Management Plan area. The WWTP will continue to serve a portion of Holland Township and Milford Borough, both in Hunterdon County, New Jersey.

4. *Siemens Healthcare Diagnostics D-70-86-2*. An application for the renewal

of a ground water withdrawal project to increase withdrawal from 8.64 mg/30 days to 12.08 mg/30 days to supply the applicant's manufacturing facility from existing Well No. 4 and to decrease the total system allocation from 15.12 mg/30 days to 12.1 mg/30 days in the Columbia Formation. The project is located in the C & D Canal and the Red Lion Creek watersheds in the City of Newark, New Castle County, Delaware.

5. *Aqua New Jersey, Inc. D-77-49-2*. An application for approval of a ground water withdrawal project to supply up to 8.6 mg/30 days of water to the applicant's Warren Glen, Riegel Ridge and Fox Hollow distribution systems from new Wells Nos. 4, 5, 6 and 7, which represents an increase in the existing withdrawal 5.6 mg/30 days to 8.6 mg/30 days. The increased allocation is requested in order to meet projected increases in service area demand. The project is located in the Leithsville Formation in the Musconetcong and Delaware River Watersheds in Holland Township, Hunterdon County and Pohatcong Township, Warren County, New Jersey. This withdrawal project is located within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

6. *Upper Gwynedd Township D-91-88 CP-4*. An application for approval of the addition of an effluent filter on the Upper Gwynedd Township WWTP. The WWTP's average annual flow of 5.7 mgd will not change. The WWTP will continue to discharge to the Wissahickon Creek, a tributary of the Schuylkill River. The facility is located in Upper Gwynedd Township, Montgomery County, Pennsylvania.

7. *Township of Pemberton D-92-56 CP-3*. An application for the renewal of a ground water withdrawal project to increase withdrawal from 38.75 mg/30 days to 58 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 4, 6, 7, 8A and 11 and new Wells Nos. 1, 2 and 13 in the Mt. Laurel/Wenonah and Englishtown Formations. The increased allocation is requested in order to meet projected increases in service area demand. The project is located in the Rancocas Creek Watershed in Pemberton Township, Burlington County, New Jersey.

8. *The Premcor Refining Group, Inc. D-93-4-6*. An application to replace the withdrawal of water from Wells Nos. P-3A and P-4A in the applicant's water supply system that have become unreliable sources of supply and to increase the applicant's surface water withdrawal from the Delaware River

and Red Lion Creek. Premcor requests that its combined withdrawal from replacement Wells Nos. P-3B and P-4B and seven existing wells remain limited to 180 mg/30 days; that its withdrawal from the Delaware River intake remain at 13,560 mg/30 days; that the docket authorize withdrawals of 38.9 mg/30 days from the Red Lion Creek intake and up to 56.2 mg/30 days from the Dragon Run intake, and that Premcor's combined withdrawal from all sources be limited to 13,835.1 mg/30 days. The proposed allocation represents no increase in groundwater withdrawals, no increase from the Delaware River intake and the inclusion in a DRBC docket of previously un-docketed pre-Compact DNREC allocations from Dragon Run and Red Lion Creek. The project is located in the Potomac Formation in the C&D Canal East, Dragon Run Creek, Red Lion Creek and Delaware River watersheds in Delaware City, New Castle County, Delaware.

9. *AES Ironwood, LLC D-97-45-2*. An application for the renewal of a surface water withdrawal project to increase the applicant's withdrawal from 64.8 mg/30 days to 70.2 mg/30 days to supply the applicant's power generation facility. The withdrawal is made via the diversion of a portion of an existing quarry discharge to Tulpehocken Creek within the Schuylkill River Watershed, and the diversion of a portion of the City of Lebanon sewage treatment plant wastewater discharge to Quittapahilla Creek, which is located in the Susquehanna River Basin. The portion of the withdrawal diverted from the City of Lebanon treatment plant discharge constitutes an inter-basin transfer. The project is located in South Lebanon Township in Lebanon County, Pennsylvania.

10. *Milford Valley Convalescent Home D-98-51-2*. An application to modify an existing 0.015 mgd WWTP with the addition of a prefabricated equalization tank. The WWTP will continue to serve the Milford Valley Convalescent Home, located in Westfall Township, Pike County, Pennsylvania. The WWTP discharges to the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters.

11. *Penn Estate Utilities D-99-20-2*. An application for approval of the addition of a denitrification filter on the Penn Estates Utilities WWTP. The existing design flow of 0.56 mgd will not change as a result of this project. The WWTP will continue to discharge to Cranberry Creek, a tributary of the Brodhead Creek, which is a tributary of the section of the non-tidal Delaware River known as the Middle Delaware.

The Middle Delaware is designated as Special Protection Waters. The facility is located in Stroud Township, Monroe County, Pennsylvania.

12. *Sussex County Municipal Utilities Authority D-2006-6 CP-2*. An application requesting approval for an increase in the average monthly Total Dissolved Solids (TDS) effluent limit for the docket holder's Hampton Commons WWTP. The request is to increase the average monthly limit from 1,000 milligrams per liter (mg/l) to 1,500 mg/l. The 50,000 gallons per day (gpd) Hampton Commons WWTP discharges to Marsh's Farm Creek, a tributary to the Paulins Kill River. The facility is located in Hampton Township, Sussex County, New Jersey, within the drainage area of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

13. *Whitemarsh Township D-93-37 CP-2*. An application for the approval of modifications to an existing but previously undocketed WWTP that will continue to serve a portion of Whitemarsh Township. The project involves replacing the original process equipment with new equipment. The 2.0 mgd WWTP will continue to provide secondary biological treatment via the trickling filter process and will continue to discharge to an unnamed tributary of the Schuylkill River. The facility is located in Whitemarsh Township, Montgomery County, Pennsylvania.

14. *Valero Paulsboro Refinery D-2006-28-1*. An application for approval of an existing surface water withdrawal project to supply up to 414 mg/30 days (~13.8 mgd) of water to the applicant's petroleum refinery from an existing surface water intake. The project is located in the Delaware Watershed in Greenwich Township, Gloucester County, New Jersey, in New Jersey Critical Water Supply Area 2.

15. *Rock Tenn Company D-2006-41-1*. An application for approval of the Rock Tenn Company's existing non-contact cooling water (NCCW) and IWTP discharge from the company's Stroudsburg paper mill. The combined discharge of 0.295 mgd of NCCW and IWTP effluent will continue to be discharged to the Brodhead Creek. The Brodhead Creek is tributary to the Middle Delaware Special Protection Waters. The facility is located in Delaware Water Gap Borough, Monroe County, Pennsylvania.

16. *Skyview Golf Course, Inc. D-2007-19-1*. An application for approval of a ground and surface water withdrawal project to supply less than 3.1 mg/30 days of water to the applicant's golf course irrigation system from new Wells Nos. 2 and 11 and Intake No. 1 and to

limit the withdrawal from all sources to less than 3.1 mg/30 days. The project is located in the Hypersthene-Quartz-Oligoclase Gneiss Formation in the Paulins Kill Watershed in Sparta Township, Sussex County, New Jersey, within the drainage area to the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

17. *City of Easton D-2007-31 CP-1*. An application for the approval of the existing Easton water treatment plant's (WTP) 0.75 mgd backwash discharge. The WTP discharges filter backwash and sludge filter press filtrate to the section of the Delaware River known as the Lower Delaware Special Protection Waters. The facility is located in the City of Easton, Northampton County, Pennsylvania.

18. *Empire Golf Management d/b/a Pine Hill Golf Club D-2007-33-1*. An application for approval of a ground and surface water withdrawal project to supply up to 12 mg/30 days of water to the applicant's golf course irrigation system from new Wells TW1, PW1, PW2, PW5B and PW6B and a pond intake. The project is located in the Kirkwood-Cohansey Formation in the Big Timber Creek Watershed in Pine Hill Borough, Camden County, New Jersey.

19. *East Stroudsburg Borough D-2007-39 CP-1*. An application for approval of the existing East Stroudsburg Borough Water Filtration Plant's (WFP) 0.09 mgd backwash discharge. The East Stroudsburg WFP discharges filter backwash to Sambo Creek, as do the plant's sludge decanting basins. Sambo Creek is a tributary to the Brodhead Creek, which is a tributary to the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters. The facility is located in Smithfield Township, Monroe County, Pennsylvania.

20. *Laurel Pipe Line Company D-2007-40-1*. An application for the approval of the existing Laurel Pipe Line Company's groundwater remediation discharge of 0.070 mgd. The applicant's groundwater remediation system will continue to discharge to an unnamed tributary of Green Creek, a tributary of Chester Creek. The facility is located in Bethel Township, Delaware County, Pennsylvania.

21. *East Brandywine Township Municipal Authority D-2007-43 CP-1*. An application for the approval of the construction of the new 61,400 gpd Hillendale WWTP and the associated pump stations, collection system, and

drip irrigation disposal facility. The Hillendale WWTP will serve the 140 acre Pine Hill Subdivision. The WWTP will discharge treated effluent to approximately 9.3 acres of spray irrigation fields. The subdivision and associated facilities are located adjacent to the East Branch Brandywine Creek. The facilities will be located in East Brandywine Township, Chester County, Pennsylvania.

22. *Tidewater Utilities, Inc. D-2008-3 CP-1*. An application for approval of a ground water withdrawal project to supply up to 5.7 mg/30 days of water to the applicant's Chimney Hill/Hillside/Woodbury district public water supply distribution system from new Wells Nos. 159102, 190503 and 209110. The project is located in the Frederica and Federalsburg formations in the Murderkill River Watershed in Kent County, Delaware.

23. *Warwick Township D-2008-4 CP-1*. An application for the approval of the construction of the new 63,050 gpd St. Peters Village WWTP and the associated pump station and 12.67 acre spray irrigation disposal facility. The St. Peters Village WWTP will serve existing and proposed development within the St. Peters Village and Knauertown areas. The WWTP will discharge treated effluent to approximately 12.67 acres of spray irrigation fields. The treatment facilities are located adjacent to French Creek. The facilities will be located near Knauertown, in Warwick Township, Chester County, Pennsylvania.

24. *Pleasant Valley School District D-2008-5 CP-1*. An application for the approval of the expansion of the Pleasant Valley School District (PVSD) Brodheadsville Campus WWTP and spray irrigation system. The PVSD WWTP will be expanded from 10,200 gpd to 30,000 gpd and the spray irrigation system will have two new storage lagoons (Nos. 3 and 4) and 7 new spray fields equal to a combined area of approximately 16 acres. The PVSD Brodheadsville WWTP will be expanded to serve the Middle School, High School, J.C. Mills School, Chestnuthill Elementary School and Bus Transportation Facility. Previously, the High School and Chestnuthill Elementary School discharged to their own individual on-lot septic systems, and the J.C. Mills School had its own WWTP. The treatment facilities are located adjacent to an unnamed tributary to Weir Creek, a tributary to the Pohopoco Creek, which is a tributary to the Lehigh River. The facilities are located near Brodheadsville, in Chestnuthill Township, Monroe County, Pennsylvania.

25. *Morrisville Borough Municipal Authority D-2008-6 CP-1*. An application for approval of the existing Morrisville Borough Municipal Authority's Water Filtration Plant backwash discharge. The 150,000 gpd backwash discharge is to the portion of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters. The facilities are located in Morrisville Borough, Bucks County, Pennsylvania.

26. *Keystone Mobile Home Park D-2008-7-1*. An application for approval of the reconstruction of the Keystone Mobile Home Park (KMHP) WWTP. The KMHP WWTP will continue to discharge 40,000 gpd to the Lehigh River, which is a tributary to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters. The KMHP WWTP is located near Laurys Station, North Whitehall Township, Lehigh County, Pennsylvania.

27. *Green Walk Trout Hatchery, Inc. D-2008-8-1*. An application for approval of a ground water withdrawal project to supply up to 13.824 mg/30 days of water to the applicant's trout hatchery facility from Wells Nos. 1 and 2. Although not previously approved by the Commission, this project has been in operation since 1971. The project is located in the Martinsburg Formation in the Jacoby Creek Watershed in Upper Mount Bethel Township, Northampton County, Pennsylvania, within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

28. *Joseph Wick Nurseries, Ltd. D-2008-10-1*. An application for approval of a ground water withdrawal project to supply up to 11.6 mg/30 days of water to the applicant's nursery from new Wells Nos. 1 and 2. The project is located in the Federalsburg Formation in the St. Jones River Watershed in the City of Dover, Kent County, Delaware.

29. *Evergreen Community Power D-2008-11-1*. An application for approval of a ground water withdrawal project to supply up to 51.84 mg/30 days of water to the applicant's steam turbine power plant from new Wells Nos. PW2 and PW3. The project is located in the Cambrian Carbonate Formation in the Schuylkill River Watershed in the City of Reading, Berks County, Pennsylvania.

30. *White Haven Borough D-2008-12 CP-1*. An application for approval of a ground water withdrawal project to supply up to 4.189 mg/30 days of water to the applicant's bottled water operations from existing Wells Nos. 1 and 2. The project is located in the

Mauch Chunk Formation in the Linesville Creek Watershed in Foster Township, Luzerne County, Pennsylvania, within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

At the conclusion of the hearing on Project Review applications the business meeting will adjourn for lunch. The meeting will resume at 1:30 p.m. with consideration of the draft Minutes from the March 12, 2008 business meeting, announcements of upcoming events, including meetings of Commission advisory committees; a hydrologic report; a report by the Executive Director; and a report by the Commission's General Counsel.

The Commission will then consider a series of resolutions, among which the following will include public hearings: a resolution approving the 2008-2013 Water Resources Program; a resolution to amend the composition of the Monitoring Advisory Committee by the addition of a representative from the Partnership for the Delaware Estuary; a resolution authorizing the executive director to enter into contracts for the analysis of ambient water samples to characterize the nature and extent of chronic toxicity in the Delaware Estuary; a resolution authorizing the executive director to accept funds from the Pennsylvania Department of Environmental Protection for development of an integrated Water Resources Program for the Schuylkill River Watershed; a resolution authorizing the executive director to accept funds from NOAA-NWS for flood warning improvements and flood warning outreach initiatives recommended by the Interstate Flood Mitigation Task Force Report of July 2007; and a resolution providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year 2008-2009, commencing July 1, 2008.

The business meeting also will include consideration of a resolution amending the Water Quality Regulations and Comprehensive Plan to permanently designate the Lower Delaware River as a Special Protection Water and clarify certain aspects of the rule. A public hearing on this item was conducted on December 4, 2007 and the comment period closed on December 6, 2007.

Draft dockets scheduled for public hearing on May 14, 2008 will be posted on the Commission's Web site, <http://www.drbc.net>, where they can be accessed through the Notice of Commission Meeting and Public

Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609-883-9500, extension 221, with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: April 21, 2008.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E8-9112 Filed 4-24-08; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)—Center on Postsecondary Education for Students With Intellectual Disabilities

Notice inviting applications for a new award for fiscal year (FY) 2008.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A-12.

DATES:

Applications Available: April 25, 2008.

Deadline for Transmittal of Applications: June 24, 2008.

Date of Pre-Application Meeting: May, 21, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: <http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP>.

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Center on Postsecondary Education for Students With Intellectual Disabilities* priority is from the notice of final priority and definitions for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2008, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and a *Center on Postsecondary Education for Students With Intellectual Disabilities*.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priority and definitions for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$500,000.

Estimated Range of Awards:

\$490,000–\$500,000.

Maximum Award: We will reject any application that proposes a budget exceeding \$500,000 for a single budget

period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. **Eligible Applicants:** States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994 U.S.C. 479.1.

2. **Cost Sharing or Matching:** Cost sharing is required by 34 CFR 350.62(a)(3)(i), and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. **Address To Request Application Package:** You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: <http://www.ed.gov/fund/grant/apply/grantapps/index.html>. To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–12.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you,

the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. **Submission Dates and Times:** *Applications Available:* April 25, 2008.

Deadline for Transmittal of Applications: June 24, 2008.

Date of Pre-Application Meeting:

Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on May 21, 2008. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), room 6029,

550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245-7462 or by e-mail: Donna.Nangle@ed.gov.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review*: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements*: Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Disability Rehabilitation Research Projects competition, CFDA number 84.133A-12, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Disability Rehabilitation Research Projects competition—CFDA number 84.133A-

12 at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A-12).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting

authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date.

The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.133A-12), 400

Maryland Avenue, SW., Washington, DC 20202-4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA number 84.133A-12), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.133A-12), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education

Application Control Center at (202) 245-6288.

V. Application Review Information

1. **Selection Criteria:** The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. **Review and Selection Process:** Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V.2. **Review and Selection Process** is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. **Award Notices:** If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. **Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of newly-awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) in support of these performance measures.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: <http://www.neweditions.net/pr/commonfiles/pmconcepts.htm>.

Grantees should consult this site on a regular basis to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, PCP, Washington, DC

20202. Telephone: (202) 245-7462 or by e-mail: Donna.Nangle@ed.gov.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD, call the FRS, toll-free, at 1-800-877-8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: April 22, 2008.

Tracey R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8-9109 Filed 4-24-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Notice of final priority and definitions.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services, in conjunction with the Assistant Secretary for Vocational and Adult Education and the Assistant

Secretary for Postsecondary Education, announces a priority and definitions for a Center on Postsecondary Education for Students With Intellectual Disabilities (Center) under the DRRP program administered by NIDRR. The Assistant Secretary may use this priority and definitions for competitions in fiscal year (FY) 2008 and later years. We take this action to focus research attention on areas of national need. We intend this priority and definitions to improve postsecondary education and other outcomes for individuals with intellectual disabilities.

DATES: *Effective Date:* This priority and definitions are effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT:

Tracy Justesen, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5107, Potomac Center Plaza, Washington, DC 20202-2700. Attention Donna Nangle. Telephone: (202) 245-7462 or by e-mail: donna.nangle@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the *General Disability and Rehabilitation Research*

Projects (DRRP) Requirements priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: <http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP>.

We published a notice of proposed priority and definitions (NPP) for NIDRR's DRRP program in the **Federal Register** on December 11, 2007 (72 FR 70316). The NPP included a background statement that described our rationale for the priority and definitions proposed in that notice.

There are differences between the NPP and this notice of final priority and definitions (NFP) as discussed in the following section.

Analysis of Comments and Changes

In response to our invitation in the NPP, 11 parties submitted comments on the proposed priority and definitions. An analysis of the comments and of any changes in the priority and definitions since publication of the NPP follows.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority or definitions.

Comment: One commenter suggested that the Center be designed so that students with intellectual disabilities (ID) or developmental disabilities (DD) are not segregated from other students.

Discussion: The Center is designed to conduct research and disseminate information on promising practices in postsecondary education; it will not provide postsecondary education for students with ID or DD. Therefore, because the Center will not provide direct services to students, the recommendation that it be designed so that students with ID or DD are not segregated from other students is inapplicable.

Changes: None.

Comment: One commenter noted that individuals with disabilities often have significant health issues and that success in postsecondary education may be related to their health status. This commenter recommended that the Center involve personnel with expertise in health issues related to individuals with disabilities.

Discussion: Nothing in the priority precludes applicants from proposing to involve personnel with expertise in the health of individuals with ID (e.g., these individuals might serve on the Center's

advisory committee). However, we do not have a basis for requiring all applicants to do so.

Changes: None.

Comments: Two commenters asked for a definition of "longitudinal study" and whether the longitudinal study must be limited to an analysis of existing datasets or if the Center could collect its own longitudinal data. In addition, they asked whether applicants could propose to conduct analyses of existing datasets that were not mentioned specifically in the NPP.

Discussion: We recognize that, given the level of funding available for the Center, the Center would be unable to conduct a longitudinal study. Therefore, we have revised the priority to require the Center to do one or both of the following: (1) Engage in data collection activities, or (2) conduct secondary analyses of existing national and State longitudinal datasets. The purpose of the data collection activities and secondary data analyses would be to generate knowledge about the extent to which variations in educational, vocational, and independent living outcomes for students with ID are associated with participation in different types of postsecondary education programs. The National Longitudinal Transition Study-2 (NLTS-2) and the Florida K-20 Data Warehouse are examples of existing data sources that contain relevant data and have not been analyzed fully; applicants may propose to use other extant data sources. We believe that much can be learned from existing data sources without necessarily expending funds on designing surveys or collecting data. Finally, we do not believe it is necessary to define the term "longitudinal study" because the final priority does not require the Center to conduct such a study.

Changes: We have removed all references to conducting a longitudinal study from the priority. Instead, we have clarified the language in paragraph (b) to indicate that the Center must (1) engage in data collection activities; or (2) conduct secondary analyses of existing datasets, such as the NLTS-2 and the Florida K-20 Data Warehouse; or both.

Comment: One commenter suggested that efforts to collect new longitudinal data or establish baseline data may be more beneficial than analyses of existing data that are intended to generate knowledge about the relationship between postsecondary education and outcomes among individuals with ID.

Discussion: The funds available for this priority will likely not permit the Center to collect new longitudinal data

or establish baseline data. However, we are convinced that conducting data collection activities, secondary analyses of existing data, or both, will generate new and beneficial knowledge about outcomes associated with postsecondary education programs for individuals with ID. Because this is the case, paragraph (b) of the priority allows applicants to conduct data collection activities, analyze existing datasets, or engage in both activities.

Changes: None.

Comment: Seven commenters noted that the datasets mentioned under paragraph (b) of the priority (i.e., the NLTS-2 and the Florida K-20 Data Warehouse) have limitations in disability variables and descriptors of postsecondary education programs that could negatively impact the extent to which secondary analyses relating to the population of individuals with ID may be completed. Further, the commenters expressed concern that neither of these datasets contains variables that are necessary to connect the outcomes of students with ID to the different types of postsecondary education programs that serve students with ID. These commenters also noted that neither dataset provides information on dual enrollment programs, and that some variables relating to postsecondary outcomes in the NLTS-2 dataset have zero percent of cases of people with ID.

Discussion: With respect to disability variables or identifier codes, while it is true that neither of the datasets mentioned in the priority include the "intellectual disabilities" code, both datasets include related codes that would make it possible to conduct analyses that cover students with ID and that could address important outcomes for this population. For example, although the Florida K-20 Data Warehouse does not include an "intellectual disabilities" code, it contains 22 "exceptionality" codes that include (a) educable mentally handicapped, (b) trainable mentally handicapped, and (c) profoundly mentally handicapped. Using these codes, it would be possible to identify a sample of students with ID by selecting students whose primary disability is educable, trainable, or profoundly mentally handicapped, and to conduct any number of analyses related to the outcomes for this population. Likewise, while the NLTS-2 does not include an "intellectual disabilities" code, it would be possible to identify a sample of students with ID in the dataset by selecting students whose primary disability is mental retardation or who were identified as

having mental retardation on either the parent or teacher interview.

With respect to descriptors of postsecondary education, while it is true that neither dataset provides information on dual enrollment programs, we believe that there are many variables or descriptors related to students with ID that are worth exploring.

Lastly, the commenters observed that some variables related to postsecondary outcomes in the NLTS-2 dataset show zero percent of cases of individuals with ID. However, the commenters did not identify any specific postsecondary variables or explain the importance of these variables to the work of the Center. The NLTS-2 has five waves of data, and only three of these waves include individuals who are old enough to be included in the postsecondary sample, particularly because many students with ID attend secondary school to the maximum age (21 years old or older). We believe that the number of variables lacking relevant cases should decline as individuals age in the postsecondary category.

Changes: None.

Comment: Seven commenters noted that the effort to develop and implement postsecondary education programs for individuals with ID is in its early stages. Given this fact, six of these commenters noted that experimental designs would be premature, and one recommended that the Center be allowed to use multiple research methods and data collection designs.

Discussion: Paragraph (b) of the priority requires the Center to conduct scientifically based research. The definition of *scientifically based research*, as the term is used in the priority, includes but is not limited to research that utilizes experimental or quasi-experimental designs. We are interested in rigorous methods of research that produce findings that are useful for the education field and for further research. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter asked how "postsecondary education programs" are defined.

Discussion: Although the *Definitions* section of the NPP included a definition of "postsecondary education programs," upon further review, we believe that this definition is not sufficiently clear because it did not incorporate the language from the background section of the NPP referring to dual enrollment programs for students with ID who are still enrolled in high school and are receiving special education services. To

clarify what we mean, instead of providing a definition of "postsecondary education programs," we will provide a more expansive explanation of the term "postsecondary education programs" in the text of the priority.

Changes: We have removed the definition of "postsecondary education programs" from the *Definitions* section of this notice, and revised paragraph (a) of the priority to provide a fuller explanation of what is meant by this term.

Comment: Four commenters recommended that the Department's Office of Postsecondary Education (OPE) be included in the list of the Center's required collaborators in paragraph (h) of the priority.

Discussion: As described in the opening paragraph of the priority, OPE is one of the sponsors of this Center. However, many of the activities supported by this Center will focus on technical assistance and research. Because OPE does not fund technical assistance grantees, it would not be appropriate or useful to require the Center to collaborate with OPE for purposes of this priority.

Changes: None.

Comment: Six commenters suggested that "employment" be added to the list of key outcomes described in the opening sentence of paragraph (b) of this priority. While these commenters noted that vocational outcomes are important, they stated that employment should be highlighted by specifically including it in the list of outcomes for students with ID.

Discussion: We agree that employment is a desired outcome for individuals with ID participating in postsecondary education programs and will add it to the list of outcomes in paragraph (b) of the priority.

Changes: We have added employment to the list of outcomes described in paragraph (b) of the priority.

Comment: Five commenters noted that legislation is pending in Congress that would authorize demonstration projects and a coordinating center, the primary purpose of which would be training and technical assistance on programs providing postsecondary education for individuals with ID. These commenters noted that the Center should focus primarily on research and dissemination of technical assistance materials. The commenters recommend that the Center remain distinct from the projects pending in Congress.

Discussion: We agree that the focus of the Center should be on research and the dissemination of technical

assistance materials, and we believe that this purpose is reflected in the priority.

Changes: None.

Comment: Five commenters recommended that the priority expand the age range of students with ID who will be the focus of the Center's work to 13 to 26 years. They expressed that students with ID may require additional time to complete a postsecondary education program. These commenters also noted that the definition of *students with intellectual disabilities* is overly restrictive in terms of the age of onset of a student's disability and the scope of the disabilities covered.

Discussion: We agree that the proposed age range of 16 to 24 years is too restrictive. The age range of students included in the NLTS-2 and the Florida K-20 Education Data Warehouse is comparable to the age range of 13 to 26 years suggested by the commenters. Changing the age range to 13 to 26 years of age in the definition of *students with intellectual disabilities* would support the Center's potential use of these two databases as key data sources for its analyses. In addition, using this age range would address the commenters' concerns that students with ID may require additional time to complete a postsecondary education program. Therefore, we will change the definition of *students with intellectual disabilities* to cover individuals 13 to 26 years of age. In addition, although some individuals acquire disabilities that result in cognitive limitations after the age of 18, we continue to agree with the American Association of Intellectual and Developmental Disabilities and the Equal Employment Opportunity Commission that students with intellectual disabilities are students whose disability occurred before age 18. We do not believe this definition is too restrictive in terms of scope of disabilities covered; we are simply restricting the definition to those individuals who acquired their disability prior to age 18 regardless of the specific disability involved.

Changes: We have revised paragraph (a) of the definition of *students with intellectual disabilities* so that the term includes individuals ages 13 to 26.

Comment: Two commenters suggested that universal design for learning be a required element for evaluating promising practices under paragraph (a) of the priority. These commenters proposed a definition of universal design for learning that the Department could use in connection with the proposed priority.

Discussion: We consider universal design for learning to be one approach that could be evaluated as a promising

practice rather than a required element for evaluating promising practices. We, therefore, decline to make the requested changes.

Changes: None.

Note: This notice does not solicit applications. In any year in which we choose to use this priority and definitions, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

This NFP is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: <http://www.whitehouse.gov/infocus/newfreedom>.

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: <http://www.ed.gov/about/offices/list/oser/nidrr/policy.html>.

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and, (6) disseminate findings.

Priority—Center on Postsecondary Education for Students With Intellectual Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services, the Assistant Secretary for Vocational and Adult Education, and the Assistant Secretary for Postsecondary Education jointly announce a priority for a DRRP—the Center on Postsecondary Education for Students with Intellectual Disabilities (Center). In order to meet this priority, the Center must—

(a) Identify key characteristics and promising practices of postsecondary education programs at community colleges, vocational-technical schools, and four-year colleges that currently serve students with intellectual disabilities (ID), including specialized programs that are intended to promote independence and improve employment outcomes for students with ID such as dual enrollment programs for students with ID who are still enrolled in high school and receiving special education services. This includes collecting information on—

(1) How students with ID are recruited and retained in these programs;

(2) The extent to which students with ID are enrolled in academic courses as part of these programs; and

(3) The types and extent of accommodations provided to students with ID in order to ensure their active participation in these programs;

(b) Conduct scientifically based research (as defined in 20 U.S.C. 7801(37) and included in the *Definitions* section of this notice) to determine whether variations in educational, vocational, employment, and independent living outcomes for students with ID are associated with participation in different types of postsecondary education programs. To fulfill this requirement, the Center must do one or both of the following: (1) Engage in data collection activities or (2) conduct secondary analyses of existing national and State longitudinal datasets, such as the National Longitudinal Transition Study-2 (NLTS-2) and the Florida K–20 Education Data Warehouse.

Note: The NLTS-2 and the Florida K–20 Education Data Warehouse are only examples of existing datasets that may be used for purposes of conducting secondary analysis. Reports of study findings and data tables containing frequency counts for some variables can be accessed at: <http://www.nlts2.org>. For information on acquiring restricted-use data sets for NLTS-2, see page: http://www.nlts2.org/data_tables/datatable_training.html of this Web site. The Florida K–20 Education Data Warehouse can be

accessed at: <http://www.edwapp.doe.state.fl.us/doe/>.

(c) Compile existing technical assistance materials and develop new materials, as needed, including information on promising practices that can be replicated, for postsecondary education institutions that are developing new programs or expanding existing programs to provide activities for students with ID. Technical assistance materials must be informed by knowledge acquired through the Center's research program, as the knowledge becomes available;

(d) Partner with existing training and technical assistance providers for the purpose of disseminating technical assistance materials to postsecondary education programs interested in developing new programs or expanding existing programs for students with ID. To the extent possible, technical assistance and other informational materials should be disseminated to interested students with ID and their families;

(e) Provide technical assistance information and materials to appropriate NIDRR research and dissemination centers, including the National Center for the Dissemination of Disability Research and the Research Utilization Support and Help (RUSH) Project at the Southwest Educational Development Laboratory, and the Center for International Rehabilitation Research Information and Exchange at the State University of New York at Buffalo;

(f) Establish an advisory committee of researchers, vocational rehabilitation providers, transition planners, secondary and postsecondary educators, individuals with ID, and parents of individuals with ID to provide the Center, on an ongoing basis, with guidance on the Center's research and technical assistance activities;

(g) Conduct a formative evaluation of the Center's activities, using clear performance objectives to ensure continuous improvement in the operation of the Center, including objective measures of progress in implementing the project and ensuring the quality of research and technical assistance; and

(h) To the extent possible, consult with the sponsors of activities that are similar or related to the Center's activities, especially, existing training and technical assistance resources that have been established by relevant offices within the U.S. Department of Education, including the Rehabilitation Services Administration's Rehabilitation Continuing Education Programs; the Office of Special Education Programs'

Technical Assistance and Dissemination Network and Technical Assistance Communities of Practice; the Office of Vocational and Adult Education's National Research Center for Career and Technical Education; and the NIDRR network of knowledge translation grantees. This consultation must be designed to avoid duplication of efforts and to facilitate the exchange of information, pool resources, and improve the overall effectiveness of the Center's activities.

Definitions

The Assistant Secretary for Special Education and Rehabilitative Services, the Assistant Secretary for Vocational and Adult Education, and the Assistant Secretary for Postsecondary Education jointly establish the following definitions for the purpose of the *Center on Postsecondary Education for Students With Intellectual Disabilities* priority:

(1) *Adaptive skill areas*, as used in the definition of *students with intellectual disabilities*, means the basic skills needed for everyday life, such as communication, self-care, home living, social skills, leisure, health and safety, self-direction, functional academics (reading, writing, basic math), and work.

(2) *Scientifically based research* has the meaning given the term in 20 U.S.C. 7801(37): Research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs. It includes research that—

(a) Employs systematic, empirical methods that draw on observation or experiment;

(b) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(c) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(d) Is evaluated using experimental or quasi-experimental designs in which individual entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(e) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a

minimum, offer the opportunity to build systematically on their findings; and

(f) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(3) *Students with intellectual disabilities* means—

(a) Individuals ages 13 through 26 whose intellectual functioning levels require significant changes in instructional methods and modifications to the curriculum in order to participate in postsecondary education programs;

(b) Individuals who have significant limitations in adaptive skill areas as expressed in conceptual, social, and practical adaptive skills; and

(c) Individuals whose disabilities originated before the age of 18.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priority and definitions justify the costs.

Summary of Potential Costs and Benefits

The benefits of the DRRP programs have been well established over the years in that other DRRP projects have been completed successfully. The priority and definitions announced in this notice will generate new knowledge through research, dissemination, utilization, and technical assistance.

Another benefit of the final priority and definitions is that establishing a new DRRP will support the President's NFI and improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with intellectual disabilities to achieve improved education, employment, and independent living outcomes.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal**

Register, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister/index.html>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Numbers 84.133A Disability Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: April 22, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8-9108 Filed 4-24-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Adult English as a Second Language (ESL) Literacy Impact Study

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled "Adult English as a Second Language (ESL) Literacy Impact Study" (18-13-19). The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES) commissioned this evaluation. It will be conducted under a contract that IES awarded in September 2004.

The study will address the following questions:

(1) How effective is instruction based on a literacy workbook in improving the English reading and speaking skills of low-literate adult ESL learners?

(2) Is instruction based upon the workbook more effective for certain groups of students (e.g., native Spanish speakers)?

(3) How well do instructors implement the instruction based upon the workbook?

The system will contain information about approximately 40 adult ESL teachers and two cohorts of approximately 900 adult learners per cohort. Within each cohort, approximately 450 learners will participate in classes in which instruction based upon the literacy workbook is implemented and approximately 450 learners will participate in classes in which instruction that is not based upon the literacy workbook is implemented. The first cohort of learners will be enrolled in adult education classes during the Fall semester of 2008. The second cohort of learners will be enrolled in adult education classes during the Spring semester of 2009.

The system of records will include information about the adult learners participating in the evaluation, including names and addresses; demographic information such as race, ethnicity, gender, age, and educational background; and scores on literacy assessments. The system of records will also include information about the teachers participating in the evaluation, including names; demographic information such as race, ethnicity, gender, and educational background; and teaching experience.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records referenced in this notice on or before May 27, 2008.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 22, 2008. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on June 2, 2008 or (2) May 27, 2008, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Dr. Ricky Takai, Director, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208-0001.

Telephone: (202) 208-7083. If you prefer to send comments through the Internet, use the following address: comments@ed.gov.

You must include the term “Adult ESL Literacy Impact Study” in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice at the U.S. Department of Education in room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

FOR FURTHER INFORMATION CONTACT: Dr. Ricky Takai. Telephone: (202) 208-7083. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains individually identifying information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a “record,” and the system, whether manual or computer-based, is called a “system of records.”

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and to

prepare and send a report to OMB whenever the agency publishes a new system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. These reports are intended to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister/index.html>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: April 8, 2008.

Grover Whitehurst,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18-13-19

SYSTEM NAME:

Adult English as a Second Language (ESL) Literacy Impact Study.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences (IES), U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208-0001.

(2) American Institutes for Research, 1000 Thomas Jefferson Street, Washington, DC 20007-3839.

(3) Berkeley Policy Associates, 440 Grand Avenue, Suite 500, Oakland, CA 94610-5012.

(4) Mathematica Policy Associates, 600 Alexander Park, Princeton, NJ 08540-6346.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on adult ESL students and teachers who are participating in an evaluation of the effectiveness of a literacy workbook and teacher training in improving the English reading and speaking skills of adult ESL learners who have low levels of literacy in their native language. Teachers and adult ESL learners at recruited sites will volunteer to participate in the study.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information about 40 adult ESL teachers and two cohorts of approximately 900 adult ESL learners per cohort. The system of records will include information about the adult learners participating in the evaluation, including the learners' names; addresses; demographic information such as race/ethnicity, gender, age, educational background; and scores on literacy assessments. The system of records will also include information about the teachers participating in the evaluation, including the teachers' names; demographic information such as race/ethnicity, gender, educational background; and teaching experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation being conducted is authorized under section 243 of the Adult Education and Family Literacy Act (20 U.S.C. 9253), as well as sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563).

PURPOSE(S):

The information in this system is used for the following purpose: To study the effectiveness of a literacy workbook and teacher training in improving the English reading and speaking skills of adult ESL learners who have low levels of literacy skills in their native language.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of

individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES.

Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

The Department maintains records on CD-ROM, and the contractor (American Institutes for Research) and subcontractors (Berkeley Policy Associates and Mathematica Policy Associates) maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed and retrieved by a number assigned to each individual that is cross-referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site and to the sites of the Department's contractor and subcontractors, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a need-to-know basis, and controls individual users' ability to access and alter records within the system. The contractor and subcontractors will establish similar sets of procedures at their sites to ensure confidentiality of data. Their systems are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractors will maintain security of the complete set of all master data files and documentation. Access to individually

identifying data will be strictly controlled. At each site all data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include: Password-protected accounts that authorize users to use the contractor's and subcontractors' systems but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The contractor and subcontractor employees who "maintain" (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS, Part 3, Item 2b and Part 3, Item 5a).

SYSTEM MANAGER AND ADDRESS:

Director, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

The system of records will include information collected from adult

learners and from teachers participating in the evaluation. Data collected from the learners will include learners' names; addresses; demographic information such as race/ethnicity, gender, age, educational background; and scores on literacy assessments. Data collected from the teachers will include the teachers' names; demographic information such as race/ethnicity, gender, educational background; and teaching experience.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-9115 Filed 4-24-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy; Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. No. 92-463, as amended) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, May 19, 2008, 9 a.m. to 5:30 p.m.; and Tuesday, May 20, 2008, 9 a.m. to 12:30, E.D.T.

ADDRESSES: Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301-903-9817; david.thomassen@science.doe.gov) Designated Federal Officer, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC-23/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585-1290. The most current information concerning this meeting can be found on the Web site: <http://www.science.doe.gov/ober/berac/announce.html>.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda

- Report on the Environmental Remediation Sciences Division Committee of Visitors.
- Report on the Low Dose Radiation Research Program BERAC Review.
- Science Talk.
- Update on BER Program for Ecosystems Research.
- Workshop Report—Next Generation of Climatic Change Ecosystem Experiments After the FACE Studies, Follow-on to October 2006, BERAC Report.
- Genomics: GTL Data Sharing Policy.
- Update on Joint ASCAC-BERAC GTL Charge
- Report on BER Carbon Cycling and Carbon Sequestration Workshop
- Comments and Discussion, Anna Palmisano, Associate Director of Science for Biological and Environmental Research.
- News from the Life and Medical Sciences, Climate Change Research, and Environmental Remediation Sciences Divisions.
- New business.
- Public Comment.

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: <http://www.science.doe.gov/ober/berac/Minutes.html>.

Issued in Washington, DC on April 22, 2008.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-9082 Filed 4-24-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, May 19, 2008, 1 p.m.–5 p.m., Tuesday, May 20, 2008, 8:30 a.m.–4 p.m.

ADDRESSES: DoubleTree Hotel, 411 West Bay Street, Savannah, GA 31401.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952-7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, May 19, 2008

1 p.m. Combined Committee Session.
5 p.m. Adjourn.

Tuesday, May 20, 2008

8:30 a.m. Approval of Minutes, Agency Updates.
9:30 a.m. Public Comment Session.
9:45 a.m. Chair and Facilitator Updates.
10:15 a.m. Waste Management Committee Report.
11:15 a.m. Facility Disposition and Site Remediation Committee Report.
11:45 a.m. Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Strategic and Legacy Management Committee Report.
2 p.m. Nuclear Materials Committee Report.
2:45 p.m. Administrative Committee Report.
3:45 p.m. Public Comment Session.
4 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, May 19, 2008.

Public Participation: The meeting is open to the public. Written statements

may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: <http://www.srs.gov/general/outreach/srs-cab/srs-cab.html>.

Issued at Washington, DC on April 21, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8-9083 Filed 4-24-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 733-010]

Eric Jacobson; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

April 18, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 733-010.

c. *Date Filed:* April 9, 2008.

d. *Applicant:* Eric Jacobson.

e. *Name of Project:* Ouray Hydroelectric Project.

f. *Location:* The project is located on the Uncompahgre River in Ouray County, Colorado. The project occupies lands within the Uncompahgre National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Eric Jacobson, P.O. Box 745, Telluride, CO 81435; (970) 369-4662.

i. *FERC Contact:* Steve Hocking, (202) 502-8753 or steve.hocking@ferc.gov.

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The project consists of the following existing facilities: (1) A 0.48-acre reservoir

formed by a 70-foot-long masonry gravity dam with a maximum height of 72 feet consisting of a 51-foot-long non-overflow section and a 19-foot-wide spillway; (2) a 6,130-foot-long pressure pipeline; (3) a 32-by-65-foot powerhouse containing three turbine-generating units with a total authorized capacity of 632 kilowatts (kW); and (4) appurtenant facilities. The applicant proposes to upgrade turbine-generator unit No. 1 and add a fourth turbine-generator unit to increase the project's total installed capacity to 775 kW.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction by contacting the applicant using the contact information in item (h) above.

m. You may also register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	September 1, 2008.
Interventions, Recommendations, Terms and Conditions due	October 30, 2008.
Commission Issues Single Environmental Assessment (EA)	January 13, 2009.
EA Comments due	February 12, 2009.
Modified Terms and Conditions due	April 13, 2009.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-9022 Filed 4-24-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197-073 North Carolina; Project No. 2206-030 North Carolina]

Alcoa Power Generating, Inc.; Progress Energy Carolinas; Notice of Availability of the Final Environmental Impact Statement for the Yadkin Project and the Yadkin-Pee Dee River Project

April 18, 2008.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for licenses for Alcoa Power Generating, Inc.'s 210-megawatt Yadkin Hydroelectric Project (Project No. 2197) and Progress Energy Carolina's 108.6-MW Yadkin-Pee Dee River Hydroelectric Project (Project No. 2206), located on the Yadkin and Pee Dee rivers in the counties of Davidson, Davie, Montgomery, Rowan, Stanly, Anson, and Richmond, near Charlotte, North Carolina. Based upon this review,

the Office of Energy Projects has prepared a Final Environmental Impact Statement (final EIS) for the projects.

The final EIS contains staff's evaluation of the applicant's proposal and alternatives for relicensing the Yadkin and Yadkin-Pee Dee River Projects. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the final EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS also may be viewed on the Commission's Web site at <http://www.ferc.gov> under 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.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Stephen Bowler at (202) 502-6861 or stephen.bowler@ferc.gov or Lee Emery at (202) 502-8379 or lee.emery@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-9021 Filed 4-24-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-31-000]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Sentinel Expansion Project

April 18, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) of the natural gas pipeline facilities proposed by the Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC

staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the environmental impacts of constructing and operating the proposed Sentinel Expansion Project (Project). The purpose of the proposed Project is to provide approximately 142,000 dekatherms per day (Dt/d) of natural gas delivery capacity to the northeastern United States through the replacement of existing facilities and the addition of looping and compression facilities along Transco's existing natural gas delivery system.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Copies of the EA have been mailed to federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages the electronic filing of any comments or interventions or protests to this proceeding, see 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at <http://www.ferc.gov> under the link to "Documents and Filings" and "eFiling." eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your hard drive. New eFiling users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing." In addition, there is a "Quick Comment" option available, which is an easy method for interested persons to submit text-only comments on a project. The Quick-Comment User Guide can be viewed at <http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf>. Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick

Comment option are placed in the public record for the specified docket.

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP08-31-000;
- Label one copy of the comments for the attention of the Gas Branch 2, PJ-11.2; and
- Mail your comments so that they will be received in Washington, DC on or before May 19, 2008.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).¹ Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching

¹ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-9023 Filed 4-24-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1881-050]

PPL Holtwood, LLC; Notice of Extension of Comment Date

April 18, 2008.

On February 21, 2008, the Commission issued a "Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions" with a comment date of April 21, 2008, and a reply comment date of June 5, 2008.

On April 16, 2008, Exelon Corporation and PPL Holtwood, LLC, jointly requested the comment date be extended an additional two weeks. The comment date will be extended to May 5, 2008, and the reply comment date will be extended until June 19, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-9020 Filed 4-24-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08-536-002]

Polytop Corporation; Notice of Filing

April 18, 2008.

Take notice that on April 16, 2008, Polytop Corporation tendered for filing a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

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 7, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-9018 Filed 4-24-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12737-001]

Gathright Hydroelectric Project; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approval of Use of the Traditional Licensing Process

April 18, 2008.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 12737-001.

c. *Date Filed:* December 27, 2007.

d. *Submitted By:* Hydro Matrix Limited Partnership.

e. *Name of Project:* Gathright Hydroelectric Project.

f. *Location:* The project would be located at the existing Corps of Engineer's Gathright Dam on the Jackson River in Alleghany County, Virginia.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Mr. James B. Price, Hydro Matrix Limited Partnership, P.O. Box 903, Gatlinburg, TN 37738, (865) 436-0402.

i. *FERC Contact:* Michael Spencer, (202) 502-6093 or michael.spencer@ferc.gov.

j. Hydro Matrix Limited Partnership filed its request to use the Traditional Licensing Process on December 27, 2007. Hydro Matrix Limited Partnership filed public notice of its request on January 15, 2008. In a letter dated February 13, 2008, the Director of the Office of Energy Projects approved Hydro Matrix Limited Partnership's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act; and (b) the Virginia 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. Hydro Matrix Limited Partnership 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. A copy of the PAD is 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/docs-filing/esubscription.asp> to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-9019 Filed 4-24-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket Nos. ER08-411-000; ER08-411-00;
ER08-411-002; ER08-411-003]

Tiger Natural Gas, Inc.; Notice of
Issuance of Order

April 18, 2008.

Tiger Natural Gas, Inc. (Tiger) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Tiger also requested waivers of various Commission regulations. In particular, Tiger requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Tiger.

On April 17, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Tiger should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at <http://www.ferc.gov>.

Notice is hereby given that the deadline for filing protests is May 19, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Tiger is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Tiger, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Tiger's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-9017 Filed 4-24-08; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION
AGENCY

[FRL-8558-4]

Office of Research and Development;
Ambient Air Monitoring Reference and
Equivalent Methods: Correction to
Description of Equivalent Method
EQPM-0308-170 MetOne Instruments,
Inc.'s, BAM-1020 Beta Attenuation
Mass Monitor

AGENCY: Environmental Protection Agency.

ACTION: Notice of the correction of the description of an equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) designated on March 12, 2008, in accordance with 40 CFR part 53, one new equivalent method for measuring concentrations of particulate matter as PM_{2.5} in the ambient air. This notice corrects the description of the method.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD-D205-03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541-3737, e-mail: Hunike.Elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet

specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announced the designation of one new equivalent method for measuring concentrations of particulate matter as PM_{2.5} in the ambient air on March 12, 2008. This designation was made under the provisions of 40 CFR part 53, as amended on December 18, 2006 (71 FR 61271).

The new equivalent method for PM_{2.5} is an automated method (sampler) that utilizes a measurement principle based on filter sample collection and analysis by beta-ray attenuation. The newly designated equivalent method is identified as follows: EQPM-0308-170, "Met One Instruments, Inc. BAM-1020 Beta Attenuation Mass Monitor—PM_{2.5} FEM Configuration, configured with a BGI VSCC™ Very Sharp Cut Cyclone particle size separator," operated for 24 1-hour average measurements with firmware revision 3.2.4 or later, with or without an inlet tube extension (BX-823), with or without external enclosures BX-902 or BX-903, in accordance with the BAM 1020 Particulate Monitor operation manual, revision F or later, and VSCC™ supplemental manual and equipped with BX-596 ambient temperature and barometric pressure combination sensor, internal BX-961 automatic flow controller operated in Actual (volumetric) flow control mode, the standard BX-802 EPA PM₁₀ inlet head and a BGI VSCC™ Very Sharp Cut Cyclone (VSCC-A), BX-827 (110V) or BX-830 (230V) Smart Inlet Heater, with the heater RH set to 35% and the temperature control set to "off", the 8470-1 revision D or later tape control transport assembly with close geometry beta source configuration, used with standard glass fiber filter tape, COUNT TIME parameter set for 8 minutes, the SAMPLE TIME parameter set for 42 minutes, BX-302 zero filter calibration kit required.

An application for an equivalent method determination for the candidate method was received by the EPA on September 19, 2007. The sampler is commercially available from the applicant, Met One Instruments, Inc., 1600 Washington Boulevard, Grants Pass, Oregon 97526 (<http://www.metone.com>).

A test analyzer representative of this method has been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended

on December 18, 2006). After reviewing the results of those tests and other information submitted by the applicant in the application, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant in the application will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the applicable designation method description (see the identifications of the method above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R-94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1," EPA-454/R-98-004 (available at <http://www.epa.gov/ttn/amtic/qabook.html>). Vendor modifications of a designated equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (e.g., by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR Parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with Part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR Part 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD-E205-01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E8-9089 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2006-0922; FRL-8558-8]

Draft Risk and Exposure Assessment Reports for Nitrogen Dioxide (NO₂)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period on the Draft Risk and Exposure Assessment Reports for Nitrogen Dioxide (NO₂) (73 FR 20045; April 14, 2008). The EPA is extending the comment period that originally ends on May 1, 2008. The extended comment period will close on May 30, 2008. The EPA is extending the comment period to provide stakeholders and the public with adequate time to conduct appropriate analysis and prepare meaningful comments.

DATES: Comments on the above reports must be received on or before May 30, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0922, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail*: Comments may be sent by electronic mail (e-mail) to a-and-r-docket@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2006-0922.

- *Fax*: Fax your comments to 202-566-9744, Attention Docket ID. No. EPA-HQ-OAR-2006-0922.

- **Mail:** Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0922.

- **Hand Delivery or Courier:** Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0922. The 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 Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202-566-1742; fax 202-566-9744.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Jenkins, Office of Air Quality Planning and Standards (Mailcode C504-06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: Jenkins.scott@epa.gov; telephone: 919-541-1167; fax: 919-541-0237.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for Preparing Your Comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes NAAQS for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for the nitrogen oxides (NO_x) and NAAQS have been established for nitrogen dioxide (NO₂), an indicator for NO_x. Presently, EPA is reviewing the air quality criteria for NO_x and the NAAQS for NO₂. As part of its review of the NAAQS, EPA is preparing an assessment of exposures and health risks associated with ambient NO₂. A draft plan describing the proposed approaches to assessing exposures and risks is described in the draft document, *Nitrogen Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment*. This document was released for public review and comment in September 2007 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on October 24 and 25, 2007. Comments received from that consultation have been considered in developing the draft risk and exposure assessment documents being released at this time.

The draft documents convey the approach taken to assess exposures to ambient NO₂ and to characterize associated health risks, as well as to present the results of those assessments.

These draft documents will be available online at: http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_rea.html.

The EPA is soliciting advice and recommendations from the CASAC by means of a review on the draft documents at an upcoming public meeting of the CASAC. A **Federal Register** notice will inform the public of the date and location of that meeting. Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing a second draft risk and exposure assessment report. The release of the second draft report will be followed by another CASAC meeting and ultimately by a final risk and exposure assessment report.

Dated: April 18, 2008.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. E8-9132 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6698-2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 04/14/2008 Through 04/18/2008 Pursuant to 40 CFR 1506.9

EIS No. 20080147, Final EIS, AFS, MT Trapper Bunk House Land Stewardship Project, Reduce Risk from Stand-Replacing and Uncontrollable Fires, Improve Resiliency and Provide Forest Products, Fuel Reduction Research and Watershed Improvement, Bitterroot National Forest, Darby Ranger District, Ravalli County, MT, Wait Period Ends: 05/27/2008, Contact: Chuck Oliver 406-821-3913.

EIS No. 20080148, Final EIS, SFW, WI Trempealeau National Wildlife Refuge Comprehensive Conservation Plan, Implementation, located within the Mississippi River Valley, Buffalo and Trempealeau Counties, WI, Wait Period Ends: 05/27/2008, Contact: Victoria Hirschboeck 608-539-2311.

EIS No. 20080149, Final EIS, SFW, AZ Horseshoe and Bartlett Reservoirs Project, To Store and Release Water, Issuance of an Incidental Take Permit for Operation, Located Northeast of

Phoenix, Maricopa and Yavapai Counties, AZ, Wait Period Ends: 05/27/2008, Contact: Debra Bills 602-242-0210.

EIS No. 20080150, Draft EIS, NOA, 00 Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery, To End Overfishing of Gag and Vermillion Snapper, Implementation, South Atlantic Region, Comment Period Ends: 06/09/2008, Contact: Dr. Roy E. Crabtree 727-824-5301.

EIS No. 20080151, Second Final Supplement, AFS, CA Watdog Project, Additional Clarification of Changes Between the Final EIS (2005) and Final Supplement EIS (2007), Feather River Ranger District, Plumas National Forest, Butte and Plumas Counties, CA, Wait Period Ends: 05/27/2008, Contact: Carol Spinos 530-534-6500.

EIS No. 20080152, Final EIS, FRC, NC Yadkin—Yadkin-Pee Dee Hydro Electric Project (Docket Nos. P-2197-073 & P-2206-030), Issuance of New Licenses for the Existing and Proposed Hydropower Projects, Yadkin—Yadkin-Pee Dee Rivers, Davidson, Davie, Montgomery, Rowan, Stanly, Anson and Richmond Counties, NC, Wait Period Ends: 05/27/2008, Contact: Stephen Bowler 202-502-6861.

EIS No. 20080153, Draft Supplement, NOA, 00 Snapper Grouper Amendment 15B, Fishery Management Plan, Updated Information on the Economic Analysis for the Bag Limit Sales Provision, Update Management Reference Point for Golden Tilefish (*Lopholatilus chamaeleonticeps*); Define Allocations for Snowy Grouper (*Epinephelus niveatus*) and Red Porgy (*Pagrus pagrus*), NC, SC, FL, and GA, Comment Period Ends: 06/09/2008, Contact: Dr. Roy E. Crabtree 727-824-5305.

EIS No. 20080154, Draft EIS, FHW, MD US 50 Crossing Study, Transportation Improvement from MD-611 to MD 378; and 3rd Street to Somerset Street, Funding, U.S. Coast Guard, U.S. Army COE Section 10 and 404 Permits, Worcester County, MD, Comment Period Ends: 06/30/2008, Contact: Denise King 410-779-7145.

Amended Notices

EIS No. 20080072, Draft EIS, IBR, CO Southern Delivery System Project, Water Supply Development, Execution of up to 40-year Contracts for Use of Frypan-Arkansas Project Facilities, Special Use Permit, El Paso County, CO, Comment Period Ends:

04/29/2008, Contact: Kara Lamb 970-663-3212.

Revision of FR Notice Published 02/29/2008: Extending Comment Period from 04/29/2008 to 06/13/2008.

Dated: April 22, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-9075 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6698-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080004, ERP No. D-NSA-A06182-00 PROGRAMMATIC-EIS—Complex Transformation, To Make the U.S. Nuclear Weapon Complex Smaller, and more Responsive, Efficient and Secure in Order to Meet National Security Requirements, CA, NV, NM, SC, TN and TX

Summary: EPA does not object to the proposed action. *Rating* LO.

EIS No. 20080035, ERP No. D-IBR-L39041-WA Yakima River Basin Water Storage Feasibility Study, Create Additional Water Storage, Benton, Yakima, Kittitas Counties, WA

Summary: EPA expressed environmental objections to the proposed Black Rock Alternative because of potential impacts to groundwater, and subsequent migration of radiological and chemical contaminants to the Columbia River, and a lack of effective mitigation measures. EPA's concerns about the Wymer Dam and Reservoir and Wymer Dam Plus Yakima River Pump Exchange alternatives were the potential adverse effects on wetlands, riparian areas, water quality, and habitat. EPA recommended additional evaluation of

the seepage impacts, as well as further examination of proposed State Alternatives, which may help to increase water availability with minimal environmental effects. *Rating* EO2.

EIS No. 20080071, ERP No. D-NOA-L39164-WA PROGRAMMATIC—Incorporation of the Revised Washington Shoreline Management Act Guidelines Into the Federally Approved Washington Coastal Management Program, Amendment No. 4 Approval, Coastal Counties in WA

Summary: EPA does not object to the proposed project. *Rating* LO.

Final EISs

EIS No. 20080087, ERP No. F-FRC-G03036-00 Fayetteville/Greenville Expansion Project, Construction and Operation of the Natural Gas Pipeline Facilities in Arkansas and Mississippi

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080088, ERP No. F-FHW-J40261-MT Miller Creek Road Project, To Provide Safe and Improved Access Between U.S. 93 and the Miller Creek Area, Missoula County, MT

Summary: EPA does not object to the proposed project.

Dated: April 22, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-9074 Filed 4-24-08; 8:45 am]

BILLING CODE 5650-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8556-4; Docket ID No. EPA-HQ-ORD-2007-0664]

Integrated Risk Information System (IRIS); Announcement of Availability of Literature Searches for IRIS Assessments

AGENCY: Environmental Protection Agency.

ACTION: Notice; Announcement of availability of literature searches for IRIS assessments; request for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of literature searches for three IRIS assessments, manganese (CAS No. 7439-9), 1,2,4 trimethylbenzene (CAS No. 95-63-6), and 1,3,5-trimethylbenzene (CAS No. 108-67-8) that may be started in 2008, and requesting scientific information on health effects that may result from exposure to these chemical substances.

The Integrated Risk Information System (IRIS) is an EPA database that contains information on human health effects that may result from chronic exposure to chemical substances in the environment.

EPA will accept information related to the specific substances included herein as well as any other compounds being assessed by the IRIS Program. Please submit any information in accordance with the instructions provided below.

ADDRESSES: Please submit relevant scientific information, identified by docket ID number EPA-HQ-ORD-2007-0664, online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to ord.docket@epa.gov; by mail to the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001 or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or as an ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Dr. Abdel-Razak Kadry, IRIS Program Director, National Center for Environmental Assessment, (Mail Code: 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (703) 347-8545; facsimile: (703) 347-8689; or e-mail: kadry.abdel@epa.gov.

For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (202) 566-1676 or send electronic mail inquiries to hotline.iris@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

IRIS is a database of human health effects that may result from chronic exposure to various chemical substances found in the environment. (EPA notes that information in the IRIS database has no preclusive effect and does not predetermine the outcome of any rulemaking. When EPA uses such information to support a rulemaking, the scientific basis for, and the application of that information are subject to comment.) IRIS currently provides information on the chronic health effects—both cancer and non-

cancer—associated with more than 500 chemical substances.

The database includes chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, *i.e.*, hazard identification and dose-response evaluation. Combined with specific situational exposure assessment information, the information in IRIS is an important source in evaluating potential public health risks from environmental contaminants.

The IRIS Annual Agenda

The 2008 IRIS agenda was announced in a **Federal Register** Notice (FRN) of December 21, 2007, which can be found on the IRIS Web site at <http://www.epa.gov/iris>. The December 21, 2007, FRN lists all ongoing IRIS assessments and 20 assessments that may start in 2008. EPA is conducting literature searches for these 20 chemicals. Based on the results of the literature searches and as EPA resources allow, assessments will be started for those chemicals with data that may support development of one or more toxicity values. With the December 21, 2007, IRIS agenda announcement, EPA also started a new process to actively solicit information from the public at the beginning of assessment development. As literature searches are completed, the results will be posted on the IRIS Web site (<http://www.epa.gov/iris>). The public is invited to review the literature search results and submit additional information to EPA. In conjunction with the December 21, 2007 FRN, EPA posted literature searches for 11 chemicals and stated that the availability of additional literature searches would be announced in subsequent FRNs.

Request for Public Involvement in IRIS Assessments

EPA is soliciting public involvement in assessments on the IRIS agenda, including new assessments starting in 2008. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that are not available through the open literature. EPA would appreciate receiving scientific information from the public during the information gathering stage for the assessments listed in this notice or any other assessments on the IRIS agenda. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. While EPA is primarily soliciting information on new assessments starting in 2008, the

public may submit information on any chemical substance at any time.

This notice provides: (1) A list of new IRIS assessments that may start in 2008 for which literature searches have recently become available; and (2) instructions to the public for submitting scientific information to EPA pertinent to the development of these assessments. EPA is also announcing the availability of additional literature searches on the IRIS Web site (<http://www.epa.gov/iris>). The public is invited to review the literature search results and submit additional information to EPA.

Literature searches are now available for manganese (CAS No. 7439-9), 1,2,4-trimethylbenzene (CAS No. 95-63-6), and 1,3,5-trimethylbenzene (CAS No. 108-67-8) at <http://www.epa.gov/iris>. Literature search results were provided on December 21, 2007, at <http://www.epa.gov/iris> for tert-amyl methyl ether, biphenyl, n-butanol, tert-butanol, carbonyl sulfide, diethyl phthalate, diisopropyl ether, hexabromocyclodecane, weathered toxaphene, tungsten, and urea. Additional literature searches will be posted as they are completed, and their availability will be announced in the **Federal Register**. Instructions on how to submit information are provided below under General Information.

General Information

As of Monday, November 28, 2005, EPA's EDOCKET was replaced by the Federal Docket Management System (FDMS), the new federal government-wide system. FDMS was created to provide a single point of access to all federal rulemaking activities. All materials previously found in EDOCKET are now available on the Internet at <http://www.regulations.gov>.

A. How Can I Get Copies of Related Information?

EPA has established an official public docket for this action under Docket ID No. EPA HQ-ORD-2007-0664. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, 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 Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system. EPA Dockets at <http://www.regulations.gov> may be used to submit or view public submissions, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," and then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public submissions, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the submission contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute are not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Information?

Information on chemical substances listed in this notice may be submitted as provided in the **ADDRESSES** section. If you submit electronic information, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your submission and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the information and allows EPA to contact you in case EPA cannot read your information due to technical difficulties or needs further information on the substance of your submission. Any identifying or contact information provided in the body of submitted information will be included as part of the submission information that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your information due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your information.

EPA's preferred method for receiving submissions is via EPA's electronic

public docket. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your submission. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send e-mail directly to the docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the submission that is placed in the official public docket and made available in EPA's electronic public docket.

Dated: April 15, 2008.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E8-8885 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8558-6]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this meeting is to discuss biofuels, environmental technology, and sustainable water infrastructure. The Council will also be discussing potential projects on environmental information and integrated modeling for integrated environmental decision making, among other issues. A copy of the agenda for the meeting will be posted at <http://www.epa.gov/ocem/nacept/cal-nacept.htm>.

DATES: NACEPT will hold a two day open meeting on Wednesday, May 14, 2008, from 8:30 a.m. to 12:30 p.m. and Thursday, May 15, 2008, from 12 p.m. to 2 p.m.

ADDRESSES: The meeting will be held at the U.S. EPA's Potomac Yards Conference Center, 2777 Crystal Drive, Arlington, VA 22202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT:

Sonia Altieri, Designated Federal Officer, altieri.sonia@epa.gov, (202) 564-0243, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. All requests must be submitted no later than May 8, 2008.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202-564-0243 or altieri.sonia@epa.gov. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 17, 2008.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E8-9125 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2008-0273; FRL-8361-3]

Hevea brasiliensis Natural Rubber Latex Adhesives; TSCA Section 21 Petition; Notice of Receipt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has received a petition under section 21 of the Toxic Substances Control Act (TSCA), and requests comments on issues raised by the petition. The petition was received from Michael J. Dochniak on March 6, 2008, and asks EPA "to establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* natural rubber latex adhesives having a total protein content greater than 200 micrograms per dry weight of latex based on the American Society for Testing and Material's method ASTM D1076-06 (Category 4)," because "implementation of an EPA regulation may affect the incidence and prevalence

of latex allergy and allergy-induced autism in neonates." EPA must either grant or deny a TSCA section 21 petition within 90 days of receipt of the petition, and, will, therefore, respond to this petition by June 3, 2008.

DATES: Comments must be received on or before May 12, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2008-0273, by one of the following methods:

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

- **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Hand Delivery:** OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2008-0273. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2008-0273. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. 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 electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an x-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8086; e-mail address: brown.gerry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by an action in response to this petition if you manufacture, process, import, or distribute in commerce *Hevea brasiliensis* natural rubber latex adhesives. Potentially affected entities may include, but are not limited to:

- NAICS code 325520, Adhesive Manufacturing.
- NAICS code 424690, Other Chemical and Allied Products Merchant Wholesalers.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities that may potentially be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the TSCA section 21 petition on *Hevea brasiliensis* natural rubber latex adhesives. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is a TSCA Section 21 Petition?

Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts that the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, EPA must promptly commence an appropriate proceeding. If EPA denies the petition, EPA must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial or expiration of the 90-day period, if no action is taken, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding.

B. What Action is Requested Under this TSCA Section 21 Petition?

On March 6, 2008, Michael J. Dochniak petitioned EPA under TSCA section 21. The petitioner is concerned about risks to human health and the environment from exposure to *Hevea brasiliensis* natural rubber latex adhesives. He is petitioning EPA "to establish regulations prohibiting the use and distribution in commerce of *Hevea brasiliensis* natural rubber latex adhesives having a total protein content greater than 200 micrograms per dry weight of latex based on the American Society for Testing and Material's method ASTM D1076-06 (Category 4)," because "implementation of an EPA regulation may affect the incidence and prevalence of latex allergy and allergy-induced autism in neonates."

C. EPA Seeks Public Comment

Under TSCA section 21, EPA must either grant or deny a petition within 90 days. Because the 90 day response date is June 3, 2008, EPA will allow the public until May 12, 2008 to reply with any additional information relevant to the issues identified in the petition, a copy of which can be obtained from the public docket (see **ADDRESSES**).

In assessing the usability of any data or information that may be submitted, EPA plans to follow the guidelines in EPA's "A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information" (EPA 100B-03/001), referred to as the "Assessment Factors Document." The Assessment Factors Document was published in the **Federal Register** issue of July 1, 2003 (68 FR 39086) (FRL-7520-2) and is available on-line at <http://www.epa.gov/fedrgstr/EPA-GENERAL/2003/July/Day-01/g16328.htm>. That document is also available on-line at <http://www.epa.gov/osa/spc/assess.htm>.

List of Subjects

Environmental protection, antigenic proteins, Asperger syndrome, Autism, *Hevea brasiliensis* natural rubber latex adhesives.

Dated: April 18, 2008.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.
[FR Doc. E8-9041 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2008-0267; FRL-8362-6]

Formaldehyde Emissions from Composite Wood Products; TSCA Section 21 Petition; Notice of Receipt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has received a petition under section 21 of the Toxic Substances Control Act (TSCA), and requests comments on issues raised by the petition. The petition was received on March 24, 2008, from 25 organizations and approximately 5,000 individuals. The petitioners are concerned about risks to human health and the environment from exposure to formaldehyde in composite wood products, including hardwood plywood, particle board, and medium density

fiberboard. They are petitioning EPA to assess and reduce these risks by exercising its authority under TSCA section 6(a) to: Adopt and apply nationally the formaldehyde emissions regulation for composite wood products recently approved by the California Air Resources Board; and to extend the regulation to include composite wood products used in manufactured homes. EPA must either grant or deny a TSCA section 21 petition within 90 days of receipt of the petition, which for this petition is June 21, 2008.

DATES: Comments must be received on or before May 12, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2008-0267, by one of the following methods:

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

- **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Hand Delivery:** OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2008-0267. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2008-0267. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available

on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 docket index available in www.regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the www.regulations.gov website to view the docket index or access available documents. 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 electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an x-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mary Belefski, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8461; e-mail address: belefski.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by an action in response to this petition, if you manufacture, process, import, or distribute in commerce composite wood products, including hardwood plywood, particle board, and medium density fiberboard. Potentially affected entities may include, but are not limited to:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).
- Prefabricated wood building manufacturing (NAICS code 321992).
- All other basic organic chemical manufacturing (NAICS code 325199), e.g., formaldehyde manufacturing.
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), e.g., merchant wholesale distributors of manufactured homes (i.e., mobile homes) and/or prefabricated buildings.
- Furniture stores (NAICS code 4421).
- Building material and supplies dealers (NAICS code 4441).
- Manufactured (mobile) home dealers (NAICS code 45393).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities that may potentially be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the TSCA section 21 petition. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is a TSCA Section 21 Petition?

Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts that the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, EPA

must promptly commence an appropriate proceeding. If EPA denies the petition, EPA must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial or expiration of the 90-day period, if no action is taken, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding.

B. What Action is Requested Under this TSCA Section 21 Petition?

On March 24, 2008, the Sierra Club, National Center for Healthy Housing, National Coalition to End Childhood Lead Poisoning, Alliance for Healthy Homes, National Housing Institute, Healthy Building Network, Gulf Coast Environmental Restoration Task Force of Sierra Club, Next Generation Choices Foundation, Improving Kids' Environment, EarthRose Institute, Grassroots Environmental Education, Healthy Homes of Louisiana, Lower Mississippi Riverkeeper, Women's Community Cancer Project, Gulf Coast D'Iberville Volunteers Foundation, Advocates for Environmental Human Rights, Environmental Health Watch, North Gulfport Community Land Trust, Louisiana Environmental Action Network, Allergy and Environmental Health Assoc., Aspen River Construction, DeVany Industrial Consultant, Protect Sacred Sites "Indigenous People, One Nation," United People of the Cherokee Nation, Clean Air Athens, and approximately 5,000 individuals petitioned EPA under TSCA section 21. The petitioners are concerned about risks to human health and the environment from exposure to formaldehyde emitted from composite wood products, including hardwood plywood, particle board, and medium density fiberboard. They are petitioning EPA to assess and reduce these risks by exercising its authority under TSCA section 6(a) to:

1. Adopt and apply nationally the formaldehyde emissions regulation for composite wood products, including hardwood plywood, particle board, and medium density fiberboard, recently adopted by the California Air Resources Board.

2. Extend the regulation to include composite wood products used in manufactured homes.

C. EPA Seeks Public Comment

Under TSCA section 21, EPA must either grant or deny a petition within 90 days. Because the 90-day response date is June 21, 2008, EPA will allow the public until May 12, 2008 to reply with any additional information relevant to the issues identified in the petition, a

copy of which can be obtained from the public docket (see **ADDRESSES**).

While EPA is interested in any information relevant to the issues identified in the petition, EPA is particularly interested in comments that address any of the following questions:

1. *Present domestic composite wood market.* What percentage (by volume of product) of the domestic hardwood plywood, particle board, and medium density fiberboard ("composite wood") markets, exclusive of California, presently conform to the Phase 1 or Phase 2 emissions limits in the California Air Toxic Control Measure (ATCM) for formaldehyde in composite wood products? For information on the California ATCM see <http://www.arb.ca.gov/toxics/compwood/compwood.htm>.

2. *Future domestic composite wood market*—i. What percentage (by volume of product) of the domestic composite wood market, exclusive of California, anticipates conforming to the California ATCM in the future?

- ii. How is this likely to vary by region of the country, as compared to the national market?

3. *Formaldehyde emitting substitutes*—i. What low or no formaldehyde emitting substitutes exist?

- ii. What percentage of the composite wood market uses them?

- iii. What percentage of the national composite wood market, exclusive of California, is expected to use them after 2012 (when California's Phase 2 emission limits have become effective)?

4. *Composite wood products used in manufactured housing.* While the California regulation does not apply to manufactured housing, the petitioners have asked EPA to apply the California regulation "to composite wood products used in manufactured housing":

- i. What percentage of the composite wood market is used in manufactured housing?

- ii. How are the composite wood products used in manufactured housing different from composite wood products subject to the California regulation?

- iii. What is the annual volume of composite wood products used in manufactured housing?

- iv. What percentage of composite wood products (by volume of product) is used in manufactured housing and is therefore not subject to the California regulations?

- v. What percentage of composite wood products used for manufactured housing and not subject to California's regulations nonetheless meets the California emission limits?

In assessing the usability of any data or information that may be submitted,

EPA plans to follow the guidelines in EPA's "A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information" (EPA 100B-03/001), referred to as the "Assessment Factors Document." The "Assessment Factors Document" was published in the **Federal Register** issue of July 1, 2003 (68 FR 39086) (FRL-7520-2) and is available on-line at <http://www.epa.gov/fedrgstr/EPA-GENERAL/2003/July/Day-01/g16328.htm>. That document is also available on-line at <http://www.epa.gov/osa/spc/assess.htm>.

List of Subjects

Environmental protection, Composite wood products, Formaldehyde, Housing, Toxic Substance Control Act (TSCA).

Dated: April 21, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8-9136 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA-RO4-SFUND-2008-0305; FRL-8558-3]

Smalley-Piper Superfund Site; Collierville, Shelby County, TN; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) 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 costs concerning the Smalley-Piper Superfund Site located in Collierville, Shelby County, Tennessee for publication.

DATES: The Agency will consider public comments on the settlement until May 27, 2008. 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-2008-0305 or Site name Smalley-Piper

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-2008-0305. 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://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: March 8, 2008.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E8-9129 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8558-2; Docket ID No. EPA-HQ-ORD-2008-0245]

Draft Toxicological Review of Ethylene Glycol mono-Butyl Ether (EGBE): In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The EPA is announcing a public comment period for the external review draft document entitled, "Toxicological Review of Ethylene Glycol mono-Butyl Ether (EGBE): In Support of Summary Information in the Integrated Risk Information System (IRIS)" (EPA/635/R-08/006A). EPA intends to consider comments and recommendations from the public and the expert panel meeting, which will be scheduled at a later date and announced in the **Federal Register**, when EPA finalizes the draft document. The public comment period will provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments, submitted in accordance with this notice, to the external peer-review panel prior to the workshop for their consideration.

EPA is releasing this draft document solely for the purpose of pre-dissemination public review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be

construed to represent any Agency policy or determination.

The draft document is available via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/ncea>. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

DATES: The public comment period begins April 25, 2008, and ends June 24, 2008. Technical comments should be in writing and must be received by EPA by June 24, 2008. EPA intends to submit comments from the public received by this date for consideration by the external peer-review panel.

ADDRESSES: The draft "Toxicological Review of Ethylene Glycol mono-Butyl Ether (EGBE): In Support of the Summary Information on the Integrated Risk Information System (IRIS)" is available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/ncea>. A limited number of paper copies are available by contacting the Information Management Team, NCEA; telephone: 703-347-8561; facsimile: 703-347-8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via www.regulations.gov, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202-566-1752; facsimile: 202-566-1753; or e-mail: ORD.Docket@epa.gov.

If you have questions about the document, contact, Angela Howard, Chemical Manager, National Center for Environmental Assessment; telephone: (919) 541-5133; facsimile: (919) 541-0248; e-mail: howard.angela@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of Information about the Integrated Risk Information System (IRIS)

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at <http://www.epa.gov/iris>)

contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How to Submit Technical Comments to the Docket at <http://www.regulations.gov>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2008-0245 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- E-mail: ORD.Docket@epa.gov.

- Fax: 202-566-1753.

- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202-566-1752.

- **Hand Delivery:** The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 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 Public Reading Room is 202-566-1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2008-0245. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to

include all comments it receives in the public docket without change and to make the comments available online at <http://www.regulations.gov>, including any personal information provided, unless a 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 OEI Docket in the EPA Headquarters Docket Center.

Dated: April 16, 2008.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E8-9088 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202-523-5793 or tradeanalysis@fmc.gov).

Agreement No.: 011117-045.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; ANL Singapore Pte Ltd.; CMA-CGM, S.A.; Compagnie Maritime Marfret S.A.; Hamburg-Süd; Hapag-Lloyd AG; U.S. Lines Limited; and Wallenius Wilhelmsen Logistics AS.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes U.S. Lines Limited as a party to the agreement, reflecting the merger with ANL Singapore Pte Ltd.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8-9121 Filed 4-24-08; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 2008.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. *ESB Bancorp, MHC and ESB Bancorp, Inc., both of Easthampton, Massachusetts*; to become a mutual bank holding company and stock bank holding company respectively, by acquiring 100 percent of the voting shares of Easthampton Saving Bank, Easthampton, Massachusetts.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Lake Shore Wisconsin Corporation, Sheboygan, Wisconsin*; to become a bank holding company by acquiring 100 percent of the voting shares of Lake Shore Bank, (in organization) Sheboygan, Wisconsin.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *La Jolla Pacific Bancorp, San Diego, California*; to become a bank holding company by acquiring 100 percent of the voting shares of Home Bank of California, San Diego, California.

Board of Governors of the Federal Reserve System, April 22, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8-9052 Filed 4-24-08; 8:45 am]

BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

Multiple Award Schedule Advisory Panel; Notification of Public Advisory Panel Meetings; Correction

AGENCY: U.S. General Services Administration (GSA).

ACTION: Correction.

SUMMARY: In the meeting notice that published in the issue of Wednesday, April 16, 2008 (73 FR 20675), the telephone number for Ms. Pat Brooks in **FOR FURTHER INFORMATION CONTACT** should read as set forth below.

FOR FURTHER INFORMATION CONTACT: Information on the Panel meetings, agendas, and other information can be obtained at <http://www.gsa.gov/masadvisorypanel> or you may contact Ms. Pat Brooks, Designated Federal Officer, Multiple Award Schedule Advisory Panel, U.S. General Services Administration, 2011 Crystal Drive, Suite 911, Arlington, VA 22205; telephone 703 605-3406, Fax 703 605-3454; or via e-mail at mas.advisorypanel@gsa.gov.

Dated: April 18, 2008.

Diedra Wingate,

Federal Register Liaison.

[FR Doc. E8-8897 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-EP-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to

access or amend their records in the systems of records. The updated system notices also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/GOV-8

SYSTEM NAME:

Excluded Parties List System (EPLS).

SYSTEM LOCATION:

The General Services Administration's (GSA) Office of the Chief Acquisition Officer (OCAO) is the owner of the system. The system of records is maintained by a contractor. Contact the system manager for additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- a. Individuals excluded or disqualified under a Federal agency's codification of the Common Rules on Nonprocurement suspension and debarment, or otherwise declared ineligible from receiving certain Federal assistance and/or benefits.
- b. Individuals debarred, suspended, proposed for debarment, or otherwise declared ineligible from participating in Federal procurement programs.
- c. Individuals barred or suspended from acting as sureties for bid and performance bond activity in procurement programs.
- d. Individuals barred from entering the United States.
- e. Individuals that may be subject to sanctions pursuant to 31 CFR Parts 500-599 and subparts there under.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information entered by Federal agencies that identifies excluded individuals and the applicable authority, in the form of cause and treatment (CT) codes, under which the exclusion was made.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintaining the system are the Federal Acquisition Regulation Subparts 9.4 and 28.2; Executive Order 12549 (February 18, 1986); Executive Order 12689 (August 16, 1989); and 31 U.S.C. Sec. 6101, note.

PURPOSE:

To maintain a Governmentwide system of records that identifies individuals who have been excluded

from participating in Federal procurement and nonprocurement (financial or non-financial assistance and benefits programs), throughout the Federal government. In some instances a record may demonstrate that an exclusion applies only to the agency taking the action, and therefore, does not have Governmentwide effect. The purpose of these exclusions is to protect the Government from nonresponsible contractors and individuals, ensure proper management throughout the Federal government, and protect the integrity of Federal activities.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING THE TYPES OF USERS AND THEIR PURPOSES FOR USING THE RECORDS:

- a. To contracting officers and other Federal, State, and local government employees involved in procuring goods and services with Federal funds or administering Federal financial assistance programs or benefits to determine a party's eligibility status to participate in Federal procurement and nonprocurement programs.
- b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order where the records clearly indicate, or when seen with other records indicate, a violation of civil or criminal law or regulation, when the information is needed to perform a Federal duty or to decide the issues.
- c. To a Federal, State or local agency, financial institution or a healthcare or industry provider that administers Federal financial or non-financial assistance programs or benefits, when the information is needed to determine eligibility.
- d. To an expert, consultant, contractor, Federal, State or local agency, or financial institution, when the information is needed to perform a Federal duty.
- e. To an appeal, grievance, or formal complaints examiner, an equal employment opportunity investigator, an arbitrator, a union representative, or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee, when the information is needed to decide the issues.
- f. To a requesting Federal, State or local agency, financial institution, or a healthcare or industry provider in connection with hiring or retaining an employee, issuing a security clearance, investigating an employee, clarifying a job, letting a contract, or issuing a license, grant, or other benefit by the requesting agency where the information is needed to decide on a

Federal financial or non-financial assistance program or benefit.

g. To a member of Congress or to a congressional staff member in response to a request from the person who is the subject of the record, when the information is needed to perform a Federal duty.

h. To the Department of Justice when an agency, an agency employee, or the United States is a party to or has an interest in litigation, and the records are needed to pursue the litigation.

i. To a court or judicial body when an agency, an agency employee, or the United States is a party to or has an interest in litigation, and the records are needed to pursue the litigation.

j. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO) or the Interagency Suspension and Debarment Committee (ISDC) when the information is required for program evaluation purposes.

k. To the National Archives and Records Administration (NARA) for records management purposes.

l. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, ACCESSING, RETRIEVING, MAINTAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored on readily accessible servers and backed up to tape media. Paper records are stored in file folders.

RETRIEVABILITY:

Electronic records are retrieved by Exact Name, Partial Name, Action Dates, Termination Dates, Create Dates, Data Universal Numbering System (DUNS), Classification, Exclusion Type, CT Code, Agency, U.S. State, Country, Cage Code, verification of Name with the

Social Security Number (SSN) or the Tax Identification Number (TIN), and verification of Name with residential street address.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act of 1974, as amended, the Computer Security Enhancement Act of 1997, and the EPLS Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data that is stored, processed, and transmitted. Paper records are stored in locked filing cabinets when not in use or are kept in secured rooms, accessible to authorized users only. The Debar Maintenance and Administration portals are ID and password protected. The public portal does not require ID and passwords because privacy protected information is not available on the public site.

RETENTION AND DISPOSAL:

Electronic records of past exclusions are maintained permanently in the archive list for historical reference. Federal agencies reporting exclusion information in the EPLS should follow their agency's guidance and policies for disposition of paper records.

SYSTEM MANAGER(S) AND ADDRESS:

Integrated Acquisition Environment Program Manager, Office of the Chief Acquisition Officer, General Services Administration, 2011 Crystal Drive, Suite 911, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Individuals receive prior notification that their names will be contained in the EPLS from the Agency that takes the action to exclude them from Federal procurement and nonprocurement programs. An individual may retrieve system records by accessing the EPLS public portal, which displays publicly available information only.

RECORD ACCESS PROCEDURE:

Requests from individuals to determine the specifics of a record included in the EPLS should be addressed to the Agency Point of Contact (POC) identified in the record.

CONTESTING RECORD PROCEDURE:

The procedures for contesting the content of a record and appealing an initial decision may be found in 41 CFR Part 105-64. Individuals should contact the Agency Point of Contact (POC) identified in the record to commence a record contest or appeal.

RECORD SOURCES:

Federal agencies are the source for entering record information in the EPLS. [FR Doc. E8-8882 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION**Privacy Act of 1974; Notice of Updated Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,
Director, Office of Information Management.

GSA/GOVT-6**SYSTEM NAME:**

GSA SmartPay Purchase Charge Card Program.

SYSTEM LOCATION:

System records are located at the Federal agency for which an individual is authorized to perform purchase charge card transactions. Records necessary for a contractor to perform under a Federal agency contract are located at the contractor's facility. Contact the System Manager for additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are Federal employees, contractors, and other individuals who apply for and/or use Government-assigned purchase charge cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides control over expenditure of funds through the use of Federal Government purchase cards. System records include:

a. Personal information on individuals who apply for and use Federal Government charge cards, including name, Social Security Number, agency of employment, business address (including city, state, country, and zip code), title or position, business telephone, business fax number, and e-mail address.

b. Account processing and management information, including purchase authorizations and vouchers, charge card applications, charge card receipts, terms and conditions for card use, charge card transactions, contractor monthly reports showing charges to individual account numbers, account balances, and other data needed to authorize, account for, and pay authorized purchase card expenses.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

E.O. 9397; E.O. 12931; 40 U.S.C. Sec. 501-502.

PURPOSE:

To establish and maintain a system for operating, controlling, and managing a purchase charge card program involving commercial purchases by authorized Federal Government employees and contractors.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by authorized Federal agency employees or contractors to conduct official duties associated with the management and operation of the purchase charge card program. Information from this system also may be disclosed as a routine use:

a. To a Federal, State, local, or foreign agency responsible for investigating,

prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where an agency becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To officials of labor organizations recognized under Public Law 95-454, when necessary to their duties of exclusive representation on personnel policies, practices, and matters affecting working conditions.

d. To another Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; clarifying a job; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO) or other Federal agency when the information is required for program evaluation purposes.

f. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To an expert, consultant, or contractor in the performance of a Federal duty to which the information is relevant, including issuance of charge cards.

i. To GSA in the form of listings, reports, and records of all transportation related transactions, including refunds and adjustments, by the contractor to enable audits of transportation related charges to the Government.

j. To GSA contract agents assigned to participating agencies for billing of purchase expenses.

k. To agency finance offices for debt collection purposes.

l. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or

integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, credit card number, and/or other personal identifier or appropriate type of designation.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A-130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2A and CIO P 1820.1), authorized GSA records schedules, and by individual agencies.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Commercial Acquisition (FC), General Services Administration, 1901 South Bell Street, Arlington VA 22202. Also, officials responsible for individual agency purchase card programs using the SmartPay system.

NOTIFICATION PROCEDURE:

Individuals may obtain information about their records from the purchase charge card program manager of the agency for which they transact purchases.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to

their agency's purchase charge card program manager or to the finance office of the agency for which the individual transacts purchases.

CONTESTING RECORD PROCEDURES:

Individuals may access their records, contest the contents, and appeal determinations according to their agency's rules.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals submitting charge card applications, monthly contractor reports, purchase records, managers, other agencies, non-Federal sources such as private firms, and other agency systems containing information pertaining to the purchase charge card program.

[FR Doc. E8-8883 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: Telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system

notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,
Director, Office of Information Management.

GSA/GOVT-7

SYSTEM NAME:

Personal Identity Verification Identity Management System (PIV IDMS).

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Records covered by this system are maintained by a contractor at the contractor's site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The PIV IDMS records will cover all participating agency employees, contractors and their employees, consultants, and volunteers who require routine, long-term access to federal facilities, information technology systems, and networks. The system also includes individuals authorized to perform or use services provided in agency facilities (e.g., Credit Union, Fitness Center, etc.).

At their discretion, participating Federal agencies may include short-term employees and contractors in the PIV program and, therefore, inclusion in the PIV IDMS. Federal agencies shall make risk-based decisions to determine whether to issue PIV cards and require prerequisite background checks for short-term employees and contractors. The system does not apply to occasional visitors or short-term guests. GSA and participating agencies will issue temporary identification and credentials for this purpose.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment records maintained in the PIV IDMS on individuals applying for the PIV program and a PIV credential through the GSA HSPD-12 managed service include the following data fields: Full name; Social Security Number; Applicant ID number, date of birth; current address; digital color photograph; fingerprints; biometric template (two fingerprints); organization/office of assignment; employee affiliation; work e-mail address; work telephone number(s); office address; copies of identity source documents; employee status; military status; foreign national status; federal

emergency response official status; law enforcement official status; results of background check; Government agency code; and PIV card issuance location. Records in the PIV IDMS needed for credential management for enrolled individuals in the PIV program include: PIV card serial number; digital certificate(s) serial number; PIV card issuance and expiration dates; PIV card PIN; Cardholder Unique Identifier (CHUID); and card management keys. Agencies may also choose to collect the following data at PIV enrollment which would also be maintained in the PIV IDMS: Physical characteristics (e.g., height, weight, and eye and hair color). Individuals enrolled in the PIV managed service will be issued a PIV card. The PIV card contains the following mandatory visual personally identifiable information: Name, photograph, employee affiliation, organizational affiliation, PIV card expiration date, agency card serial number, and color-coding for employee affiliation. Agencies may choose to have the following optional personally identifiable information printed on the card: Cardholder physical characteristics (height, weight, and eye and hair color). The card also contains an integrated circuit chip which is encoded with the following mandatory data elements which comprise the standard data model for PIV logical credentials: PIV card PIN, cardholder unique identifier (CHUID), PIV authentication digital certificate, and two fingerprint biometric templates. The PIV data model may be optionally extended by agencies to include the following logical credentials: Digital certificate for digital signature, digital certificate for key management, card authentication keys, and card management system keys. All PIV logical credentials can only be read by machine.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Federal Information Security Management Act (Pub. L. 107-296, Sec. 3544); E-Government Act (Pub. L. 107-347, Sec. 203); Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et al.) and Government Paperwork Elimination Act (Pub. L. 105-277, 44 U.S.C. 3504); Homeland Security Presidential Directive 12 (HSPD-12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Federal Property and Administrative Services Act of 1949, as amended.

PURPOSES:

The primary purposes of the system are: To ensure the safety and security of

Federal facilities, systems, or information, and of facility occupants and users; to provide for interoperability and trust in allowing physical access to individuals entering Federal facilities; and to allow logical access to Federal information systems, networks, and resources on a government-wide basis.

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. Section 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside GSA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice (DOJ) when: (1) The agency or any component thereof; or (2) any employee of the agency in his or her official capacity; (3) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or (4) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by DOJ and is therefore deemed by the agency to be for a purpose compatible with the purpose for which the agency collected the records.

b. To a court or adjudicative body in a proceeding when: (1) The agency or any component thereof; (2) any employee of the agency in his or her official capacity; (3) any employee of the agency in his or her individual capacity where the agency or the Department of Justice has agreed to represent the employee; or (4) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records and is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

c. Except as noted on Forms SF 85, SF 85-P, and SF 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise,

responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

d. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

e. To the National Archives and Records Administration (NARA) or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

f. To agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Federal Information Security Management Act (Pub. L. 107–296), and associated OMB policies, standards and guidance from the National Institute of Standards and Technology, and the General Services Administration.

g. To a Federal agency, State, local, foreign, or tribal or other public authority, on request, in connection with the hiring or retention of an employee, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision.

h. To the Office of Management and Budget (OMB) when necessary to the review of private relief legislation pursuant to OMB Circular No. A–19.

i. To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; Executive Order 12333 or any successor order; and applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or Directives.

j. To designated agency personnel for controlled access to specific records for the purposes of performing authorized audit or authorized oversight and administrative functions. All access is controlled systematically through authentication using PIV credentials based on access and authorization rules for specific audit and administrative functions.

k. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO), or other Federal agency in accordance with the agency's responsibility for evaluation of Federal personnel management.

l. To the Federal Bureau of Investigation for the FBI National Criminal History check.

m. To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended; the CIA Act of 1949 as amended; Executive Order 12333 or any successor order; and applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

n. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media and in paper files.

RETRIEVABILITY:

Records may be retrieved by name of the individual, Cardholder Unique

Identification Number, Applicant ID, Social Security Number, and/or by any other unique individual identifier.

SAFEGUARDS:

Consistent with the requirements of the Federal Information Security Management Act (Pub. L. 107–296), and associated OMB policies, standards and guidance from the National Institute of Standards and Technology, and the General Services Administration, the GSA HSPD–12 managed service office protects all records from unauthorized access through appropriate administrative, physical, and technical safeguards. Access is restricted on a “need to know” basis, utilization of PIV Card access, secure VPN for Web access, and locks on doors and approved storage containers. Buildings have security guards and secured doors. All entrances are monitored through electronic surveillance equipment. The hosting facility is supported by 24/7 onsite hosting and network monitoring by trained technical staff. Physical security controls include: Indoor and outdoor security monitoring and surveillance; badge and picture ID access screening; biometric access screening. Personally identifiable information is safeguarded and protected in conformance with all Federal statutory and OMB guidance requirements. All access has role-based restrictions, and individuals with access privileges have undergone vetting and suitability screening. All data is encrypted in transit. While it is not contemplated, any system records stored on mobile computers or mobile devices will be encrypted. GSA maintains an audit trail and performs random periodic reviews to identify unauthorized access. Persons given roles in the PIV process must be approved by the Government and complete training specific to their roles to ensure they are knowledgeable about how to protect personally identifiable information.

RETENTION AND DISPOSAL:

Disposition of records will be according to NARA disposition authority N1–269–06–1 (pending).

SYSTEM MANAGER AND ADDRESS:

Director, HSPD–12 Managed Service Office, Federal Acquisition Service (FAS), General Services Administration, Suite 911, 2011 Crystal Drive, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

A request for access to records in this system may be made by writing to the System Manager. When requesting

notification of or access to records covered by this Notice, an individual should provide his/her full name, date of birth, agency name, and work location. An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to access, such as a government-issued photo ID.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Employee, contractor, or applicant; sponsoring agency; former sponsoring agency; other Federal agencies; contract employer; former employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-8884 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

**GENERAL SERVICES
ADMINISTRATION****Privacy Act of 1974; Notice of Updated
Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the

revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/GOVT-5**SYSTEM NAME:**

Access Certificates for Electronic Services (ACES).

SYSTEM LOCATION:

System records are maintained for the General Services Administration (GSA) by contractors at various physical locations. A complete list of locations is available from: Administrative Contracting Officer, FEDCAC, Federal Technology Service, General Services Administration, 7th and D Streets, SW., Room 5060, Washington, DC 20407; telephone (202) 708-6099.

**CATEGORIES OF INDIVIDUALS COVERED BY THE
SYSTEM:**

Individuals covered are persons who have applied for the issuance of a digital signature certificate under the ACES program; have had their certificates amended, renewed, replaced, suspended, revoked, or denied; have used their certificates to electronically make contact with, retrieve information from, or submit information to an automated information system of a participating agency; have requested access to ACES records under the Freedom of Information Act (FOIA) or Privacy Act; and have corresponded with GSA or its ACES contractors concerning ACES services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish and verify the identity of ACES users, to maintain the system, and to establish accountability and audit controls. System records include:

a. Applications for the issuance, amendment, renewal, replacement, or revocation of digital signature certificates under the ACES program, including evidence provided by applicants or proof of identity and authority, and sources used to verify an applicant's identity and authority.

b. Certificates issued.

c. Certificates denied, suspended, and revoked, including reasons for denial, suspension, and revocation.

d. A list of currently valid certificates.

e. A list of currently invalid certificates.

f. A file of individuals requesting access and those granted access to ACES information under FOIA or the Privacy Act.

g. A file of individuals requesting access and those granted access for reasons other than FOIA or the Privacy Act.

h. A record of validation transactions attempted on digital signature certificates issued by the system.

i. A record of validation transactions completed on digital signature certificates issued by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5124(b) of the Clinger-Cohen Act of 1996, 40 U.S.C. 1424, which provides authority for GSA to develop and facilitate governmentwide electronic commerce resources and services, and the Paperwork Reduction Act, 44 U.S.C. 3501, *et. seq.*, which provides authority for GSA to manage Federal information resources.

PURPOSE:

To establish and maintain an electronic system to facilitate secure, on-line communication between Federal automated information systems and the public, using digital signature technologies to authenticate and verify identity.

**ROUTINE USES OF THE SYSTEM RECORDS,
INCLUDING CATEGORIES OF USERS AND THEIR
PURPOSES FOR USING THE SYSTEM:**

Information from this system may be disclosed as a routine use:

a. To GSA ACES program contractors to compile and maintain documentation on applicants for proofing applicants' identity and their authority to access information system applications of participating agencies.

b. To GSA ACES program contractors to establish and maintain documentation on information sources for verifying applicants' identities.

c. To Federal agencies participating in the ACES program to determine the validity of applicants' digital signature certificates in an on-line, near real time environment.

d. To GSA, participating Federal agencies, and ACES contractors, for ensuring proper management, ensuring data accuracy, and evaluation of the system.

e. To Federal, State, local or foreign agencies responsible for investigating,

prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

f. To a member of Congress or to a congressional staff member in response to a request from the person who is the subject of the record.

g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

h. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

i. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

j. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

k. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

l. To the National Archives and Records Administration (NARA) for records management purposes.

Disclosure to consumer reporting agencies: Disclosure of system records to consumer reporting systems is not permitted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

All records are stored by GSA ACES contractors or by GSA as hard copy documents and/or on electronic media.

RETRIEVABILITY:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA and made available to ACES participants at the time of their application for ACES services.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A-130, Appendices I and III. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. The ACES System Security Plan, approved by GSA for each ACES contractor, provides for inspections, testing, continuity of operations, and technical certification of security safeguards. GSA accredits and annually re-accredits each contractor system prior to its operation.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Administrative Contracting Officer, FEDCAC, Federal Technology Service, General Services Administration, Room 5060, 7th and D Streets, SW., Washington, DC 20407.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the system manager. Applicants for digital signature certificates will be notified by the GSA ACES contractor which facilitates individual access to the relevant Federal agency database as follows:

a. Each applicant will be provided, on a Government-approved form that can be retained by the individual applicant, the principal purposes of the ACES program; the authority for collecting the information; the fact that participation is voluntary; the fact that identity and authority information must be provided and verified before a certificate will be issued; the fact that the information provided is covered by the Privacy Act and the Computer Security Act; the routine uses that will be made of the information being provided; the limitations on the uses of the information being provided; the procedures to be followed for requesting access to the individual's own records; and the possible consequences of failing to provide all or part of the required information or intentionally providing false information.

b. Written notification in response to an individual's request to be advised if the system contains a record pertaining to him/her.

c. Written notification to an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

d. Written notification of the right to appeal to GSA by any individual on any dispute concerning the accuracy of his/her record.

RECORD ACCESS PROCEDURE:

GSA ACES contractors will provide notification of, access to, review of, or copies of an individual's record upon his/her request as required by the Privacy Act.

CONTESTING RECORD PROCEDURE:

GSA ACES contractors will amend an individual's record upon his/her written request, as required by the Privacy Act and GSA's implementing regulations, 41 CFR part 105-64. If the ACES contractor determines that an amendment is inappropriate, the contractor shall submit the request to the System Manager for a determination by GSA whether to grant or deny the request for amendment and direct response to the requester.

RECORD SOURCES CATEGORIES:

The sources for information in the system are the individuals who apply for digital signature certificates, GSA ACES contractors using independent sources to verify identities, and internal system transactions designed to gather and maintain data needed to manage and evaluate the ACES program.

[FR Doc. E8-8886 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer:

telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/HRO-4

SYSTEM NUMBER:

GSA/HRO-4.

SYSTEM NAME:

Labor-Management Relations Files.

SYSTEM LOCATION:

The system is in the Office of Human Resources Services at GSA (CPL) at 18th & F Streets, NW., Washington, DC 20405, and service and staff offices throughout GSA. The Offices are as follows:

Central Office, Central Office Human Resources Division (CPL), General Services Administration, 1800 F Street, NW., Washington, DC 20405. (202) 501-0040.

National Capital Region, Human Resources Office (WCP), General Services Administration, 7th and D Streets, SW., Washington, DC 20407. (202) 708-5335.

New England Region, Human Resources Office (1CP), General Services Administration, 10 Causeway Street, Boston, MA 02222. (617) 565-6634.

Northeast and Caribbean Region, Human Resources Office (2AR), General Services Administration, 26 Federal Plaza, New York, NY 10278. (212) 264-8138.

Mid-Atlantic Region, Human Resources Office (3CP), General Services

Administration, The Strawbridge Building, 20 North Eighth Street, Philadelphia, PA 19107-3191. (215) 446-4951.

Southeast Sunbelt Region, Office of Human Resources (4AH), General Services Administration, 77 Forsyth Street, Suite 650, Atlanta, GA 30303. (404) 331-3186.

Great Lakes Region, Human Resources Office (5CP), General Services Administration, 230 South Dearborn Street, Chicago, IL 60604. (312) 353-5550.

The Heartland Region, Human Resources Office (6CP), General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131. (816) 926-7206.

Greater Southwest Region, Human Resources Office (7CP), General Services Administration, 819 Taylor Street, Room 9A00, Fort Worth, TX 76102. (817) 978-3190.

Region 8 Human Resource Office (7CP-8), W. 6th Avenue & Kipling Street, Room: 210, Lakewood, CO 80225-0000.

Pacific Rim Region, Human Resources Office (9CP), General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94100. (415) 744-5185.

Auburn On-Site Support Group (9CPA), 400 15th Street, SW., Room: 1008, Auburn, WA 98001.

PERSONS COVERED BY THE SYSTEM:

GSA employees who are union officials or who are in an exclusively recognized union. It includes GSA employees who file a grievance under the negotiated grievance procedure.

TYPES OF RECORDS IN THE SYSTEM:

Records include:

1. List of employees who are elected or appointed as National union officers or officials.
2. National arbitration awards based on an employee or union grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining the system comes from 5 U.S.C. Chapter 71.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING TYPES OF USERS AND THEIR PURPOSE IN USING THEM:

a. To identify and record employees who are included in an exclusively recognized union, are under dues withholding, are elected or appointed as union officers, whose grievances have been resolved by arbitration, and who use official time for representing employees.

b. To the Department of Labor in carrying out its functions regarding labor-management relations in the Federal service.

c. To officials of labor organizations recognized under Pub. L. 95-454, when needed for their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

d. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

e. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

f. By the Office of Personnel Management in producing descriptive statistics to support the function for which the records are collected and maintained or for related work force studies. While published statistics and studies do not identify individuals, in some instances data elements in a study may be structured so as to allow an individual to be identified by inference.

g. To disclose information to the Office of Management and Budget in reviewing private relief legislation at any stage of the clearance process.

h. To disclose information to officials of the Merit System Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performing official duties.

i. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

j. To a Member of Congress or staff on behalf of and at the requests of the individual who is the subject of the record.

k. To the extent that official personnel records in the custody of GSA are covered within systems of records published by the Office of Personnel Management as Government-wide system, they are considered part of the Government-wide system. Other official personnel records covered by notices published by GSA and considered to be separate systems of records may be transferred to the Office of Personnel Management under official personnel programs and activities as a routine use.

l. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

m. To the National Archives and Records Administration (NARA) for records management purposes.

n. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the

security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or system generated inquiries are stored in file cabinets.

RETRIEVABILITY:

The records are filed numerically and/or alphabetically by name.

SAFEGUARDS:

When not in use by an authorized person, the records are stored in locked metal file cabinets or in secured rooms.

RETENTION AND DISPOSAL:

The Office of Human Resources Services disposes of the records as scheduled in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2A).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor Relations Division (CPL), Office of Human Resources Services, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Current employees may obtain information about whether they are a part of the system by contacting the designated office where the action was processed.

RECORD ACCESS PROCEDURES:

Requests from current employees to review information about themselves should be directed to the designated office where the action was processed. For the identification required, see 41 CFR part 105-64.

PROCEDURE TO CONTEST A RECORD:

GSA rules for reviewing a record, contesting the content, and appealing an initial decision are 41 CFR part 105-64.

RECORD SOURCES:

Officials who manage records pertaining to employees who are union officials or in an exclusively recognized union and employees who have filed a grievance under the negotiated grievance procedure.

[FR Doc. E8-8889 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: Telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/ADM-25

SYSTEM NAME:

Internal Evaluation Case Files.

SYSTEM LOCATION:

This system is located in the GSA Office of Inspector General, 1800 F Street, NW., Washington, DC 20405. The database for this system is on a local area network in the GS Building and is operated by the System Development and Support Division of the Office of Inspector General.

SYSTEM LOCATION:

Individuals covered by the system are employees and former employees of the GSA Office of Inspector General. The system also includes any person who was the source of a complaint or allegation; a witness who has information or evidence on any aspect of an investigation; and any possible or actual suspect in a civil, criminal, or administrative action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files containing information such as name, date and place of birth, experience, and investigative material that is used as a basis for taking civil, criminal, and administrative actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3., Section 2 *et seq.*

PURPOSE:

The system serves as a basis for issuing subpoenas and taking civil, criminal, and administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used by GSA officials and representatives of other Government agencies on a need-to-know basis in the performance of their official duties under the authorities set forth above and for the following routine uses.

a. A record of any case in which there is an indication of a violation of law, whether civil, criminal, or regulatory in nature, may be disseminated to the appropriate Federal, State, local, or foreign agency charged with the responsibility for investigating or prosecuting such a violation or charged with enforcing or implementing the law.

b. A record may be disclosed to a Federal, State, local, or foreign agency or to an individual organization in the course of investigating a potential or actual violation of any law, whether civil, criminal, or regulatory in nature,

or during the course of a trial or hearing or the preparing for a trial or hearing for such a violation, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, and disclosing the information is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

c. A record relating to a case or matter may be disclosed in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice, even when the agency is not a party to the litigation.

d. A record relating to a case or matter may be disclosed to an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on matters such as settlement of the case or matter, plea-bargaining, or informal discovery proceedings.

e. A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement or that involves a case or matter within the jurisdiction of any agency may be disclosed to the agency to notify it of the status of the case or matter or of any decision or determination that has been made or to make such other inquiries and reports as are necessary during the processing of the case or matter.

f. A record relating to a case or matter may be disclosed to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States, or to an Executive agreement.

g. A record may be disclosed to a Federal, State, local, foreign, or international law enforcement agency to assist in crime prevention and detection or to provide leads for investigation.

h. A record may be disclosed to a Federal, State, local, foreign, tribal or other public authority in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuing of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

i. A record may be disclosed to the public, news media, trade associations, or organized groups when the purpose is educational or informational, such as describing crime trends or distinctive or unique modus operandi, provided that the record does not identify a specific individual.

j. A record may be disclosed to an appeal or grievance examiner, formal complaints examiner, equal opportunity investigator, arbitrator, or other authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. This includes matters and investigations involving the Merit Systems Protection Board or the Office of Special Counsel. A record also may be disclosed to the United States Office of Personnel Management (OPM) in accordance with the agency's responsibility for evaluating Federal personnel management.

k. A record may be disclosed as a routine use to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the person who is the subject of the record.

l. Information may be disclosed at any stage of the legislative coordination and clearance process to the Office of Management and Budget (OMB) for reviewing private relief legislation as set forth in OMB Circular No. A-19. A record may be disclosed:

(a) To an expert, a consultant, or contractor of GSA engaged in a duty related to an agency function to the extent necessary to perform the function; and

(b) To a physician to conduct a fitness-for-duty examination of a GSA officer or employee.

m. A record may be disclosed to any official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation.

n. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and

persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

o. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, REVIEWING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in files and file folders. Electronic records are stored on hard drive or CD-ROM.

RETRIEVABILITY:

Both paper records and electronic records are retrievable by name or assignment number.

SAFEGUARDS:

Paper records are stored in locked rooms with access limited to authorized personnel. Computer based records are available only to authorized users with a need to know and are protected by a network logon password, user password, and restricted right of access to the software, system, file, data element, and report.

RETENTION AND DISPOSAL:

Records are disposed of by shredding or burning, as scheduled in GSA Handbook, GSA Maintenance and Disposition System (OAD P 1820.2A).

SYSTEM MANAGER(S) AND ADDRESS:

Internal Evaluation Staff (JE) of the Office of Inspector General, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURES:

An individual who wishes to be notified whether the system contains a record concerning him or her should address a request to the Office of Counsel to Inspector General (JC), General Services Administration, Room 5324, 1800 F Street, NW., Washington, DC 20405.

RECORDS ACCESS PROCEDURES:

An individual seeking access to a record should put his or her request in writing and address it to the Office of Counsel to the Inspector General (JC), including full name (maiden name if appropriate), address, and date and place of birth. General inquiries may be made by telephone: (202) 501-1932.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the content of a record or appealing a denial of a request to amend a record are in 41 CFR Part 105-64.

RECORD SOURCE CATEGORIES:

The sources are individuals themselves, employees, informants, law enforcement agencies, other Government agencies, employers, references, co-workers, neighbors, educational institutions, and intelligence sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

In accordance with 5 U.S.C. 552a(j), this system of records is exempt from all provisions of the Privacy Act of 1974 with the exception of subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i) of the Act, to the extent that information in the system pertains to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals; to the activities of prosecutors, courts, and correctional, probation, pardon, or parole authorities; and to (1) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (2) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or (3) reports of enforcement of the criminal laws, from arrest or indictment through release from supervision. This system is exempted to maintain the efficacy and integrity of the Office of Inspector General's law enforcement function.

In accordance with 5 U.S.C. 552a(k), this system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974. The system is exempt:

a. To the extent that the system consists of investigatory material compiled for law enforcement purposes. However, if any individual is denied any right, privilege, or benefit for which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the source would be held in confidence; and

b. To the extent the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the source would be held in confidence.

This system has been exempted to maintain the efficacy and integrity of lawful investigations conducted pursuant to the Office of Inspector General's law enforcement responsibilities and responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

[FR Doc. E8-8891 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and

maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/FSS-13

SYSTEM NAME:

Personal Property Sales Program.

SYSTEM LOCATION:

System records are maintained by the General Services Administration (GSA) at several locations. A complete list of the locations is available from the System Manager.

INDIVIDUALS COVERED BY THE SYSTEM:

The system will include those individuals who request to be added to GSA bidders' mailing lists, register to bid on GSA sales, and enter into contracts to buy Federal personal property at sales conducted by GSA.

RECORDS IN THE SYSTEM:

The system contains information needed to identify potential and actual bidders and awardees, and transaction information involving personal property sales. System records include:

a. Personal information provided by bidders and buyers, including names, phone numbers, addresses, Social Security Numbers, and credit card numbers or other banking information; and

b. Contract information on Federal personal property sales, including whether payment was received, the form of the payment, notices of default, and contract claim information.

AUTHORITY FOR MAINTAINING THE SYSTEM:

40 U.S.C. 121(c) and 40 U.S.C. 541, et seq.

PURPOSE:

To establish and maintain a system of records for conducting public sales of Federal personal property by GSA.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to prepare for and conduct personal property sales, administer sales contracts, perform

oversight or maintenance of the GSA electronic systems and, when necessary, for sales contract litigation or non-procurement suspension or debarment purposes.

INFORMATION FROM THIS SYSTEM ALSO MAY BE DISCLOSED AS A ROUTINE USE:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the GSA Office of Finance for debt collection purposes (see GSA/PPFM-7).

h. To the National Archives and Records Administration (NARA) for records management purposes.

i. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate.

RETRIEVABILITY:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A-130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2), and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Property Management Division (FBP), Federal Supply Service, General Services Administration, 2200 Crystal Drive, Crystal Plaza 4, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register**, 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

Information is provided by individuals who wish to participate in the GSA personal property sales program, and system transactions designed to gather and maintain data

and to manage and evaluate the Federal personal property disposal program.

[FR Doc. E8-8894 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,
Director, Office of Information Management.

GSA/OAP-4

SYSTEM NAME:

FedBizOpps (FBO).

SYSTEM LOCATION:

Records are maintained in electronic form in the GSA Federal Supply Service

(FSS) FedBizOpps production facilities, hosted by a contractor in Sterling, VA and Chicago, IL. Contact the system manager for additional information.

SYSTEM LOCATION:

a. Interested individuals. Individuals who request information from the FedBizOpps system. The contact is voluntary. The individual's e-mail address is used to respond to requests and inquiries.

b. Interested vendors. Contact information provided by vendors and/or individuals who are sole proprietors. Vendors may voluntarily establish a Vendor Notification Profile in FedBizOpps, within the secure production portion of the system. The vendor is notified by the system when selected FedBizOpps postings occur that are of interest to that vendor based on the profile.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains an inventory of Federal solicitations and related documents, and vendor contact information. System information includes:

a. Organizational, contact, and access control information on Federal contracting officials authorized to access and use the FedBizOpps system services for the management, administration, and posting of Federal solicitation information and related documents.

b. Contact information in the form of an e-mail address, provided voluntarily by vendors and other individuals who wish to use FedBizOpps to be kept informed of Federal procurements and/or specific solicitations of interest. Vendors also may choose to be included on the Interested Vendors Listing (IVL) to further eCommerce opportunities. A vendor may provide any or all of the data in the Interested Vendor Listing, which consists of Company Name, Address, Phone Number(s), E-mail address(es), Name of Point of Contact, and Business Type.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 637 and 41 U.S.C. 416.

PURPOSE:

To establish and maintain a system for posting, finding, and retrieving Federal solicitation information for procurements valued over \$25,000; and to disseminate Federal solicitations to interested public individuals and businesses.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by authorized Federal

contracting officials to post Federal solicitation information and related documents in the conduct of official Federal business or by Federal contractors, vendors, and/or interested individuals to search, monitor, find, and/or respond to Federal solicitations of interest. Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM) and the Government Accountability Office (GAO) when the information is required for evaluation of the program.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Information is collected electronically and is stored on readily accessible hard drives, backed up to tape media.

RETRIEVABILITY:

Federal government electronic solicitation records and related documents are readily retrievable by the general public using the search and retrieval capabilities of FedBizOpps. The Federal buyer and interested individual (vendor) contact information described in the Categories of Records in the System paragraph is accessible only to authorized Federal officials and to the FedBizOpps system services that use the information for its intended purposes.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and the FedBizOpps System Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data that is stored, processed, and transmitted, including password protection and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the GSA Records Maintenance and Disposition System handbooks OAD P 1820.2A and CIO P 1820.1, and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

FBO Program Manager, FedBizOpps Program Office, General Services Administration, Federal Supply Service (GSA/FIB), Crystal Mall Four, Room 804 (CM4-804), 1901 South Bell Street, Arlington, VA 22202-4502.

NOTIFICATION PROCEDURES:

An individual may obtain information on whether the system contains his or her record by addressing a request to the FedBizOpps (FBO) Program Manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the FedBizOpps (FBO) Program Manager at the above address.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, for contesting the contents of

systems of records, and for appealing initial determinations are published in the **Federal Register**, 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who are Federal contracting officials authorized to use the FedBizOpps system for official Federal business or who are individuals voluntarily providing contact information using FedBizOpps vendor services in order to be notified of solicitations of interest.

[FR Doc. E8–8899 Filed 4–24–08; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M–07–16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M–07–16 regarding a new routine use that allows agencies to disclose information in connection with a

response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/OAP–3

SYSTEM NAME:

Federal Procurement Data System—Next Generation (FPDS–NG).

SYSTEM LOCATION:

Electronic records are maintained by the FPDS–NG contractor in a secure computer facility. Contact the system manager for additional information.

SYSTEM LOCATION:

FPDS–NG includes information on individuals who are sole proprietors who have or had contracts with the Federal Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system collects, processes, and maintains official statistical data on Federal contracting, including:

- a. Information on individual federal contractors that may include name, DUNS (Data Universal Numbering System) number, and Social Security Number as the Taxpayer Identification Number (TIN).
- b. Contracts that are unclassified but may be considered sensitive due to insight they may provide into federal government activities in conjunction with data from other federal contracts.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Public Law 93–400 Office of Federal Procurement Policy Act, as amended; 41 U.S.C. 405, 417.

PURPOSE:

To establish and maintain a system for assembling, organizing, and presenting contract procurement data for the federal government and the public sector.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

Information in this system may be disclosed as a routine use:

- a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.
- c. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment

opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an individual to whom the information pertains.

d. To the Office of Management and Budget (OMB) and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To authorized officials of the agency that provided the information for inclusion in the system.

g. To an expert, consultant, or contractor in the performance of a Federal duty to which the information is relevant.

h. To provide recurring or special reports to the President, Congress, the Government Accountability Office, Federal Executive agencies, and the general public.

i. As a means of measuring and assessing the impact of Federal contracting on the nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged and woman-owned small business concerns are sharing in Federal contracts.

j. To provide information for policy and management control purposes.

k. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Information may be collected electronically and may be stored on electronic media, as appropriate. Electronic records are kept on server

hard drives and electronic backup devices.

RETRIEVABILITY:

Records are retrievable by a variety of fields, the key for individual records being the unique Procurement Instrument Identifier (PIID).

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and the FPDS-NG System Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data that is stored, processed, and transmitted. Electronic records are protected by passwords and other appropriate security measures.

Data entry is limited to authorized users whose names and levels of access are maintained by federal agencies and the information is securely stored online. Unclassified but sensitive contract data in the system is restricted to those who have access within the federal agency. Agencies determine when their contract information may be made available for viewing by other agencies and the public.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the GSA Records Maintenance and Disposition System handbooks OAD P 1820.2A and CIO P 1820.1, and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Federal Procurement Data Center Program Manager, Integrated Acquisition Environment (GSA/IAE/VSI), Office of The Chief Acquisition Officer, Suite 911, Crystal Park I, 2011 Crystal Drive, Arlington, VA 22202.

NOTIFICATION PROCEDURES:

An individual may obtain information on whether the system contains his or her record by registering with FPDS-NG as a public user and using one or more of the various search capabilities to search for the record, or by addressing the inquiry to the system manager. Requests for system information that is releasable under the Freedom of Information Act (FOIA) may be directed to the Federal Procurement Data Center Program Manager through the FOIA Requestor Service Center, 1800 F St., NW., Room 7126, Washington, DC 20405.

RECORD ACCESS PROCEDURES:

Any individual may register with FPDS-NG as a public user and use one or more of the various search capabilities to search for federal contracts after they have been awarded and entered into FPDS-NG. Individuals also may request access to their information from the system manager. The public may obtain releasable information by submitting a FOIA request to the Federal Procurement Data Center Program Manager through the FOIA Requestor Service Center.

CONTESTING RECORD PROCEDURES:

GSA establishes the rules for access to federal contracts. Individuals may contest the contents of a contract by contacting the contracting office in the department or agency that awarded the contract.

RECORD SOURCE CATEGORIES:

Information is obtained from federal agencies who report federal contracts after award according to the reporting requirements included in the Federal Acquisition Regulation Subpart 4.6—Contract Reporting. These records may contain the names of individuals, their DUNS number, and Taxpayer Identification Number (TIN).

[FR Doc. E8-8900 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA

is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PBS-6

SYSTEM NAME:

Electronic Acquisition System (EAS).

SYSTEM LOCATION:

The system records and documents are maintained at the Enterprise Service Center of the GSA Public Buildings Service (PBS). Contact the EAS System Manager for additional information.

SYSTEM LOCATION:

The system maintains information on individuals, as well as businesses, who have made an offer or provided a quote in response to a PBS solicitation or who have entered into a contract with PBS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains information required throughout the lifecycle of a PBS contract action including information about contracts, proposals and bids, and vendors. The Central Contractor Registry, a federal government computer system maintained by the Department of Defense, is the sole source for vendor information in EAS. All information received from CCR is originally submitted by the vendor to CCR. In addition to business contact and identification information (address, telephone number, and Taxpayer Identification Number (TIN)), the system includes personal information on individuals who use personal contact and identification information (home address, telephone, e-mail, and fax numbers, and Social Security Number) for business purposes as sole proprietors.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400), as

amended by Public Law 96–83, Federal Acquisition Regulation (FAR), General Services Administration Acquisition Manual (GSAM), GSA Order PBS 2120.1

PURPOSE:

To provide and maintain a system supporting PBS acquisition contract preparation, workflow activities, tracking, and reporting. The system ensures that the PBS staff prepares, assembles, and maintains information necessary for compliance with FAR and GSAM contracting requirements.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees and contractors to conduct official duties associated with federal acquisition. Information from this system may be disclosed as a routine use:

- a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.
- c. To duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.
- d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO) or other Federal agency when the information is required for program evaluation purposes.
- e. To another Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; clarifying a job; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.
- f. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.
- g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.
- h. To the National Archives and Records Administration (NARA) for records management purposes.
- i. To appropriate agencies, entities, and persons when (1) the Agency

suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

System records and documents are electronically stored on servers, tape backups, and/or compact discs.

RETRIEVABILITY:

Records may be retrieved by name and/or other personal identifier or appropriate type of designation.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and the EAS System Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the data. Security measures include password protections, assigned roles, and transaction tracking.

RETENTION AND DISPOSAL:

Disposition of records will be according to the National Archives and Records Administration (NARA) guidelines, set forth in the GSA Records Maintenance and Disposition System (OAD P 1820.2A) handbook.

SYSTEM MANAGER AND ADDRESS:

EAS Program Manager, Systems Development and Maintenance Division (PGAB), Office of the PBS Chief Information Officer, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURES:

Individuals may obtain information about their records from the EAS Program Manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to

the EAS Program Manager. GSA rules for individuals requesting access to their records are published in 41 CFR part 105–64.

CONTESTING RECORD PROCEDURES:

Individuals must contest their record's source data and appeal determinations for correction at the Central Contractor Registry according to CCR rules. Individuals may contest their GSA records' contents and appeal determinations according to GSA rules published in 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is obtained from the Central Contractor Registry for registered and matched vendors who are offerors or winners of GSA PBS contract actions.

[FR Doc. E8–8903 Filed 4–24–08; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M–07–16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: Telephone 202–208–1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system

notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/OEA-1

SYSTEM NAME:

Records of Defunct Agencies.

LOCATION:

The system of records is located in the GSA regional office building, 7th & D Streets, SW., Washington, DC 20407, and at the GSA National Payroll Center, 6BCY, 1500 E. Bannister Road, Kansas City, MO 64131-3088.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of defunct agencies, including but not limited to, presidential commissions, committees, small agencies, and boards, whose records the GSA services under a reimbursable agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and financial records, including but not limited to, time and attendance cards, payment vouchers, employee health benefit records, requests for deductions, tax forms, including W-2 forms, overtime requests, leave data, retirement records, and vendor register and payment tapes.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. Part III, Subparts D and E, 26 U.S.C. Chapter 24 and 3501, E.O. 9397, and 31 U.S.C. 1531.

PURPOSE:

To notify the public of the routine use and storage of payroll, personnel and financial records stored by GSA for defunct agencies that are sensitive in nature.

ROUTINE USES OF THE RECORDS IN THE SYSTEM, INCLUDING TYPES OF USERS AND THE PURPOSES OF THE USES:

The GSA uses the records for concluding the administrative operations of the defunct agency. Routine uses include providing a copy of an employee's Department of the Treasury Form W-2, and Wage and Tax Statement, to the State, city, or other local jurisdiction that has authority to tax the employee's pay. The agency also provides a record under a withholding agreement between a State, city, or other jurisdiction and the Department of the

Treasury under 5 U.S.C. 5516, 5517, and 5520, or in response to the written request of an authorized official of the taxing jurisdiction to the Director, GSA National Payroll Center (6BCY), 1500 East Bannister Road, Kansas City, MO 64131-3088. The request must include a copy of the statute or ordinance showing the authority of the jurisdiction to tax the employee based on place of residence, place of employment, or both.

Under a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), the GSA furnishes copies of executed city tax withholding certificates to the city in response to a written request from the proper city official to the GSA official named in the paragraph above. Records are also released to the Government Accountability Office for audits and to the Internal Revenue Service for use in investigations. Additional routine uses are:

a. To disclose a record to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, or regulation, or order, where the GSA becomes aware of an indication of a violation, or potential violation of a civil or criminal law or regulation.

b. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

c. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant and a physician to conduct a fitness-for-duty examination of a GSA officer or employee.

g. To disclose a record to the OPM concerning pay, benefits, retirement deductions, and other information needed under that agency's responsibility to evaluate Federal personnel management.

h. To the National Archives and Records Administration (NARA) for records management purposes.

i. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

To the extent that official personnel records in the GSA's custody are covered within systems of records published by the OPM as Government-wide records, the records are considered part of the Government-wide system. Other personnel records covered by notices published by the GSA and considered to be separate systems of records may be transferred to the OPM under personnel programs as a routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are in file folders and card files. Microfiche records on microfiche sheets are stored in cabinets. CD-ROMs and floppy disks are stored in file cabinets.

RETRIEVABILITY:

Payroll records are retrievable by Social Security Number and other records by name.

SAFEGUARDS:

When not in use by an authorized person, the records are stored in locked metal containers or in secured rooms.

RETENTION AND DISPOSAL:

The Division Director of the Agency Liaison Division and the National Payroll Center disposes of the records as scheduled in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

The system managers are the Director, Agency Liaison Division (WB-E),

General Services Administration, 7th & D Streets, SW., Washington, DC 20407 and the Director, GSA National Payroll Center, 6BCY, 1500 E. Bannister Road, Kansas City, MO 64131-3088.

NOTIFICATION PROCEDURE:

Requests to review or receive a copy of a record should be sent to the system manager named above.

RECORD ACCESS PROCEDURE:

See 41 CFR part 105-64, published in the **Federal Register**, for the procedures. Address your written request to review or copy records to the system manager, with the words "Privacy Act Request" written on the letter and on the envelope.

CONTESTING RECORD PROCEDURE:

See 41 CFR part 105-64.

RECORD SOURCES:

When it shuts down, the agency that the GSA services publishes a notice in the **Federal Register** transferring administrative responsibility for the records to the GSA.

[FR Doc. E8-8904 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

**GENERAL SERVICES
ADMINISTRATION****Privacy Act of 1974; Notice of Updated
Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for

one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/TRANSIT-1**SYSTEM NAME:**

Transportation Benefits Records.

SYSTEM LOCATION:

System records are maintained by the Office of the Chief Human Capital Officer (C), 1800 F Street, NW., Washington, DC 20405; and by each of GSA's regional offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE
SYSTEM:**

Employees applying for transit subsidies for use of public transportation and vanpools to and from the workplace.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record categories may include name, home address, Social Security Number, work organization and location, mode of transportation, and commuting costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 13150; 26 U.S.C. 132(f); and Federal Employees Clean Air Incentives Act (section 2(a) of Public Law 103-172, found at 5 U.S.C. 7905), as amended.

PURPOSE:

To establish and maintain systems for providing transportation fringe benefits to employees who use mass transportation to commute to and from work.

**ROUTINE USES OF RECORDS MAINTAINED IN THE
SYSTEM, INCLUDING CATEGORIES OF USERS AND
THE PURPOSE OF SUCH USES:**

System information is used to determine the eligibility of applicants for transportation benefits and to disburse benefits to eligible employees through the Department of Transportation. Information also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING,
RETRIEVING, ACCESSING, RETAINING, AND
DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

System records are stored electronically and on paper.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, or other identifier in the system.

SAFEGUARDS:

Records are safeguarded in accordance with the Privacy Act and the Computer Security Act. Technical,

administrative, and personnel security measures ensure confidentiality and integrity of system data. Access is limited to authorized individuals.

RETENTION AND DISPOSAL:

Applications will be maintained for as long as the applicant is an eligible participant in the subsidy program. System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Office of the Chief Human Capital Officer (C), Office of Human Capital Management (CH), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURES:

Inquiries should be directed to the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests for access to records should be directed to the system manager. GSA rules for accessing records under the Privacy Act are provided in 41 CFR part 105-64.

RECORD CONTESTING PROCEDURES:

Requests to correct records should be directed to the system manager. GSA rules for contesting record contents and for appealing determinations are provided in 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

Sources for information in the system are: Employees submitting applications for transit subsidies.

[FR Doc. E8-8906 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-14-M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer:

telephone 202-208-1317; e-mail sa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/HRO-10

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

The records are located in the Office of Human Resources Services at GSA or office in GSA in which grievances were filed. The offices are as follows:

Central Office, Central Office Human Resources Division (CHP), General Services Administration, 1800 F Street NW., Washington, DC 20405, (202) 501-0040.

National Capital Region, Human Resources Office (WCP), General Services Administration, 7th and D Streets SW., Washington, DC 20407, (202) 708-5335.

New England Region, Human Resources Office (1CP), General Services Administration, 10 Causeway Street, Boston, MA 02222, (617) 565-6634.

Northeast and Caribbean Region, Human Resources Office (2AR), General Services Administration, 26 Federal Plaza, New York, NY 10278, (212) 264-8138.

Mid-Atlantic Region, Human Resources Office (3CP), General Services Administration, The Strawbridge Building, 20 North Eighth Street, Philadelphia, PA 19107-3191, (215) 446-4951.

Southeast Sunbelt Region, Office of Human Resources (4AH), General Services Administration, 77 Forsyth Street, Suite 650, Atlanta, GA 30303, (404) 331-3186.

Great Lakes Region, Human Resources Office (5CP), General Services Administration, 230 South Dearborn Street, Chicago, IL 60604, (312) 353-5550.

The Heartland Region, Human Resources Office (6CP), General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131, (816) 926-7206.

Greater Southwest Region, Human Resources Office (7CP), General Services Administration, 819 Taylor Street, Room 9A00, Fort Worth, TX 76102, (817) 978-3190.

Pacific Rim Region, Human Resources Office (9CP), General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94100, (415) 744-5185.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees who have filed grievances with GSA under part 771 of the Office of Personnel Management (OPM) Regulations (5 CFR part 771) or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains grievances filed by agency employees under part 771 of OPM regulations. It also includes files of internal grievance and arbitration systems that are established through negotiations with recognized labor unions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 75; E.O. 10577, as amended; E.O. 11491, as amended.

PURPOSE:

To maintain an information system documenting employee grievances, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System information may be accessed and used by authorized Federal agency employees or contractors to conduct official duties. Information from this system also may be disclosed as a routine use:

- In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- To disclose information to any source from which additional

information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

c. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

e. By GSA or the Office of Personnel Management in the production of summary description statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To officials of the Merit Systems Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel, or Equal Employment Opportunity Commission when requested in performance of their authorized duties.

g. In response to a request for a discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

i. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

j. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

k. To the National Archives and Records Administration (NARA) for records management purposes.

l. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has

determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders.

RETRIEVABILITY:

Records reside where the grievance action is processed. The records are filed numerically and/or alphabetically by name.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Director of Human Capital Policy and Program Management Division (CHP), Office of Human Capital Management (CH), 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Current employees may obtain information about whether they are a part of the system by contacting the designated office where the action was processed.

RECORD ACCESS PROCEDURE:

Requests from current employees to review information about themselves should be directed to the designated office where the action was processed. For the identification required, see 41 CFR part 105-64.

CONTESTING RECORD PROCEDURES:

Review of a request from an individual seeking to amend a grievance record that has been the subject of a judicial or quasi-judicial process is limited in scope. Review of this type of request is restricted to determining if the record accurately documents GSA's

ruling on the case and does not include a review of the merits of an action, determination, or finding. An individual who wishes to amend his or her record to correct factual errors should contact the GSA Office of Human Resources Services (CHP) or the office where the grievance was processed. The individual must also follow the GSA Privacy Act procedures on amending records (CPO 1878.1).

RECORD SOURCE CATEGORIES:

Officials who manage records pertaining to employees who have filed grievances with GSA under part 771 of the Office of Personnel Management (OPM) Regulations (5 CFR part 771) or a negotiated procedure.

FILES EXEMPTED FROM PARTS OF THE ACT:

Under 5 U.S.C. 552a(k)(2), this system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) of the Act when the records are compiled for a law enforcement purpose and the record will not be used to deny a right, benefit, or privilege from the subject of the record.

[FR Doc. E8-8907 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions,

GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also includes the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/HRO-3

SYSTEM NAME:

Occupational Health and Injury Files.

SYSTEM LOCATION:

The system of records is used in the General Services Administration's Office of Human Resources Services; the Safety and Environmental Management Division, Office of Real Property Management and Safety, Public Building Service; and in the offices of supervisors of any employee who has had an occupational health problem or who was injured on the job. The data base is in computers at the Heartland Regional Office, Kansas City MO.

The Human Resources Services Offices are as follows:

Central Office, Central Office Human Resources Division (CPS), General Services Administration, 1800 F Street NW., Washington, DC 20405, (202) 501-0040.

National Capital Region, Human Resources Office (WCP), General Services Administration, 7th and D Streets SW., Washington, DC 20407, (202) 708-5335.

New England Region, Human Resources Office (1CP), General Services Administration, 10 Causeway Street, Boston, MA 02222, (617) 565-6634.

Northeast and Caribbean Region, Human Resources Office (2AR), General Services Administration, 26 Federal Plaza, New York, NY 10278, (212) 264-8138.

Mid-Atlantic Region, Human Resources Office (3CP), General Services Administration, The Strawbridge Building, 20 North Eighth Street, Philadelphia, PA 19107-3191, (215) 446-4951.

Southeast Sunbelt Region, Office of Human Resources (4AH), General Services Administration, 77 Forsyth

Street, Suite 650, Atlanta, GA 30303, (404) 331-3186.

Great Lakes Region, Human Resources Office (5CP), General Services Administration, 230 South Dearborn Street, Chicago, IL 60604, (312) 353-5550.

The Heartland Region, Human Resources Office (6CP), General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131, (816) 926-7206.

Greater Southwest Region, Human Resources Office (7CP), General Services Administration, 819 Taylor Street, Room 9A00, Fort Worth, TX 76102, (817) 978-3190.

Pacific Rim Region, Human Resources Office (9CP), General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94100, (415) 744-5185.

PERSONS COVERED BY THE SYSTEM:

GSA employees who were injured or who have an occupational health problem.

TYPES OF RECORDS IN THE SYSTEM:

The system includes:

- Accident reports (including CA 1 and 2: Federal Employee's Notice of Injury or Occupational Disease);
 - Claims for Compensation for Injury or Occupational Disease (CA 4 replaced with CA-2);
 - Claims for Continuance of Compensation on Account of Disability (CA 8 replaced with CA-7); and
 - Lists of employees receiving medical services, and health records.
- The automated information system contains statistics such as occupation and sex of employees, age group, cost per injury, days lost, cause and severity of injuries, and part(s) injured.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. ch. 81 and 5 U.S.C. 7203 and 7901.

PURPOSE:

To maintain information for accident and occupational health reports, gather data for statistical reports, and record any employee who is injured or has an occupational health problem.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE TYPE OF USER AND THEIR PURPOSE IN USING THE RECORDS:

System information may be accessed and used by authorized Federal agency employees or contractors to conduct official duties. Information from this system also may be disclosed as a routine use:

- a. To a Federal, State, or local public health agency on any employee who has a specific communicable disease or

condition. The purpose is to prevent the spread of the disease or condition.

- b. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

- c. To the Office of Worker's Compensation Programs on a claim for benefits filed by an employee.

- d. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

- e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

- f. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

- g. To the Occupational Safety and Health Administration, as required by section 19 of the Occupational Safety and Health Act.

- h. To Central Office and regional office managers and supervisors to identify trends in injuries and better manage the program.

- i. To the Department of Labor to verify payments to an injured employee.

- j. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

- k. To the National Archives and Records Administration (NARA) for records management purposes.

- l. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records are kept in file folders. Magnetic tapes and disks are stored in libraries. Electronic records are stored in computers and attached equipment.

RETRIEVABILITY:

Records are filed and retrieved by Social Security Number or claim number.

SAFEGUARDS:

Records are stored in locked file cabinets or in secured rooms. Computer records are protected by a password system.

RETENTION AND DISPOSAL:

The Office of Human Resources Services disposes of the records as scheduled in the handbook, GSA Records Maintenance and Disposition system (OAD P 1820.2A).

SYSTEM MANAGER AND ADDRESS:

Chief, Employee Relations Branch, (CPSE), Office of Human Resources Services (CP), General Services Administration (CP), 18th and F Streets, NW., Washington, DC 20405.

NOTIFICATION PROCEDURES:

Current employees should address requests to their supervisor or to the Human Resources Services officer. Former employees should address requests to the Human Resources Services officer.

RECORD ACCESS PROCEDURES:

Current employees should address requests to their supervisor or to the Human Resources Services officer. Former employees should address requests to the Human Resources Services officer. For the identification required, see 41 CFR part 105-64.

PROCEDURE FOR CONTESTING THE CONTENT OF A RECORD:

GSA rules for contesting the content and appealing an initial decision are in 41 CFR part 105-64.

RECORD SOURCES:

The employee and the personnel specialist who prepared a claim.

[FR Doc. E8-8909 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION**Privacy Act of 1974; Notice of Updated Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PPFM-10**SYSTEM NAME:**

Purchase Card Program.

SYSTEM LOCATION:

System records are maintained by the Office of Finance, General Services Administration (GSA), at 1800 F Street, NW., Washington, DC 20405, and by designated purchase card coordinators' offices in GSA regions. Contact the System Manager for additional information.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

The system includes employees of GSA, and of independent offices and commissions serviced by GSA, who qualify to use Federal Government charge cards for making authorized purchases for official business.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides control over expenditure of funds through the use of Federal Government purchase cards. System records include:

a. Personal information on charge card users, including names, home or business telephone numbers and addresses, Social Security Numbers, date of birth, employment information, or commercial and agency investigative reports showing debtors' asset, liabilities, income, expenses, bankruptcy petitions, history of wage garnishments, repossessed property, tax liens, legal judgments on debts owed, and financial delinquencies; and

b. Account processing and management information, including charge card transactions, contractor monthly reports showing charges to individual account numbers, account balances, and other data needed to authorize, account for, and pay authorized purchase card expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 U.S.C. 252a, 252b, 427, 428; E.O. 12931, and Section 639 of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447).

PURPOSE:

To establish and maintain a system for operating, controlling, and managing the purchase card program involving commercial purchases by authorized Government employees.

ROUTINE USE OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to conduct official duties associated with the management and operation of the purchase card program. Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or

the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To the GSA Office of Finance for debt collection purposes (see GSA/PPFM-7).

i. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate.

RETRIEVABILITY:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A-130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and

transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (CIO P 1820.1), and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Financial Initiative Division (BCD), Office of Financial Policy and Operations, Office of the Chief Financial Officer, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

A Privacy Act Statement on the purchase card data collection form notifies individuals of the purpose and uses of the information they provide. Employees may obtain information about whether they are a part of this system of records from the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published at 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals submitting charge card applications, monthly contractor reports, purchase records, managers, other agencies, non-Federal sources such as private firms, and other agency systems containing information pertaining to the purchase card program.

[FR Doc. E8-8910 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant,

necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PPFM-11

SYSTEM NAME:

Pegasys.

SYSTEM LOCATION:

Pegasys records and files are maintained in the Phoenix Data Center (PDC), with records also stored in the Washington, DC Central Office, Ft. Worth regional office, and Kansas City regional office.

INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by Pegasys include GSA vendors and Federal employees.

RECORDS IN THE SYSTEM:

Pegasys contains records and files pertaining to financial information; therefore, these files and records contain the following privacy data:

- Social Security Number (SSN);
- Employee address;
- Banking information;

- Credit Card number.

AUTHORITY FOR MAINTAINING THE SYSTEM:

The Chief Financial Officers (CFO) Act of 1990 (Public Law 101-576) as amended.

PURPOSE:

Pegasys is the GSA core financial management system of records to make payments and record accounting transactions. This includes funds management (budget execution and purchasing), credit cards, accounts payable, disbursements, standard general ledger, and reporting. It is part of a shared-services financial operation providing a commercial-off-the-shelf (COTS) financial system (in a private-vendor hosted environment), financial transaction processing, and financial analysis for its main business lines of Federal supplies and technology, public buildings, and general management and administration offices. GSA also utilizes this shared-service operation to cross service multiple external client agencies.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information accessed by Pegasys may be used by designated finance center employees and their supervisors, along with designated analysts and managers. System information also may be used:

- a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To conduct investigations, by authorized officials, that are investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.
- c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.
- d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.
- e. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.
- f. To the National Archives and Records Administration (NARA) for records management purposes.
- g. To appropriate agencies, entities, and persons when (1) the Agency

suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:**STORAGE:**

All records and files in Pegasys are stored electronically in a password-protected database format.

RETRIEVAL:

Information on individuals contained in Pegasys records and files are retrievable by name or vendor number.

SAFEGUARDS:

Pegasys records and files are safeguarded in accordance with the requirements of the Privacy Act. Access is limited to authorized individuals with passwords, and the database is maintained behind a certified firewall. Information on individuals is released only to authorized persons on a need-to-know basis and in accordance with the provisions of routine use. This system undergoes frequent testing and is certified and accredited for operation. Periodic Privacy Act Impact Assessments are performed as well to ensure the adequacy of security controls to protect personally identifiable information.

RETENTION AND DISPOSAL:

Pegasys records and files are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Director, Financial Systems Development Division (BDD), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if the system contains information about them

should contact the Pegasys system manager.

RECORD ACCESS PROCEDURE:

Requests for access may be directed to the Pegasys system manager.

RECORD CONTESTING PROCEDURE:

GSA rules for accessing records, for contesting the contents, and appealing initial decisions are in 41 CFR part 105-64, published in the **Federal Register**.

RECORD SOURCES:

The sources for information in Pegasys are the individuals for whom the records are maintained, the supervisors of those individuals, and existing agency systems.

[FR Doc. E8-8919 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION**Privacy Act of 1974; Notice of Updated Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: Telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new

requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PPFM-9

SYSTEM NAME:

Payroll Accounting and Reporting (PAR) System.

SYSTEM LOCATION:

The system is located in the Office of the Chief Financial Officer, General Services Administration (GSA) in Kansas City, Missouri; in commissions, committees and small agencies serviced by GSA; and in administrative offices throughout GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those covered are present and former employees of GSA and of commissions, committees, and small agencies serviced by GSA; and persons in intern, youth employment, and work/study programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

PAR provides complete functionality for an employee's entire service life from initial hire through final payment and submission of retirement records to the Office of Personnel Management (OPM). The system holds payroll records, and includes information received by operating officials as well as personnel and finance officials administering their program areas, including information regarding nonsupport of dependent children. The system also contains data needed to perform detailed accounting distributions, provide for tasks such as mailing checks and bonds, and preparing and mailing tax returns and reports. The record system may contain:

- a. Employee's name, Social Security Number, date of birth, sex, work schedule, and type of appointment.
- b. Service computation date for assigning leave, occupational series, position, grade, step, salary, award amounts, and accounting distribution.
- c. Time, attendance, and leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.
- d. Tables of data for editing, reporting, and processing personnel and pay actions, which include nature-of-action code, organization table, and salary table.

e. Information regarding court-ordered payments to support dependent children, including amounts in arrears.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Part III, Subparts D and E, 26 U.S.C. Chapter 24 and 2501, and E.O. 9397.

PURPOSE:

To maintain automated information system to support the day-to-day operating needs of the payroll program. The system can provide payroll statistics for all types of Government organizations, and allows many uses for each data element entered. The system has a number of outputs: For the payroll office, outputs include comprehensive payroll reports; accounting distribution of costs; leave data summary reports; each employee's statement of earnings, deductions, and leave every payday; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; Forms W-2, Wage and Tax Statement; and reports of withholding and contributions.

For the Office of Human Resources Services, outputs include data for reports of Federal civilian employment. The system also provides data to GSA staff and administrative offices to use for management purposes.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

- a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agency becomes aware of a violation or potential violation of civil or criminal law or regulation.
- b. To disclose requested information to a court or other authorized agency regarding payment or nonpayment of court-ordered support for a dependent child.
- c. To disclose information to Congressional staff in response to a request from the person who is the subject of the record.
- d. To disclose information to a manager, expert, consultant, or contractor of the agency for performing a Federal duty.
- e. To disclose information to a Federal, State, or local agency maintaining civil, criminal, enforcement, or other information to obtain information needed to make a decision on hiring or retaining an employee; issuing a security clearance; letting a contract; or issuing a license, grant, or other benefit.
- f. To disclose requested information to a Federal agency in connection with

hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; or clarifying a job.

g. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; union official or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.

h. To disclose information to the Office of Management and Budget for reviewing private relief legislation at any stage of the clearance process.

i. To provide a copy of the Department of the Treasury Form W-2, Wage and Tax Statement, to the State, city, or other local jurisdiction that is authorized to tax the employee's compensation. The record is provided by a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury under 5 U.S.C. 5516, 5517, and 5520.

j. To disclose information to the Office of Human Resources Services in reporting civilian employment.

k. To disclose information to agency administrative offices who may restructure the data for management purposes.

l. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file folders, within locked power files; microfiches in cabinets; and computer records within a computer and attached equipment. All paper records are secured with the National Payroll Center (NPC), which is a secured area at the GSA NPC in Kansas City, Missouri.

RETRIEVAL:

Records are filed by name or Social Security Number at each location.

SAFEGUARDS:

Records are stored in locked power files, within the NPC in Kansas City, when not in use by an authorized person. Electronic records are protected by a password system and other appropriate security measures. The NPC is a secured access facility.

RETENTION AND DISPOSAL:

The Heartland Finance Center disposes of the records by shredding or burning, as scheduled in the handbook GSA Records Maintenance and Disposition System (CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

Deputy Chief Financial Officer, Office of Financial Policy and Operations, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

An individual inquiry should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

An individual request should be addressed to the system manager. Furnish full name, Social Security Number, address, telephone number, approximate dates and places of employment, and nature of the request.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the content of a record and appealing an initial decision are in 41 CFR 105-64.

RECORD SOURCE CATEGORIES:

The sources are the individuals themselves, other employees, supervisors, officials of other agencies, State governments, record systems GSA/HRO-37, OPM/GOVT-1, EEOC/GOVT-1, and private firms.

[FR Doc. E8-8920 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

**GENERAL SERVICES
ADMINISTRATION****Privacy Act of 1974; Notice of Updated
Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of

updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PBS-4**SYSTEM NAME:**

System for Tracking and Administering Real-property (STAR).

SYSTEM LOCATION:

Electronic records are maintained at the GSA Public Buildings Service (PBS) Enterprise Service Center site. Paper records are located in PBS regional and field offices. Contact the system manager for additional information.

SYSTEM LOCATION:

STAR includes information on individuals who are sole proprietors who lease property to the Federal Government. In addition to sole proprietors, individuals who might be designated to receive lease payments are included. Information on these individuals includes their name, contact information, and their Taxpayer Identification Number (TIN).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains an inventory of government owned and leased property and includes:

a. Personal information of property owners, including sole proprietors who are designated as Lessors, or the sole proprietor's designee who is authorized to receive payments for the lease, designated as Lease Payee. b. Internal communications that reference the Lessors and Lease Payees.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. Chapters 5, 31, and 33.

PURPOSE:

To establish and maintain a system for tracking and administering leased property.

**ROUTINE USES OF THE SYSTEM RECORDS,
INCLUDING CATEGORIES OF USERS AND THEIR
PURPOSES FOR USING THE SYSTEM:**

System information may be accessed and used by authorized GSA employees or contractors in the conduct of official duties associated with the tracking and administration of leased property. The information may be shared with the GSA real property management systems Rent Estimate, Business Information Solution, Occupancy Agreement Tool, and Data Gateway. Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM) and the Government Accountability Office (GAO) when the information is required for evaluation of the program.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has

determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate. Electronic records are kept on server hard drives and/or CD-ROM.

RETRIEVABILITY:

Records are retrievable by a lessor's or designee's name and/or TIN.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and the STAR System Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data that is stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the GSA Records Maintenance and Disposition System handbooks OAD P 1820.2A and CIO P 1820.1, and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

STAR Program Manager, Systems Development Division (PGAB), Office of Technology Capital Asset Management, Room 5217, General Services Administration, 1800 F Street, NW., Washington, DC 20405-0001.

NOTIFICATION PROCEDURES:

An individual may obtain information on whether the system contains his or her record by addressing a request to the

STAR Program Manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the STAR Program Manager at the above address.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, for contesting the contents of systems of records, and for appealing initial determinations are published in the **Federal Register**, 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who are sole proprietor property owners or individuals who are designated to receive lease payments.

[FR Doc. E8-8921 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the

systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/GOVT-3

SYSTEM NAME:

Travel Charge Card Program.

SYSTEM LOCATION:

This system of records is located in the finance office of the local installation of the Federal agency for which an individual has traveled. Records necessary for a contractor to perform under a contract are located at the contractor's facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current Federal employees who have their own government assigned charge card and all other Federal employees and authorized individuals who use a Federal account number for travel purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, address, Social Security Number, date of birth, employment information, telephone numbers, information needed for identification verification, travel authorizations and vouchers, charge card applications, charge card receipts, terms and conditions for use of charge cards, and monthly reports from contractor(s) showing charges to individual account numbers, balances, and other types of account analyses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5707 and implementing Federal Travel Regulation, 41 CFR 300-304; 5 U.S.C. 5738; E.O. 11609; 36 CFR 13747 (1971); 31 U.S.C. 1348; Public Law 107-56 Sec. 326.

PURPOSE(S):

To assemble in one system information to provide government agencies with: (1) Necessary information on the commercial travel and transportation payment and expense control system, which provides travelers charge cards and the agency an account number for official travel and related travel expenses on a worldwide basis; (2) attendant operational and control support; and (3) management

information reports for expense control purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, implementing, or carrying out a statute, rule, regulation, or order, where an agency becomes aware of a violation or potential violation of civil or criminal law or regulation.
- b. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry made at the request of the individual who is the subject of the record.
- c. To disclose information to the contractor in providing necessary information for issuing credit cards.
- d. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.
- e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.
- f. To disclose information to officials of labor organizations recognized under Pub. L. 95-454, when necessary to their duties of exclusive representation on personnel policies, practices, and matters affecting working conditions.
- g. To disclose information to a Federal agency for accumulating reporting data and monitoring the system.
- h. To disclose information in the form of listings, reports, and records of all common carrier transactions including refunds and adjustments to an agency by the contractor to enable audits of carrier charges to the Federal government.
- i. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems

or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

j. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

k. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

l. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

m. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders. Electronic records are stored within a computer and associated equipment.

RETRIEVABILITY:

Records are filed by name, Social Security Number, and/or credit card number.

SAFEGUARDS:

Paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by passwords, access codes, and entry logs. There is restricted access to credit card account numbers, and information is released only to authorized users and officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are kept for 3 years and then destroyed, as required by the General Records Retention Schedules issued by the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Acquisition (FC), Federal Supply Service, General Services Administration, Crystal Mall Building 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Inquiries by individuals should be addressed to the Finance Officer of the agency for which they traveled.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Finance Officer of the agency for which they traveled. Individuals must furnish their full name and the authorizing agency and its component to facilitate the location and identification of their records.

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the Finance Officer of the agency for which they traveled. Individuals must furnish their full name and the authorizing agency and component for which they traveled.

RECORD SOURCE CATEGORIES:

Charge card applications, monthly reports from the contractor, travel authorizations and vouchers, credit card companies, and data interchanged between agencies.

[FR Doc. E8-8922 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for

one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/GOVT-4

SYSTEM NAME:

Contracted Travel Services Program.

SYSTEM LOCATION:

System records are located at the service providers under contract with a Federal agency and at the Federal agencies using the contracts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are Federal employees authorized to perform official travel, and individuals being provided travel by the Federal government.

CATEGORIES OF RECORDS IN THE SYSTEM:

System records include a traveler's profile containing: Name of individual; Social Security Number; employee identification number; home and office telephones; home address; home and office e-mail addresses; emergency contact name and telephone number; agency name, address, and telephone number; air travel preference; rental car identification number and car preference; hotel preference; current passport and/or visa number(s); credit card numbers and related information; bank account information needed for electronic funds transfer; frequent traveler account information (e.g., frequent flyer account numbers); trip information (e.g., destinations, reservation information); travel authorization information; travel claim information; monthly reports from travel agent(s) showing charges to individuals, balances, and other types of account analyses; and other official travel related information.

AUTHORITIES FOR MAINTENANCE:

31 U.S.C. 3511, 3512, and 3523; 5 U.S.C. Chapter 57; and implementing Federal Travel Regulations (41 CFR parts 300-304).

PURPOSE:

To establish a comprehensive beginning-to-end travel services system containing information to enable travel service providers under contract to the Federal government to authorize, issue, and account for travel and travel reimbursements provided to individuals on official Federal government business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: INFORMATION IN THE SYSTEM MAY BE DISCLOSED AS A ROUTINE USE AS FOLLOWS:

a. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To another Federal agency or a court when the Federal government is party to a judicial proceeding.

c. To a Member of Congress or staff on behalf and at the requests of the individual who is the subject of the record.

d. To a Federal agency employee, expert, consultant, or contractor in performing a Federal duty for purposes of authorizing, arranging, and/or claiming reimbursement for official travel, including, but not limited to, traveler profile information.

e. To a credit card company for billing purposes, including collection of past due amounts.

f. To an expert, consultant, or contractor in the performance of a Federal duty to which the information is relevant.

g. To a Federal agency by the contractor in the form of itemized statements or invoices, and reports of all transactions, including refunds and adjustments to enable audits of charges to the Federal government.

h. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

i. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee to whom the information pertains.

j. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the

Government Accountability Office (GAO) when the information is required for program evaluation purposes.

k. To officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

l. To a travel services provider for billing and refund purposes.

m. To a carrier or an insurer for settlement of an employee claim for loss of or damage to personal property incident to service under 31 U.S.C. Sec. 3721, or to a party involved in a tort claim against the Federal government resulting from an accident involving a traveler.

n. To a credit reporting agency or credit bureau, as allowed and authorized by law, for the purpose of adding to a credit history file when it has been determined that an individual's account with a creditor with input to the system is delinquent.

o. Summary or statistical data from the system with no reference to an identifiable individual may be released publicly.

p. To the National Archives and Records Administration (NARA) for records management purposes.

q. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, REVIEWING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file cabinets. Electronic records are maintained within a computer (e.g., PC, server, etc.) and attached equipment.

RETRIEVABILITY:

Paper records are filed by a traveler's name and/or Social Security Number/

employee identification number at each location. Electronic records are retrievable by any attribute of the system.

SAFEGUARDS:

Paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by a password system and a FIPS 140-2 compliant encrypted Internet connection. Information is released only to authorized users and officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records kept by a Federal agency are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Transportation and Property Management (FB), Federal Acquisition Service, General Services Administration, Room 300, 2200 Crystal Drive, Arlington, VA 20406.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the appropriate administrative office for the agency that is authorizing and/or reimbursing their travel.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to the appropriate administrative office for the agency that is authorizing and/or reimbursing their travel. Individuals must furnish their full name and/or Social Security Number to the authorizing agency for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate administrative office for the agency that authorized and/or reimbursed their travel. Individuals must furnish their full name and/or Social Security Number along with the name of the authorizing agency, including duty station where they were employed at the time travel was performed.

RECORD SOURCES CATEGORIES:

The sources are the individuals themselves, employees, travel authorizations, credit card companies, and travel service providers.

[FR Doc. E8-8923 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review, GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/Childcare-1

SYSTEM NAME:

Child Care Subsidy.

SYSTEM LOCATION:

This system of records is maintained by the Office of the Chief Human Capital Officer (C), 1800 F Street, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the General Services

Administration who voluntarily apply for child care subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for child care subsidy containing personal information, including employee (parent) name, Social Security Number, grade, home and work numbers, addresses, telephone numbers, total income, number of dependent children, and number of children on whose behalf the parent is applying for a subsidy; information on child care providers used, including name, address, provider license number and State where issued, tuition cost, and provider tax identification number; and copies of IRS Forms 1040 and 1040A for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 106-58 and E.O. 9397.

PURPOSE:

To establish and verify GSA employees' eligibility for child care subsidies in order for GSA to provide monetary assistance to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed as a routine use:

- a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.
- c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; of the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.
- d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.
- e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.
- f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.
- g. To the National Archives and Records Administration (NARA) for records management purposes.
- h. To appropriate agencies, entities, and persons when (1) the Agency

suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

By name; may also be cross-referenced to Social Security Number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable metal file cabinets or secured rooms. Electronic records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2) and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Office of the Chief Human Capital Officer (C), Office of Human Capital Management (CH), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to: Office of the Chief People Officer (C), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register**, 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

Information is provided by GSA employees who apply for child care subsidies. Furnishing of the information is voluntary.

[FR Doc. E8-8924 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PPFM-7

SYSTEM NAME:

Credit Data on Individual Debtors.

SYSTEM LOCATION:

Records are located at the following GSA Central Office and Regional addresses of the GSA Office of Finance:

- GSA Building, 1800 F Street, NW., Washington, DC 20405.

- Bannister Complex, 1500 East Bannister Road, Kansas City, MO 64131.
- Fritz G. Lanham Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include employees, former employees, and other individuals who are indebted to GSA or any other agency or department of the United States; a State, territory or commonwealth of the United States, or the District of Columbia (hereinafter collectively referred to as "States"); or individuals that may become indebted to GSA or another agency or department of the United States as the result of a privately owned vehicle (POV) being involved in an accident with a GSA Fleet vehicle.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may contain information from commercial and agency investigative reports showing debtors' assets, liabilities, income, and expenses; identifying information, such as names and taxpayer identification numbers (TINs) (i.e., Social Security Numbers or employer identification numbers); debtor contact information, such as work and home address, and work and home telephone numbers; and name of employer and employer address. The records for claims against nongovernmental individuals (i.e., claims arising from vehicle accidents) may contain information on privately owned vehicles (POVs), including, but not limited to: (a) The owner, year, make, model, tag number and State of the vehicle; and (b) the driver's or owner's insurance company information, including name, address, telephone number and policy number. Debts include unpaid taxes, loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, third-party claims, and other amounts of money or property owed to, or collected by, GSA, any other Federal entity or a State, including past-due support that is

being enforced by a State. The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date of debt origination, the amount of delinquency or default, date of delinquency or default, the basis for the debt, the amounts accrued for interest, penalties, and administrative costs; and the payments on the account; (b) actions taken to collect or resolve the debt, such as demand letters or invoices sent, documents or information required for referral of accounts to collection agencies, to other Federal entities, or for litigation, and notes taken regarding telephone or other communications related to the collection or resolution of the debt; and (c) the referring or collecting governmental entity that is collecting or is owed the debt, such as the name, telephone number, and address of the governmental entity contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5514, 31 U.S.C. 3701 and 3702, 31 U.S.C. 3711 *et seq.*, 31 U.S.C. 6503, and 26 U.S.C. 6402.

PURPOSE:

The purpose of the system is to assemble and maintain information on individuals who are indebted to GSA, other Federal entities, and States for the purpose of effecting enforced collections from the debtors, including past-due support enforced by States. The information contained in the records is maintained for the purpose of taking action to facilitate collection and resolution of debts using various methods, including, but not limited to, requesting repayment of debt by telephone or in writing, pursuing offset, levy, administrative wage garnishment, centralized salary offset, referral to collection agencies or litigation, and using other collection or resolution methods authorized or required by law. The information is also maintained for the purpose of providing collection information about the debt to other Federal entities or States collecting the debt, providing statistical information on debt collection operations, and testing and developing enhancements to computer systems containing the records.

ROUTINE USES OF THE SYSTEM OF RECORDS, INCLUDING CATEGORIES OF THE USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, 5 U.S.C. 552a(b), GSA may disclose information contained in this system of records without the consent of the subject individual if the disclosure

is compatible with the purpose for which the record was collected under the following routine uses:

- a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.
- c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.
- d. To any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal government on GSA's behalf. GSA may negotiate with the debtor for voluntary repayment or may initiate administrative or salary offset procedures or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982, 5 U.S.C. 5514, or the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

f. To any Federal, State or local agency, U.S. Territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

- (1) To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to: Requests for repayment by telephone or in writing; negotiation of voluntary repayment or compromise agreements; offsets of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process; referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation; obtaining administrative and court-ordered wage garnishment; conducting debt sales; publishing names and identities of delinquent debtors in the media or other appropriate places;

creating a Centralized Salary Offset program; and pursuing any other debt collection method authorized by law.

(2) To conduct computerized comparisons to locate Federal payments to be made to debtors.

(3) To conduct authorized computer matching programs in compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, to identify and locate individuals receiving Federal payments (including but not limited to salaries, wages and benefits), which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures.

(4) To collect a debt owed to GSA, another Federal entity, or State through the offset of payments made by States, territories, commonwealths, or the District of Columbia.

(5) To account for or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties.

(6) To deny Federal financial assistance in the form of loans or loan guarantees to an individual who owes a delinquent debt to GSA or another Federal entity or who owes delinquent child support that has been referred to GSA for collection by administrative offset.

(7) To develop, enhance, and/or test databases, matching communications, or other computerized systems that facilitate debt collection processes.

(8) To provide assistance with any other appropriate debt collection purpose.

g. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

h. To any individual or entity:

(1) To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to: pursuing administrative or court-ordered wage garnishment; reporting information to commercial credit bureaus; conducting asset searches; publishing the names and identities of delinquent debtors in the media or other appropriate places; conducting debt sales; or initiating Centralized Salary Offsets.

(2) To deny Federal financial assistance in the form of loans or loan guarantees to an individual who owes a delinquent debt to the United States or delinquent child support that has been referred to GSA for collection by administrative offset.

(3) To pursue any other appropriate debt collection purpose, such as to credit reporting agencies or credit bureaus for the purpose of adding to a credit history file or obtaining a credit history file or comparable credit information for use in debt collection. As authorized by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, GSA may report current (not delinquent) and delinquent consumer or commercial debts to these entities to aid the collection of debts, typically by providing an incentive to the person to repay the debt in a timely manner. GSA may report on delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS).

i. To the Internal Revenue Service and applicable State and local governments for tax reporting purposes. Under the provisions of the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, GSA is permitted to provide the Department of Treasury with Form 1099-C information on canceled or forgiven debts so that the Department of Treasury may file the form on GSA's behalf with the IRS. W-2 and 1099 Forms contain information on items to be considered as income to an individual, including payments to persons not treated as employees (e.g., fees paid to consultants and experts) and amounts written-off as legally or administratively uncollectible in whole or in part.

j. To banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose.

k. To the Department of Treasury or other Federal agency with whom GSA has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of GSA to satisfy, in whole or in part, debts owed to the United States. Cross servicing includes the possible use of all debt collections tools such as administrative offset, referral to debt collection contractors, and referral to the Department of Justice.

l. To the Department of Treasury, government corporations, State or local agencies, or other Federal agencies to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the United States under certain programs administered by the GSA in order to collect the debts under the provisions of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514,

or the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, by voluntary payment or administrative or salary offset procedures.

m. To the National Archives and Records Administration (NARA) for records management purposes.

n. To or from the Department of Treasury for the purpose of allowing the GSA National Payroll Center (NPC) to participate in the Centralized Salary Offset (CSO) program, or similar offset program. Agencies must notify the Department of Treasury of all delinquent debts over 180 days past due so that recovery may be made by centralized administrative offset. This includes debts that GSA seeks to recover from the pay account of an employee of another agency by salary offset, or by another agency seeking recovery from a GSA employee, including client agency employees, by salary offset.

o. To or from another agency or department of the United States when a GSA Fleet vehicle has been involved in an accident with an individual or commercial POV. Disclosure to consumer reporting agencies: Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3701(a)(3) and 3711(e).

p. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

q. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders and/or boxes and stored in lockable filing cabinets or file room until archived at NARA, or in electronic form in computers or other electronic media.

RETRIEVABILITY:

Records are maintained by name and claim number and are cross-referenced with the Social Security Number (when available).

SAFEGUARDS:

Records are stored in guarded buildings and/or in areas controlled by authorized personnel. Computer files are protected by the use of passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Records for files submitted to the Financial Management Service for cross servicing per the Debt Collection Act of 1996 are maintained on site for the time period at FMS (up to 10 years). Records for closed files are sent to the National Archives and Records Administration and are retained for 6 years and 3 months.

SYSTEM MANAGER AND ADDRESS:

Deputy Chief Financial Officer, Office of Financial Policy and Operations, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Inquiries by individuals under the Privacy Act of 1974, as amended (5 U.S.C. 552a) regarding claims pertaining to themselves should be addressed to the system manager. All individuals making inquiries should provide as much descriptive information as possible to identify the particular record desired. The system manager will advise as to whether GSA maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager and should include the individual's name and address.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the contents of the records and for appealing initial determinations are promulgated in 41 CFR 105.64.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individual debtors; credit bureaus;

agency investigative reports; other GSA systems of records; Federal and State agencies to which debts are owed; Federal employing agencies and other entities that employ the individual; Federal and State agencies issuing payments; collection agencies; locator and asset search companies; Federal, State or local agencies furnishing identifying information and/or addresses of debtors; or from public documents.

[FR Doc. E8-8925 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PPFM-6

SYSTEM NAME:

Employee Credit Reports.

SYSTEM LOCATION:

The system is located in the General Services Administration, Heartland Finance Center, Financial Information Control Division, 1500 East Bannister Road, Kansas City, MO 64131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees and/or contractors who have refused to abide by the terms of their training agreement or other employment-related contracts, and thereby have incurred a liability to the Government. When appropriate, similar information is gathered on their spouses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information that may be stored includes but is not limited to, name and address, age, number of dependents, name of employer, nature of business, position held/time held, full or part-time employment, net worth and what it consists of, annual earned income, other income, reputation, credit record, financial records, and personal history. The records are used in GSA to investigate employees who default on employment-related contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3711(e).

PURPOSE:

To assemble and maintain information on individuals who are indebted to GSA and other Federal entities for the purpose of effecting enforced collections from the debtors. The information contained in the records is maintained for the purpose of taking action to facilitate collection and resolution of debts using various methods, including, but not limited to, requesting repayment of debt by telephone or in writing, pursuing offset, administrative wage garnishment, centralized salary offset, referral to collection agencies or litigation, and using other collection or resolution methods authorized or required by law. The information is also maintained for the purpose of providing collection information about the debt to other Federal entities collecting the debt, and providing statistical information on debt collection operations.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities, and persons with (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The paper records are maintained in file folders and/or boxes and stored in filing cabinets or file room until archived at NARA, or in electronic form in computers or other electronic media.

RETRIEVABILITY:

Records are retrieved by name or by identifying number.

SAFEGUARDS:

Records are stored in guarded buildings and/or in areas controlled by authorized personnel. Computer files are protected by the use of passwords and other appropriate security measures. Only persons given authority to do so handle this information.

RETENTION AND DISPOSAL:

The records are disposed of as scheduled in the handbook GSA Records Maintenance and Disposition System (CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

Director, Financial Information Control Division (6BCD), Heartland Finance Center, 1500 East Bannister Road, Kansas City, MO 64131.

NOTIFICATION PROCEDURE:

Obtain this information from the office named above.

RECORD ACCESS PROCEDURES:

See 41 CFR, part 105-64 for the procedures.

RECORD SOURCE CATEGORIES:

Credit companies, individuals, employers/supervisors, former employers, banks, and GSA credit investigators.

[FR Doc. E8-8928 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

**GENERAL SERVICES
ADMINISTRATION****Privacy Act of 1974; Notice of Updated
Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: Telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/OAP-5**SYSTEM NAME:**

Federal Acquisition Institute (FAI) Online University.

SYSTEM LOCATION:

The system is managed by the Federal Acquisition Institute, located at 9820 Belvoir Road, Fort Belvoir VA 22060-5565. Contact the system manager for additional information.

SYSTEM LOCATION:

Individuals, public or private, who use the FAI Online University resources and who register for or take the online courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record of an individual and his/her course progress while attending online courses. Required information consists of name and e-mail. Additional information is voluntarily provided and may include: a. Contact data (home or business address including city, state, zip code, and country; and home or business telephone and fax number). b. Work-related information, including affiliated organization, business telephone, business fax number, and manager's e-mail. c. Training records, including course type selection, course progress, and course start/completion dates.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. Chapters 5, 31, and 33; Title 5 U.S.C. 4101, *et seq.*; E.O. 11348, as amended; E.O. 13111; and the Federal Procurement Policy Act (Pub. L. 93-400, as amended).

PURPOSE:

To maintain a system for providing acquisition and procurement training in order to promote the development of a professional Federal acquisition workforce, ensure availability of exceptional training, and improve Federal acquisition workforce management.

**ROUTINE USES OF THE SYSTEM RECORDS,
INCLUDING CATEGORIES OF USERS AND THEIR
PURPOSES FOR USING THE SYSTEM:**

System information may be accessed and used by authorized FAI employees, System Administrators, and contractors in the conduct of their official duties associated with tracking and administering training record and for system management purposes. In addition, information from this system may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of a civil or criminal law or regulation.

c. To duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM) and the Government Accountability Office (GAO) when the information is required for evaluation of the program.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure

made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Information is electronically collected and stored on hard drives.

RETRIEVABILITY:

Records are retrievable by name.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act and the Computer Security Act. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data that is stored, processed, and transmitted. Records are protected by passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the GSA Records Maintenance and Disposition System handbooks OAD P 1820.2A and CIO P 1820.1, and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Federal Acquisition Institute, c/o Defense Acquisition University, 9820 Belvoir Road, Fort Belvoir, VA 22060-5565.

NOTIFICATION PROCEDURES:

An individual may obtain information on whether the system contains his or her record by sending the request to Director, Federal Acquisition Institute, c/o Defense Acquisition University, 9820 Belvoir Road, Fort Belvoir, VA 22060-5565.

RECORD ACCESS PROCEDURES:

Individuals may access their own records using their own password. Requests from individuals for access to their records also may be requested from FAI by writing to the above address.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, for contesting the contents of systems of records, and for appealing initial determinations are published in the **Federal Register**, 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who register with FAI Online University.

[FR Doc. E8-8929 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: Telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,
Director, Office of Information Management.

GSA/PPFM-3

SYSTEM NAME:

Travel System.

SYSTEM LOCATION:

The system of records is located in the General Services Administration (GSA) Central Office, service and staff offices and administrative offices throughout GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

GSA current and former employees and travelers of commissions, committees, and small agencies serviced by GSA, including persons other than full-time employees authorized to travel on Government business.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides control over the expenditure of funds for travel, relocation, and related expenses. Therefore, provisions are made to authorize travel and relocation, provide and account for advances, and to pay for travel and relocation costs. The system contains records that may include, but are not limited to, name, Social Security Number, date of birth, residence address, dependents' names and ages, duty stations, itinerary and credit data in the form of credit scores (examples of credit scores are FICO, an acronym for Fair Isaac Corporation, a Beacon score, etc.) or commercial and agency investigative reports showing debtors' assets, liabilities, income, expenses, bankruptcy petitions, history of wage garnishments, repossessed property, tax liens, legal judgments on debts owed, and financial delinquencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701-5709, 5 U.S.C. 5721-5739, and Section 639 of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447).

PURPOSE:

To assemble in one system information supporting the day-to-day operating needs associated with managing the GSA travel and relocation programs. The system includes an automated information system and supporting documents.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to conduct official duties associated with the management and operation of the travel and relocation program. Information from this system also may be disclosed as a routine use:

- a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To authorized officials engaged in investigating or settling a grievance,

complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To the Office of Management and Budget in connection with reviewing private relief legislation at any stage of the coordination and clearance process.

i. To banking institutions so that travelers may receive travel reimbursements by electronic funds transfer (EFT).

j. To the Department of the Treasury regarding overseas travel allowances that are excluded from taxable income, so that reports can be compiled and submitted to the Congress.

k. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and/or boxes and stored in cabinets or file room until archived at NARA; magnetic tapes and cards are stored in cabinets and storage libraries; and computer records are stored within computers and attached equipment or other electronic media.

RETRIEVABILITY:

Paper records are filed by name or by identifying number.

Electronic records are retrievable by name, vendor number (an identifier assigned by GSA to all payees, including companies and individuals), or Social Security Number.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

DISPOSAL:

The agency disposes of the records as described in the HB, GSA Records Maintenance and Disposition System (CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

Director, Financial Initiative Division (BCD), Office of Financial Policy and Operations, Office of the Chief Financial Officer, General Services Administration, 1800 F Street, NW., Washington DC, 20405.

NOTIFICATION PROCEDURE:

Employees may obtain information about whether they are a part of this system of records from the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published at 41 CFR Part 105-64.

RECORD SOURCE CATEGORIES:

The sources are individuals, other employees, supervisors, other agencies,

management officials, and non-Federal sources such as private firms.

[FR Doc. E8-8930 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PPFM-1

SYSTEM NAME:

Disbursement and Accounts Payable Files.

SYSTEM LOCATION:

System records are located in GSA's finance centers and other locations as follows:

- Heartland Finance Center, 1500 East Bannister Road, Kansas City, MO 64131.
- Greater Southwest Finance Center, 819 Taylor Street, Fort Worth, TX 76102.
- Office of the Chief Financial Officer, 1800 F Street, NW., Washington, DC 20405.
- Service and Staff Offices throughout GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

GSA employees; contractors and contractual or appointed experts and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides for reporting each account's status. Records may include but are not limited to name, address, telephone number, vendor identification number, banking information and Social Security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3501 *et seq.*; 40 U.S.C. 311; 5 U.S.C. 3109.

PURPOSE:

To assemble in one system disbursement and accounts payable records to GSA employees, contractors and other experts and consultants procured by contract or by appointment.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

To the extent necessary, the records are available outside GSA to monitor and document adverse action proceedings and to advise on credit inquiries. The following routine uses also apply:

- a. In a legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.
- c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.
- d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the

Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To the Office of Management and Budget in connection with reviewing private relief legislation at any stage of the coordination and clearance process.

i. To the Department of Treasury and/or banking institutions so that payments may be made by electronic funds transfer (EFT).

j. To the Department of Treasury so claims can be collected through cross servicing, Treasury Offset Program or the Centralized Salary Offset Program.

k. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's effort to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records are maintained in file folders and/or boxes and stored in filing cabinets or file room until archived at NARA, or in electronic form in computers.

RETRIEVABILITY:

Records are retrieved by name or by identifying number.

SAFEGUARDS:

Records are stored in guarded buildings and/or in areas controlled by authorized personnel. Computer files are protected by the use of passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is in accordance with the Handbook, GSA Records Maintenance and Disposition System (CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

Deputy Chief Financial Officer, Office of Financial Policy and Operations, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals may obtain information about whether they are part of this system of records from the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests to access records should be directed to the system manager at the above address. Inquiries should provide, as appropriate, full name, Social Security number, vendor number, address, telephone number, and the dates and transactions giving rise to the record. For identification requirements, refer to the agency regulations in 41 CFR part 105-64.

CONTESTING RECORD PROCEDURES:

GSA rules for access to records, and for contesting the contents and appealing initial determinations are provided in 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

The individuals themselves, employees, other agencies, management officials, and non-Federal sources such as private firms.

[FR Doc. E8-8932 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION**Privacy Act of 1974; Notice of Updated Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration,

1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/HRO-2

SYSTEM NAME:

Employee Drug Abuse/Alcoholism Files.

LOCATION:

The system is located in the office of the private sector organizations or providers for the Employee Assistance Program (EAP) who have contracted with the Office of Human Resources Services at GSA.

The EAP office contacts are as follows:

Central Office, Federal Occupational Health, (800) 222-0364.

National Capital Region, Federal Occupational Health, (800) 222-0364.

Northeast and Caribbean Region, Cooperative Administrative Support Program Consortia, Long Island and Queens: (516) 222-1221, New Jersey: (201) 402-1015, Puerto Rico and the Virgin Islands: (809) 763-6701 or (800) 981-5070, New York City: (212) 264-4673, New England: (617) 565-6533 or (800) 869-8867.

Mid-Atlantic Region, Federal Occupational Health, (800) 222-0364.

Southeast Sunbelt Region, Davine Sparks, LCSW, (800) 222-0364 or (404) 730-3237.

Great Lakes Region, Federal Occupational Health, (800) 222-0364.

The Heartland Region, Federal Occupational Health, (800) 222-0364.

Greater Southwest Region, Federal Occupational Health, (800) 222-0364 or (888) 262-7848.

Pacific Rim Region, North of Bakersfield: Linda Boone or Jean Taylor (415) 436-7448, South of Bakersfield: Joan Sexton (213) 894-0160 or Sandy Freed (213) 894-0153.

New England Region, Services provided by a Consortia—Individual providers, (617) 565-6533 or (800) 869-8867.

Rocky Mountain Region, Federal Occupational Health (800) 222-0364 or (888) 262-7848 (TTY).

TYPES OF RECORDS IN THE SYSTEM:

1. Counseling and rehabilitation referrals.
2. Records of counseling and rehabilitation.

AUTHORITY FOR MAINTAINING THE SYSTEM:

Public Law 92-255 and 5 U.S.C. 7904.

PURPOSE:

To maintain an information system on employees suspected of abusing or known to abuse alcohol or another drug and for self-initiated referrals.

ROUTINE USES OF THE RECORD SYSTEM, INCLUDING TYPES OF USERS AND THEIR PURPOSES IN USING IT:

Disclosing information related to anyone with a history of alcohol or drug abuse is restricted by Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2. System information may be accessed and used by authorized Federal agency employees or contractors to conduct official duties. Information from this system also may be disclosed as a routine use:

- a. Documenting that the supervisor deals properly with an employee whose work is affected by alcohol abuse or other drug abuse.
- b. Communicating information to those who use it in performing their duties, such as a counselor, medical or health worker, an alcohol or other drug abuse program administrator, or a qualified service organization.
- c. Disclosing information to the Department of Justice or another Federal agency in defending a claim against the United States, when the claim is based on a person's mental or physical condition and is allegedly caused by GSA activities affecting the person.
- d. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- e. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

f. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an

investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

g. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

h. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

i. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

j. To the National Archives and Records Administration (NARA) for records management purposes.

k. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in a file cabinet or in a drawer.

RETRIEVABILITY:

The records are filed alphabetically by name.

SAFEGUARDS:

When not in use by an authorized person, the records are stored in a locked metal file cabinet or in a secured room.

RETENTION AND DISPOSAL:

The records are kept for a year after the employee's last contact with a counselor or until the employee separates or transfers, whichever occurs first. If there is an EEO case, MSPB appeal, or arbitration, the records are kept for 3 years after the case is

resolved. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Human Capital Policy and Program Management Division (CHP), Office of Human Capital Management (CH), 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

An employee may obtain information as to whether he or she is part of the system of records from the immediate supervisor or the Director of Human Capital Policy and Program Management Division at the address above, whichever is appropriate.

RECORD ACCESS PROCEDURE:

A request to review a record related to you should be directed to the immediate supervisor or Director of Human Capital Policy and Program Management Division at the address above, whichever is appropriate. For the identification required, see 41 CFR part 105-64 published in the **Federal Register**.

PROCEDURE TO CONTEST A RECORD:

GSA rules to review the content of a record and appeal an initial decision are in 41 CFR part 105-64 published in the **Federal Register**.

RECORD SOURCES:

The supervisor(s), counselors, personnel specialists, and individual employee.

[FR Doc. E8-8933 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION**Privacy Act of 1974; Notice of Updated Systems of Records**

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration,

1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PBS-5**SYSTEM NAME:**

eLease.

SYSTEM LOCATION:

The system records and documents are maintained at the Enterprise Service Center of the GSA Public Buildings Service (PBS). Contact the System Manager for additional information.

SYSTEM LOCATION:

The system maintains information on individuals, as well as businesses, who have made an offer on a PBS lease solicitation or who have entered into a contract with PBS regarding a building lease.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains information required throughout the lifecycle of a PBS building lease including information about leases, offerors, and lessors. In addition to business contact and identification information (address, telephone number, and Taxpayer Identification Number (TIN)), the system includes personal information on individuals who use personal contact and identification information (home address, telephone, e-mail, and fax numbers, and Social Security Number) for business purposes as sole proprietors.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act, as amended (40 U.S.C. Sec. 585).

PURPOSE:

To establish and maintain a system for operating, controlling, and managing the Federal property leasing program; tracking leasing projects and workflow activities; and managing associated documents.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees and contractors to conduct official duties associated with Federal government building leases. Information from this system may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO) or other Federal agency when the information is required for program evaluation purposes.

e. To another Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; clarifying a job; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

f. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

h. To the National Archives and Records Administration (NARA) for records management purposes.

i. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of

information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

System records and documents are electronically stored on servers and/or compact discs.

RETRIEVABILITY:

Records may be retrieved by name and/or other personal identifier or appropriate type of designation.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and the eLease System Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the data. Security measures include password protections, assigned roles, and transaction tracking.

RETENTION AND DISPOSAL:

Disposition of records will be according to the National Archives and Records Administration (NARA) guidelines, set forth in the GSA Records Maintenance and Disposition System (OAD P 1820.2A) handbook.

SYSTEM MANAGER AND ADDRESS:

eLease Program Manager, Systems Development Division (PGAB), Office of the PBS Chief Information Officer, General Services Administration, 1800 F Street, NW., Washington DC 20405.

NOTIFICATION PROCEDURES:

Individuals may obtain information about their records from the eLease Program Manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the eLease Program Manager. GSA rules for individuals requesting access to their records are published in 41 CFR part 105-64.

CONTESTING RECORD PROCEDURES:

Individuals may contest their records' contents and appeal determinations according to GSA rules published in 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who are offerors or lessors of GSA PBS building leases.

[FR Doc. E8-8934 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and in response to OMB M-07-16. This notice is a compilation of updated Privacy Act system of record notices.

DATES: Effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review GSA is publishing updated Privacy Act systems of records notices. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for one of its systems. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. The updated system notices also include the new requirement from OMB Memorandum M-07-16 regarding a new routine use that allows agencies to disclose information in connection with a response and remedial efforts in the event of a data breach.

Dated: April 16, 2008.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/HRO-37

SYSTEM NAME:

Personnel Security files.

SECURITY CLASSIFICATION:

Some records in the system are classified under Executive Order 12958 as amended.

SYSTEM LOCATION:

Personnel security files are maintained with other appropriate records in the Personnel Security Requirements Division (CPR), GSA Building, 1800 F Street NW., Washington, DC 20405.

SYSTEM LOCATION:

Employees, applicants for employment, former employees of GSA and of commissions, committees, small agencies serviced by GSA, contractors, students, interns, volunteers, individuals authorized to perform or use services provided in GSA facilities (e.g. Credit Union or Fitness Center) and individuals formerly in any of these positions that require regular, ongoing access to federal facilities, information technology systems or information classified in the interest of national security. Included are historical researchers, experts or consultants, and employees of contractors performing services for GSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security files contain information such as name, former names, date and place of birth, home address, phone numbers, height, weight, hair color, eye color, sex, passport information, military information, civil court information, employment history, residential history, Social Security Number, occupation, experience, and investigative material, education and degrees earned, names of associates and references and their contact information, citizenship, names of relatives, citizenship of relatives, names of relatives who work for the federal government, criminal history, mental health history, drug use, financial information, fingerprints, summary report of investigation, results of suitability decisions, level of security clearance, date of issuance of security clearance, requests for appeals, witness statements, investigator's notes, tax return information, credit reports, security violations, circumstances of violation, and agency action taken.

Forms: SF-85, SF-85P, SF-86, SF-87, GSA Form 3665, OF306, FD258, GSA Form 1380, GSA Form 3648.

AUTHORITY FOR MAINTAINING THE SYSTEM:

Depending upon the type of investigation, GSA is authorized to ask for this information under Executive Orders 10450 as amended, 10865 as amended, 12968 as amended, and 12958 as amended; sections 3301 and 9101 of title 5, U.S. Code; sections 2165 and 2201 of title 42, U.S. Code; parts 5, 731, 732, and 736 of title 5, Code of Federal Regulations; and Homeland Security Presidential Directive 12.

PURPOSE:

To assemble in one system information pertaining to issuing security clearances and public trust certifications, suitability decisions, fitness for service of applicants for federal employment and contract positions, and administrative actions. Information security files also are used for recommending administrative action against employees found to be violating GSA classified national security information regulations.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING THE TYPES OF USERS AND THE PURPOSES OF SUCH USES:

- a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.
- b. To the Department of Justice when:
 - (a) The agency or any component thereof; or
 - (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or
 - (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by DOJ is therefore deemed by the agency to be for a purpose compatible with the purpose for which the agency collected the records.
- c. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.
- d. Except as noted on Forms SF-85, 85-P, and 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto,

disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

e. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

f. To agency contractors or volunteers who have been engaged to assist the agency in the performance of a contract service, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

g. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

h. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

i. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

j. To the National Archives and Records Administration (NARA) for records management purposes.

k. To a federal, state, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives.

l. To the Office of Management and Budget when necessary to the review of private relief legislation pursuant to OMB Circular No. A-19.

m. To appropriate agencies, entities, and persons when (1) the Agency

suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronically in secure locations. Records are maintained in the system of records Comprehensive Human Resources Integrated System (GSA/PPFM-8) in the personnel security module and associated equipment.

RETRIEVABILITY:

Records are retrieved by name and Social Security Number.

SAFEGUARDS:

Personnel security file records are stored in a secured office in cabinets with access limited to authorized employees. A password system protects access to computer records. Access to the records is limited to those employees who have a need for them in the performance of their official duties.

RETENTION AND DISPOSAL:

These records are retained and disposed of in accordance with General Records Schedule 18, item 22, approved by the National Archives and Records Administration (NARA). Records are destroyed by burning, pulping, or shredding, as scheduled in the HB GSA Records Maintenance and Disposition System (OAD P 1820.2A).

SYSTEM MANAGER AND ADDRESS:

Director, Personnel Security Requirements Division (CPR), 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURES:

Inquiries by individuals as to whether the system contains a record pertaining to themselves should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager and should include full name (maiden name where appropriate), address, and date and place of birth. General inquiries may be made by telephone.

PROCEDURES FOR CONTESTING RECORDS:

GSA rules for accessing records, contesting their content, and appealing initial decisions appear in 41 CFR part 105-64.

RECORD SOURCES:

Individuals, employees, informants, law enforcement agencies, courts, other Government agencies, employees' references, co-workers, neighbors, rental/lease, educational institutions, and intelligence sources. Security violation information is obtained from a variety of sources, such as security guard's reports, security inspections, witnesses, supervisor's reports, and audit reports.

FILES EXEMPTED FROM PARTS OF THE ACT:

Under 5 U.S.C. 552a(k)(5), the personnel security case files in the system of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the act. Information will be withheld to the extent it identifies witnesses promised confidentiality as a condition of providing information during the course of the background investigation.

[FR Doc. E8-8935 Filed 4-24-08; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Call for Collaborating Partners for the OWH National Lupus Awareness Campaign**

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office on Women's Health.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS), Office of Public Health and Science (OPHS), Office on Women's Health (OWH) announces the development of a National Lupus Awareness campaign with the Advertising Council and invites public and private sector lupus and women's health related organizations to participate as collaborating partners to provide advice on the development and dissemination of the campaign materials.

DATES: Representatives of lupus and women's health organizations should submit expressions of interest by May 18, 2008.

ADDRESSES: Expressions of interest, comments, and questions may be submitted by electronic mail to Frances.Ashe-Goins@hhs.gov; or by regular mail to Frances E. Ashe-Goins, RN, MPH, Deputy Director, Office on Women's Health, Department of Health and Human Services, 200 Independence Avenue, SW., Room 728E, Washington, DC 20201, or via fax to (202) 401-4005.

FOR FURTHER INFORMATION CONTACT: Frances E. Ashe-Goins RN, MPH, Office on Women's Health, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Room 728E, Washington, DC 20201, (202) 690-6373 (telephone), (202) 401-4005 (fax).

SUPPLEMENTARY INFORMATION: The OWH was established in 1991 to improve the health of American women by advancing and coordinating a comprehensive women's health agenda throughout HHS. This program has two goals: Development and implementation of model programs on women's health; and leading education, collaboration and coordination on women's health. The program fulfills its mission through competitive contracts and grants to an array of community, academic and other organizations at the national and community levels. National educational campaigns provide information about the important steps women can take to improve and maintain their health.

OWH has worked on community based lupus awareness projects over the years and those activities, though successful, have not met the overwhelming critical national need for lupus education.

Lupus is a chronic (life-long) autoimmune disease that for unknown reasons causes the immune system to mistakenly attack the body's own healthy cells and tissue as though they were foreign invaders. The resulting inflammation causes symptoms of disease. Without intervention, the inflammation leads to tissue damage, organ failure, disability, and in many cases, premature death.

Public recognition of lupus is low. A recent survey of 1,000 U.S. adults (18+) conducted for the Lupus Foundation of America (LFA) revealed that 39 percent knew nothing about lupus, and 22 percent had never heard of the disease. When probed, only 20 percent could reflect even basic information about the disease. An earlier survey showed that only 4 out of 10 young adults (18-24)

claimed to be familiar with lupus. Lack of awareness of lupus symptoms is the underlying reason for late diagnosis and increased morbidity.

A report by the Centers for Disease Control and Prevention in 2002 revealed that over a 10-year period, deaths attributed to lupus increased 60 percent overall; among older African-American women, the increase was nearly 70 percent. This report suggests that increased awareness of lupus and proactive diagnosis of the disease will reduce the number of deaths due to lupus. It is estimated that 1/3 of deaths attributed to lupus occur among women younger than 45 years of age.

OWH has contracted with the Advertising Council to plan, develop, implement, and evaluate a national lupus marketing campaign to increase the awareness of symptoms of lupus, its health effects and provide information to individuals who may be at risk for lupus to help them decide whether to seek medical evaluation. The National Lupus Awareness Campaign is intended to generate public attention for lupus and raise recognition of the disease as a significant national public health problem that disproportionately affects young women of color.

In order to develop and implement the National Lupus Awareness Campaign, OWH is interested in establishing partnerships with private and public lupus and women's health related organizations. As partners with HHS, these health organizations can bring their ideas and expertise, administrative capabilities, and resources, which are consistent with the goals of the National Lupus Awareness Campaign.

Given the National Lupus Awareness Campaign's objectives, entities which have similar goals and consistent interests, appropriate expertise and resources, and which would like to pursue lupus awareness activities in collaboration with OWH are encouraged to reply to this notice. Working together, these partnerships will provide innovative opportunities to promote an increased national awareness of lupus, with the end goal of earlier lupus detection and diagnosis and decreased morbidity.

Dated: April 18, 2008.

Wanda K. Jones,

Deputy Assistant Secretary for Health (Women's Health).

[FR Doc. E8-9110 Filed 4-24-08; 8:45 am]

BILLING CODE 4150-33-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): School-Based Adolescent Vaccination, Funding Opportunity Announcement (FOA) IP08-006 and School-Based Influenza Vaccine, FOA IP08-007

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12 p.m.–5 p.m., May 22, 2008 (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 “School-Based Adolescent Vaccination, FOA IP08-006 and School-Based Influenza Vaccine, FOA IP08-007.”

Contact Person for More Information: Maurine Goodman, M.A., M.P.H., Scientific Review Administrator, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639-4737.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 21, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8-9054 Filed 4-24-08; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-1771, CMS-10145, CMS-10204 and CMS-10255]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Attending Physicians Statement and Documentation of Medicare Emergency and Supporting Regulations in 42 CFR 424.103; **Use:** 42 CFR 424.103(b) requires that before a nonparticipating hospital may be paid for emergency services rendered to a Medicare beneficiary, a statement must be submitted that is sufficiently comprehensive to support that an emergency existed. Form CMS-1771 contains a series of questions relating to the medical necessity of the emergency. The attending physician must attest that the hospitalization was required under the regulatory emergency definition (42 CFR 424.101) and give clinical documentation to support the claim. **Form Number:** CMS-1771 (OMB# 0938-0023); **Frequency:** Yearly; **Affected Public:** Private sector—business or other for-profit and not-for-profit institutions; **Number of Respondents:** 100; **Total Annual Responses:** 200; **Total Annual Hours:** 50.

2. Type of Information Collection Request: Revision of a currently approved collection; **Title of Information Collection:** Medicare Part B Drug and Biological Competitive Acquisition Program and Supporting Regulations in 42 CFR Sections 414.906, 414.908, 414.910, 414.914, 414.916, and 414.917; **Use:** Section 303(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) provides an alternative payment methodology for Part B covered drugs that are not paid on a cost or prospective payment basis. In particular, Section 303(d) of the MMA

amends Title XVIII of the Social Security Act by adding a new section 1847(B), which establishes a competitive acquisition program for the acquisition of and payment for Part B covered drugs and biologicals furnished on or after January 1, 2006. Since its inception, additional legislation has augmented the CAP. Section 108 of the Medicare Improvements and Extension Act under Division B, Title I of the Tax Relief Health Care Act of 2006 (MIEA-TRHCA) amended Section 1847b(a)(3) of the Social Security Act and requires that CAP implement a post payment review process. This procedure is done to assure that payment is made for a drug or biological under this section only if the drug or biological has been administered to a beneficiary. **Form Number:** CMS-10145 (OMB# 0938-0945); **Frequency:** Weekly; **Affected Public:** Private sector—business or other for-profit and not-for-profit institutions; **Number of Respondents:** 3000; **Total Annual Responses:** 156,000; **Total Annual Hours:** 31,188.

3. Type of Information Collection Request: Revision of a currently approved collection; **Title of Information Collection:** Evaluation of the Medical Adult Day Care Services Demonstration; **Use:** Section 703 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. 108-173) authorizes a three-year demonstration to conduct an evaluation of the clinical and cost-effectiveness of providing medical adult day-care services as a substitute for a portion of home health services that would otherwise be provided in the beneficiary's home. Delivering home health services in the adult day-care setting represents an expansion of coverage under the home health benefit under Medicare. The Demonstration aims to evaluate both the costs and the benefits of delivering home health services in the adult day-care setting. The evaluation will examine the achievements as well as the difficulties inherent in demonstration implementation.

Telephone survey data from Medicare beneficiary's interviews are to be completed during Phase II of the Evaluation of the Medical Adult Day-Care Services Demonstration. The survey was developed based on collection of data from face-to-face interviews with beneficiaries from Phase I of the Demonstration evaluation. **Form Number:** CMS-10204 (OMB# 0938-1017); **Frequency:** Once; **Affected Public:** Individuals or households; **Number of Respondents:** 900; **Total Annual Responses:** 900; **Total Annual Hours:** 150.

4. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Evaluation of Care and Disease Management Under Medicare Advantage. *Use:* CMS is conducting an evaluation of care and disease management programs under Medicare Advantage (MA), which includes a survey of all MA plans. The survey will help describe the structure and operation of these programs. The survey will gather information about MA health plans' care and disease management programs that is not available from other sources, such as relations with health providers, the use of electronic data systems, characteristics of care and disease management programs, population served, physician intervention, differences with regular MA plans and special needs plans, and evidence of effectiveness and assessment of costs. Information is collected through a one-time, self-administered mail questionnaire. [Refer to the crosswalk and track changes document for a list of changes to this information collection request since the last **Federal Register** publication.] *Form Number:* CMS-10255 (OMB# 0938-New); *Frequency:* Once; *Affected Public:* Private sector—business or other for-profit and not-for-profit institutions; *Number of Respondents:* 475; *Total Annual Responses:* 475; *Total Annual Hours:* 435.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office at (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on May 27, 2008.

OMB Human Resources and Housing Branch, Attention: Carolyn Raffaelli, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395-6974.

Dated: April 17, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8-9067 Filed 4-24-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-R-43 and CMS-R-71]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions of Participation for Portable X-ray Suppliers and Supporting Regulations in 42 CFR 486.104, 486.106, 486.110; *Use:* These requirements contained in this information collection request are classified as conditions of participation or conditions for coverage. These conditions are based on a provision specified in law relating to diagnostic X-ray tests "furnished in a place of residence used as the patient's home," and are designed to ensure that each supplier has a properly trained staff to provide the appropriate type and level of care, as well as, a safe physical environment for patients. CMS uses these conditions to certify suppliers of portable X-ray services wishing to participate in the Medicare program. This is standard medical practice and is necessary in order to help to ensure the well-being, safety and quality professional medical treatment accountability for each patient. *Form Number:* CMS-R-43 (OMB# 0938-0338); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and

not-for-profit institutions; *Number of Respondents:* 726; *Total Annual Responses:* 726; *Total Annual Hours:* 1,815.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Quality Improvement Organization (QIO) Assumption of Responsibilities and Supporting Regulations in 42 CFR 412.44, 412.46, 431.630, 476.71, 476.73, 476.74, and 476.78; *Use:* The Peer Review Improvement Act of 1982 amended Title XI of the Social Security Act to create the Utilization and Quality Control Peer Review Organization (PRO) program which replaces the Professional Standards Review Organization (PSRO) program and streamlines peer review activities. The term PRO has been renamed Quality Improvement Organization (QIO). This collection describes the review functions to be performed by the QIO. It outlines relationships among QIOs, providers, practitioners, beneficiaries, intermediaries, and carriers. *Form Number:* CMS-R-71 (OMB# 0938-0445); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 6,036; *Total Annual Responses:* 6,036; *Total Annual Hours:* 156,846.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by June 24, 2008:

1. *Electronically.* You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05,

7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: April 17, 2008.

Michelle Shortt,

*Director, Regulations Development Group,
Office of Strategic Operations and Regulatory
Affairs.*

[FR Doc. E8-9068 Filed 4-24-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS-2895-PN]

Medicare and Medicaid Programs; The Det Norske Veritas Healthcare, Inc (DNV) for Deeming Authority for Hospitals

AGENCY: Centers for Medicare and
Medicaid Services, HHS.

ACTION: Proposed Notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of a deeming application from Det Norske Veritas Healthcare (DNV) for recognition as a national accrediting organization for hospitals that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Social Security Act requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 27, 2008.

ADDRESSES: In commenting, please refer to file code CMS-2895-PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid

Services, Department of Health and Human Services, *Attention:* CMS-2895-PN, P.O. Box _____, Baltimore, MD 21244-8010.

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-2895-PN, 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: a. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Cindy Melanson, (410) 786-0310.

Patricia Chmielewski, (410) 786-6899.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-2895-PN 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.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospital provided certain requirements are met. Section 1861(e) of the Social Security Act (the Act), establishes distinct criteria for facilities seeking designation as a hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482 specify the conditions that a hospital must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for hospitals.

Generally, in order to enter into an agreement, a hospital must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 482 of our CMS regulations. Thereafter, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the

Medicare conditions. A national accrediting organization applying for deeming authority under part 488, subpart A must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at §§ 488.4 and 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every 6 years or sooner as determined by us.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: Requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of DNV's request for deeming authority for hospitals. This notice also solicits public comment on whether DNV's requirements meet or exceed the Medicare conditions of participation for hospitals.

III. Evaluation of Deeming Authority Request

DNV submitted all the necessary materials to enable us to make a determination concerning its request for approval as a deeming organization for hospitals. This application was determined to be complete on March 12, 2008. Under Section 1865(b)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of DNV will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of DNV's standards for a hospital as compared with Medicare's hospital conditions of participation.
- DNV's survey process to determine the following:
 - The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
 - The comparability of DNV's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- DNV's processes and procedures for monitoring a hospital found out of compliance with DNV's program requirements. These monitoring procedures are used only when DNV identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at § 488.7(d).
- DNV's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- DNV's capacity to provide us with electronic data in ASCII comparable code, and reports necessary for effective validation and assessment of the organization's survey process.
- The adequacy of DNV's staff and other resources, and its financial viability.
- DNV's capacity to adequately fund required surveys.
- DNV's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.
- DNV's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal**

Register announcing the result of our evaluation.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant effect on the rights of States, local or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 11, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–8266 Filed 4–24–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1557–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council, May 19, 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Council will meet to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary of Health and Human Services (the Secretary). This meeting is open to the public.

DATES: *Meeting Date:* Monday, May 19, 2008, from 8:30 a.m. to 5 p.m. d.s.t.

Deadline for Registration without Oral Presentation: Thursday, May 8, 2008, 12 noon, d.s.t.

Deadline for Registration with Oral Presentations: Monday, May 5, 2008, 12 noon, d.s.t.

Deadline for Submission of Oral Remarks and Written Comments: Wednesday, May 7, 2008, 12 noon, d.s.t.

Deadline for Requesting Special Accommodations: Monday, May 12, 2008, 12 noon, d.s.t.

ADDRESSES: *Meeting Location:* The meeting will be held in Room 705A in the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Submission of Testimony: Testimonies should be mailed to Kelly Buchanan, Designated Federal Official (DFO), Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop C4-13-07, Baltimore, MD 21244-1850, or contact the DFO via e-mail at PPAC@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Kelly Buchanan, DFO, (410) 786-6132, or e-mail PPAC@cms.hhs.gov. News media representatives must contact the CMS Press Office, (202) 690-6145. Please refer to the CMS Advisory Committees' Information Line (1-877-449-5659 toll free), (410) 786-9379 local) or the Internet at <http://www.cms.hhs.gov/home/regsguidance.asp> for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Secretary is mandated by section 1868(a)(1) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and manual instructions related to physician services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the Council's consultation must occur before **Federal Register** publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) not later than December 31 of each year.

The Council consists of 15 physicians, including the Chair. Members of the

Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms.

Section 1868(a)(2) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Section 1868(a)(3) of the Act provides for payment of expenses and per diem for Council members in the same manner as members of other advisory committees appointed by the Secretary. In addition to making these payments, the Department of Health and Human Services and CMS provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs in a manner to ensure appropriate balance of the Council's membership.

The Council held its first meeting on May 11, 1992. The current members are: Vincent J. Bufalino, M.D., Chairperson; M. Leroy Sprang, M.D.; Karen S. Williams, M.D.; Jonathon E. Siff, M.D., MBA; John E. Arradondo, M.D., MPH; Tye J. Ouzounian, M.D.; Arthur D. Snow, Jr., M.D.; Gregory J. Przybylski, M.D.; Jeffrey A. Ross, DPM, M.D.; and Roger L. Jordan, O.D. Four new members to be sworn on May 19th include: Joseph Giaimo, D.O.; Pamela Howard, M.D.; Fredrica Smith, M.D.; and Christopher Standaert, M.D.

II. Meeting Format and Agenda

The meeting will commence with the Council's Executive Director providing a status report, and the CMS responses to the recommendations made by the Council at the March 3, 2008 meeting, as well as prior meeting recommendations. Additionally, an update will be provided on the Physician Regulatory Issues Team. In accordance with the Council charter, we are requesting assistance with the following agenda topics:

- Recovery Audit Contractors (RAC) Update.
- National Provider Identifier (NPI) Update.
- CMS Quality Agenda, which includes the following:

- 9th Scope of Work.
- Physician Quality Reporting Initiative (PQRI) Update.
- Quality Measures: Hospital Compare; Nursing Home Compare.

For additional information and clarification on these topics, contact the DFO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to present a 5-minute oral testimony on agenda issues must register with the DFO by the date listed in the **DATES** section of this notice. Testimony is limited to agenda topics only. The number of oral testimonies may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to the DFO for distribution to Council members for review before the meeting by the date listed in the **DATES** section of this notice. Physicians and medical organizations not scheduled to speak may also submit written comments to the DFO for distribution by the date listed in the **DATES** section of this notice.

III. Meeting Registration and Security Information

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at (410) 786-6132 by the date specified in the **DATES** section of this notice.

Since this meeting will be held in a Federal Government Building, the Hubert H. Humphrey Building, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to accommodate security procedures. In order to gain access to the building, participants will be required to show a government-issued photo identification (for example, driver's license or passport), and must be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will not be permitted into the Hubert H. Humphrey Building and will not be permitted to attend the Council meeting.

All persons entering the building are subject to inspection via metal detector or other means applicable. In addition, all items brought to the Hubert H. Humphrey Building, whether personal or for the purpose of presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any

personal belongings or items used for the purpose of presentation.

Individuals requiring sign language interpretation or other special accommodation must contact the DFO via the contact information specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date listed in the **DATES** section of this notice.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, section 10(a)).)

Dated: April 4, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8-8231 Filed 4-24-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for Child Support under Title IV-D of the Social Security Act (OCSE-100 and OCSE-21-U4).

OMB No.: 0970-0017.

Description: The State plan preprint pages and amendments serve as a contract between the Office of Child Support Enforcement and State and Territory IV-D agencies. These State plan preprint pages and amendments outline the activities States and Territories will perform as required by law, in Section 454 of the Social Security Act, in order for States and Territories to receive Federal funds to meet the costs of child support enforcement.

Respondents: State and Territory IV-D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan (OCSE-100)	54	1	0.5	216
OCSE-21-U4	54	1	0.25	108

Estimated Total Annual Burden Hours: 324.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 15, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E8-9040 Filed 4-24-08; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-D-0030] (formerly Docket No. 2004D-0466)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act

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 May 27, 2008.

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, or e-mailed to baguilar@omb.eop.gov. All comments should be identified with the OMB control number 0910-NEW and title,

“Draft Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act.” 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.

Draft Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act—(OMB Control Number 0910-NEW)

Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(6)) requires that a manufacturer of a dietary supplement making a nutritional deficiency, structure/function, or general well-being claim have substantiation that the statement is truthful and not misleading. The draft guidance document entitled “Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act” (November 9,

2004; 69 FR 64962) is intended to describe the amount, type, and quality of evidence FDA recommends a dietary supplement manufacturer have to substantiate a claim under section 403(r)(6) of the act. The draft guidance does not discuss the types of claims that can be made concerning the effect of a dietary supplement on the structure or

function of the body, nor does it discuss criteria to determine when a statement about a dietary supplement is a disease claim. Persons with access to the Internet may obtain the draft guidance at the following Web site: <http://www.cfsan.fda.gov/~dms/guidance.html>. A copy of the draft guidance also is available for public

examination in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

In the **Federal Register** of January 28, 2008 (73 FR 4875), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

Claim Type	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
Widely known, established	667	1	667	44	29,348
Pre-existing, not widely established	667	1	667	120	80,040
Novel	667	1	667	120	80,040
Total					189,428

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dietary supplement manufacturers will only need to collect information to substantiate their product's nutritional deficiency, structure/function, or general well-being claim if they chose to place a claim on their product's label. Gathering evidence on their product's claim is a one time burden; they collect the necessary substantiating information for their product as required by section 403(r)(6) of the act.

The standard discussed in the draft guidance for substantiation of a claim on the labeling of a dietary supplement is consistent with standards set by the Federal Trade Commission for dietary supplements and other health-related products that the claim be based on competent and reliable scientific evidence. This evidence standard is broad enough that some dietary supplement manufacturers may only need to collect peer-reviewed scientific journal articles to substantiate their claims; other dietary supplement manufacturers whose products have properties that are less well documented may have to conduct studies to build a body of evidence to support their claims. It is unlikely that a dietary supplement manufacturer will attempt to make a claim when the cost of obtaining the evidence to support the claim outweighs the benefits of having the claim on the product's label. It is likely that manufacturers will seek substantiation for their claims in the scientific literature.

The time it takes to assemble the necessary scientific information to support their claims depends on the product and the claimed benefits. If the product is one of several on the market making a particular claim for which

there is adequate publicly available and widely established evidence supporting the claim, then the time to gather supporting data will be minimal; if the product is the first of its kind to make a particular claim or the evidence supporting the claim is less publicly available or not widely established, then gathering the appropriate scientific evidence to substantiate the claim will be more time consuming.

FDA assumes that it will take 44 hours to assemble information needed to substantiate a claim on a particular dietary supplement when the claim is widely known and established. We increased this estimated burden from 1 hour per claim to 44 hours per claim based on information received from industry, as noted in our June 7, 2007, document in response to comment 1 (72 FR 31583 and 31584). FDA believes it will take closer to 120 hours to assemble supporting scientific information when the claim is novel or when the claim is pre-existing but the scientific underpinnings of the claim are not widely established. These are claims that may be based on emerging science, where conducting literature searches and understanding the literature takes time. It is also possible that references for claims made for some dietary ingredients or dietary supplements may primarily be found in foreign journals and in foreign languages or in the older, classical literature where it is not available on computerized literature databases or in the major scientific reference databases, such as the National Library of Medicine's literature database, all of which increases the time of obtaining substantiation.

In the **Federal Register** of January 6, 2000, FDA published a final rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body (65 FR 1000). FDA estimated that there were 29,000 dietary supplement products marketed in the United States (65 FR 1000 at 1045). Assuming that the flow of new products is 10 percent per year, then 2,900 new dietary supplement products will come on the market each year. The structure/function final rule estimated that about 69 percent of dietary supplements have a claim on their labels, most probably a structure/function claim (65 FR 1000 at 1046). Therefore, we assume that supplement manufacturers will need time to assemble the evidence to substantiate each of the 2,001 claims (2,900 × 69 percent) made each year. If we assume that the 2,001 claims are equally likely to be pre-existing widely established claims, novel claims, or pre-existing claims that are not widely established, then we can expect 667 of each of these types of claims to be substantiated per year. Table 1 of this document shows that the annual burden hours associated with assembling evidence for claims is 189,428 (the sum of 667 × 44 hours, 667 × 120 hours, and 667 × 120 hours).

There are no capital costs or operating and maintenance costs associated with this information collection.

Dated: April 17, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-8973 Filed 4-24-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel LIRR and RIBT Member Conflicts 1.

Date: May 1, 2008.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: George M. Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301-435-0696, barnasg@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-9000 Filed 4-24-08; 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 Neurotoxicology and Alcohol Study Section, June 3, 2008, 8 a.m. to June 4, 2008, 5 p.m., Sir Francis

Drake Hotel, 450 Powell Street, San Francisco, CA 94102, which was published in the **Federal Register** on April 4, 2008, 73 FR 18539-18542.

The meeting will be held one day only June 3, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-9001 Filed 4-24-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 15, 2008, 10 a.m., to May 16, 2008, 8 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on April 11, 2008, 73 FR 19855-19857.

The meeting will be held one day only, May 16, 2008, from 11 a.m. to 4 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-9002 Filed 4-24-08; 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 Hematopoiesis Study Section, June 5, 2008, 8 a.m. to June 6, 2008, 11 a.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814, which was published in the **Federal Register** on April 11, 2008, 73 FR 19855-19857.

The meeting will be held one day only June 5, 2008, from 8 a.m. to 7 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-9005 Filed 4-24-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee (MDCC).

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Date: June 23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: The 2008 meeting of the MDCC will focus on the themes of therapy development and living with muscular dystrophy. MDCC members will review their activities related to the goals of the Action Plan for the Muscular Dystrophies which can be found on the MDCC website listed below. Other activities planned for the meeting include a presentation on opportunities for therapy development in myotonic dystrophy, a discussion of muscular dystrophy workforce needs, and a discussion of recent successful collaborations and new opportunities for partnering among the muscular dystrophy community, including the Fields Center for FSHD and Neuromuscular Disease and the Translational Research in Europe—Assessment and Treatment of Neuromuscular Disease (TREAT-NMD) network. An agenda will be posted prior to the meeting on the MDCC Web site: http://www.ninds.nih.gov/find_people/groups/mdcc/index.htm.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: John D. Porter, PhD, Executive Secretary, Muscular Dystrophy Coordinating Committee, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, NSC 2172, Bethesda, MD 20892, (301) 496-5739, porterjo@ninds.nih.gov.

Any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-9012 Filed 4-24-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Biomedical Imaging and Bioengineering, May 16, 2008, 9 a.m. to 5 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, Maryland 20817, which was published in the **Federal Register** on April 9, 2008, 73 FR 19230.

The meeting start time has been changed from 9 a.m. to 8:30 a.m. The meeting location remains the same.

Dated: April 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-9004 Filed 4-24-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 23, 2008.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 3:45 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidddk.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: May 23, 2008.

Open: 1 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidddk.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: May 23, 2008.

Open: 1 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidddk.nih.gov.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: May 23, 2008.

Open: 1 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, Msc 5452, Bethesda, MD 20892, (301) 594-8843, stanfibr@nidddk.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nidddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8985 Filed 4-24-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Training Grant and Career Development Review Committee.

Date: May 19–20, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Marriott Washington DC Hotel & Resorts, 1221 22nd Street, NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Nsc; 6001 Executive Blvd., Ste. 3208, Bethesda, Md 20892–9529, 301–496–9223, saavedrr@ninds.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8997 Filed 4–24–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel Antigen Presentation in Autoimmunity.

Date: May 23, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive 3121, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAD, 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: April 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8998 Filed 4–24–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0224]

Announcement of Public Meeting Regarding the Naheola Railroad Bridge Across the Black Warrior-Tombigbee Waterway, Mile 173.5, Near Pennington, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard will hold a public meeting for citizens to provide oral comments relating to the alteration of the Naheola Railroad Bridge near Pennington, Alabama. The meeting will allow interested persons to present comments and information about the bridge being unreasonably obstructive to navigation. The meeting will be open to the public.

DATES: The meeting will be held on May 21, 2008, from 1 p.m. to 5 p.m. If you would like to submit written materials as part of the meeting record or request to make an oral presentation at the meeting please provide your information to the District Bridge Administrator no later than May 16, 2008. If you wish to add comments directly to the Docket, they must reach the Coast Guard no later than May 16, 2008.

ADDRESSES: The meeting will be held at the Alabama's Delta Resource Center, 30945 Five Rivers Boulevard, Spanish Fort, Alabama 36527. Send written material, requests to make oral presentation or comments to Commander (dwb), Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, Room 2.107F, Saint Louis, Missouri 63103.

All other comments and materials may be submitted under the Coast Guard docket number USCG–2008–0224 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice call Mr. Roger K. Wiebusch, Bridge Administrator, telephone (314) 269–2378. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this action by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2008–0224), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov> at any time, click on “Search for Dockets,” and enter the docket number for this notice (USCG–2008–0224) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the Ground Floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received 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 the Department of Transportation’s Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Background

Complaints have been received alleging that the bridge is unreasonably obstructive to navigation. Information available to the Coast Guard indicates numerous bridge allisions have occurred between 1995 and 2007. The

navigation opening of the bridge is 150 feet and causes significant delays to commercial water traffic. Mariners transit the bridge under a non-navigation span when possible. During periods of high water mariners often double trip the bridge, which adds many hours to the bridge transit. Based on the comments received at the public meeting, the bridge may be found to be unreasonably obstructive to navigation. Such a finding may require relocating and increasing the horizontal clearance of the railroad bridge to meet the reasonable needs of navigation.

Procedural

The hearing is open to the public. Attendees at the meeting, who wish to present testimony and have not previously made a request to do so, will follow those having submitted a request, as time permits. If a large number of persons wish to speak, the presiding officer may limit the time allotted to each speaker. Conversely, the public meeting may end early if all present wishing to speak have done so.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Dated: March 20, 2008.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. E8–9008 Filed 4–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Law Enforcement Training Center

[Docket No. FLETC–2008–0001]

State and Local Training Advisory Committee

AGENCY: Federal Law Enforcement Training Center (FLETC), DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: On April 9, 2008, the Federal Law Enforcement Training Center announced in the **Federal Register** at 69 FR 19233 that the State and Local Training Advisory Committee would meet on April 17, 2008, in Jekyll Island, Georgia. This notice supplements that original meeting notice.

DATES: The State and Local Advisory Committee meeting met on April 17, 2008, from 8 a.m. to 3 p.m.

ADDRESSES: The meeting was held at the Jekyll Island Club Hotel, 371 Riverview Drive, Jekyll Island, Georgia.

FOR FURTHER INFORMATION CONTACT:

Reba Fischer, Designated Federal Officer, Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524; (912) 267–2343; reba.fischer@dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The mission of the Advisory Committee to the Office of State and Local Training is to advise and make recommendations on matters relating to the selection, development, content and delivery of training services by the OSL/FLETC to its State, local, campus, and tribal law enforcement customers.

The State and Local Advisory Committee met for the purpose of discussing strategic planning; training needs of state, local, campus, and tribal law enforcement officers; validation of training; and training initiatives. The meeting was open to the public.

The Federal Advisory Committee Act requires that notices of meetings of advisory committees be announced in the **Federal Register** 15 days prior to the meeting date. A notice of the meeting of the State and Local Advisory Committee was published in the **Federal Register** on April 9, 2008, 8 days prior to the meeting due to a mail delivery delay (overnight mail delayed for 6 days). Although the meeting notice was published in the **Federal Register** late, the Federal Law Enforcement Training Center made notice of the meeting in sufficient time for planning purposes to the state and local law enforcement sector via FLETC’s notification system and to the public via the Federal Advisory Committee Act Database (<http://www.fido.gov/facadatabase>).

Dated: April 10, 2008.

Malcolm Adams,

Acting Deputy Assistant Director, Office of State and Local Training.

[FR Doc. E8–9124 Filed 4–24–08; 8:45 am]

BILLING CODE 4810–32–P

DEPARTMENT OF HOMELAND SECURITY**Transportation Security Administration**

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Date for the Port of Hueneme, CA

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the date for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Port of Hueneme, CA.

DATES: TWIC enrollment begins in Hueneme on May 1, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at <http://www.regulations.gov>;

(2) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>; or

(3) Visiting TSA's Security Regulations Web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: credentialing@dhs.gov.

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast

Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Port of Hueneme, CA, on May 1, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Los Angeles/Long Beach, including those in the Port of Hueneme must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at <http://www.tsa.gov/twic>.

Issued in Arlington, Virginia, on April 18, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E8–8988 Filed 4–24–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****Approval of Intertek USA, Inc., as a Commercial Gauger**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek USA, Inc., 139 Castle Coakley Suite #8, St. Croix, VI 00820, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border

Protection by calling (202) 344–1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The approval of Intertek USA, Inc., as commercial gauger became effective on January 15, 2008. The next triennial inspection date will be scheduled for January 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 18, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–9119 Filed 4–24–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Proposed Information Collection; OMB Control Number 1018–0103, Conservation Order for Control of Mid-Continent Light Geese**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on June 30, 2008. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before June 24, 2008.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); hope_grey@fws.gov (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see **ADDRESSES**) or by telephone at (703) 358-2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The number of light geese (lesser snow and Ross' geese) in the mid-continent region has nearly quadrupled during the past several decades due to a decline in adult mortality and an increase in winter survival. Lesser snow and Ross' geese are referred to as light geese because of their light coloration as opposed to dark geese such as white-fronted or Canada Geese. Because of their feeding activity, light geese have become seriously injurious to their habitat as well as to habitat important to other migratory birds. This poses a serious threat to the short- and long-term health and status of some migratory bird populations. We believe that the number of light geese in the mid-continent region has exceeded long-term sustainable levels for their arctic and subarctic breeding habitats and that the populations must be reduced. 50 CFR 21 provides authority for the management of overabundant mid-continent light geese.

Light geese in the mid-continent region are separated into two different populations for management purposes. Lesser snow and Ross' geese that primarily migrate through North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri, and winter in Arkansas, Louisiana, Mississippi, and eastern, central, and southern Texas and other Gulf States are referred to as the mid-continent population of light geese. Lesser snow and Ross' geese that primarily migrate through Montana, Wyoming, and Colorado and winter in New Mexico, northwestern Texas, and Chihuahua, Mexico, are referred to as Western Central Flyway population of light geese.

States that participate in the light geese conservation order must inform and brief all participants on the requirements in 50 CFR 21.60 and conservation order conditions that apply to the implementation of light geese control measures. Participating States must collect information on the number of birds taken during control efforts, the methods by which they were taken, and the date on which they were taken. We use this information to administer the conservation order and, particularly, to monitor the effectiveness of control strategies and to protect migratory birds. Each participating State must submit an annual report summarizing the activities it conducted.

II. Data

OMB Control Number: 1018-0103.

Title: Conservation Order for Control of Mid-Continent Light Geese, 50 CFR 21.60.

Service Form Number(s): None.

Type of Request: Extension of a currently approved collection.

Affected Public: States participating in the conservation order.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Estimated Annual Number of Respondents: 24.

Estimated Total Annual Responses: 24.

Estimated Time Per Response: 74 hours.

Estimated Total Annual Burden Hours: 1,776.

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. 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.

Dated: February 13, 2008.

Hope Grey,

*Information Collection Clearance Officer,
Fish and Wildlife Service.*

[FR Doc. E8-9063 Filed 4-24-08; 8:45 am]

BILLING CODE 4310-55-S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Information Collection; OMB Control Number 1018-0115, Application for Training at the National Conservation Training Center

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on June 30, 2008. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before June 24, 2008.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); hope_grey@fws.gov (e-mail); or (703) 358-2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see **ADDRESSES**) or by telephone at (703) 358-2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Fish and Wildlife Service National Conservation Training Center (NCTC) in Shepherdstown, West Virginia, provides natural resource and other professional training for Service employees, employees of other Federal agencies, and other affiliations. While most training is for Service employees, NCTC offers student slots to State agencies, private individuals, not-for-profit organizations, and university personnel.

NCTC designed FWS Form 3-2193 (Training Application) as a quick and easy method for prospective students to request training. We encourage applicants to use FWS Form 3-2193 and to submit their requests electronically. However, we do not require applicants to complete both a training form required by their agency and FWS Form 3-2193. NCTC will accept any single training request as long as each

submission identifies the name, address, and phone number of the applicant, sponsoring agency, class and start date, and financial payment information.

NCTC uses data from the form to generate class rosters, class transcripts, and statistics, and as a budgeting tool for projecting training requirements. It is also used to track attendance, mandatory requirements, tuition, and invoicing for all NCTC-sponsored courses both on- and off-site.

II. Data

OMB Control Number: 1018-0115.

Title: Application for Training at the National Conservation Training Center
Service Form Number(s): 3-2193.

Type of Request: Extension of a currently approved collection.

Affected Public: Persons who wish to participate in training given at or sponsored by the NCTC.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion when applying for training at NCTC.

Estimated Annual Number of Respondents: 720.

Estimated Total Annual Responses: 720.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 60.

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. 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.

Dated: February 13, 2008.

Hope Grey,

*Information Collection Clearance Officer,
Fish and Wildlife Service.*

[FR Doc. E8-9064 Filed 4-24-08; 8:45 am]

BILLING CODE 4310-55-S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-644]

In the Matter of: Certain Composite Wear Components and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 24, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Magotteaux International S/A of Belgium and Magotteaux, Inc. of Franklin, Tennessee. A letter supplementing the complaint was filed on April 11, 2008. The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain composite wear components and products containing the same that infringe all of the claims of U.S. Patent No. RE 39,998. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by

accessing its Internet server 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>.

FOR FURTHER INFORMATION CONTACT:

Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 21, 2008, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain composite wear components and products containing the same that infringe one or more of claims 1-22 of U.S. Patent No. RE 39,998, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Magotteaux International S/A, Rue A. Dumont, Vaux-sous-Chèvremont, RPM Liege—Belgium 405,785,543. Magotteaux, Inc., 725 Cool Springs Boulevard, Franklin, Tennessee 37067.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

AIA Engineering Limited, Plot No. 115, Gujarat Vyapari Maha Mandal, Industrial Estate, Odhav Road, Ahmedabad 38240, Gujarat, India. Vega Industries, 330 Franklin Road, Suite 135-180, Brentwood, Tennessee 37027.

F.A.R. Fonderie Acciaierie Roiale S.p.A., Via Leonardo da Vinci no. 11, 33010 Reana del Roiale, Udine, Italy.

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401B, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Theodore R. Essex is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 22, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-9070 Filed 4-24-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 22, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/>

[public/do/PRAMain](http://public.do/PRAMain) or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: king.darrin@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Bridget Dooling, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not toll-free numbers), E-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Request for Examination and/or Treatment.

OMB Control Number: 1215-0066.

Form Numbers: LS-1.

Total Estimated Number of Respondents: 25,000.

Total Estimated Annual Burden Hours: 81,000.

Total Estimated Annual Cost Burden: \$3,558,000.

Affected Public: Individuals or households.

Description: The information collected on Form LS-1 is used by the Department's Longshore Division to verify that proper medical treatment has been authorized by the employer/insurance carrier, and to determine the

severity of a claimant's injuries and thus his/her entitlement to compensation benefits. The employers/insurance carriers are responsible by law to provide these benefits if a claimant is medically unable to work as a result of a work-related injury. If the information were not collected, verification of authorized medical care and entitlement to compensation benefits would not be possible. For additional information, see related notice published at 73 FR 2947 on January 16, 2008.

Agency: Employment Standards Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Rehabilitation Plan and Award.

OMB Control Number: 1215-0067.

Form Numbers: OWCP-16.

Total Estimated Number of Respondents: 7,000.

Total Estimated Annual Burden Hours: 3,500.

Total Estimated Annual Cost Burden: \$0.

Affected Public: Business or other for-profit.

Description: Form OWCP-16 serves to document the agreed upon plan for rehabilitation services submitted by the injured worker and vocational rehabilitation counselor, and OWCP's award of payment from funds provided for rehabilitation. For additional information, see related notice published at 73 FR 2946 on January 16, 2008.

Agency: Employment Standards Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: Report of Changes That May Affect Your Black Lung Benefits.

OMB Control Number: 1215-0084.

Form Numbers: CM-929 and CM-929P.

Total Estimated Number of Respondents: 70,000.

Total Estimated Annual Burden Hours: 15,269.

Total Estimated Annual Cost Burden: \$0.

Affected Public: Individuals or households.

Description: The CM-929 is used to help determine continuing eligibility of primary beneficiaries receiving black lung benefits from the Black Lung Disability Trust Fund. For additional information, see related notice published at 72 FR 70616 on December 12, 2007.

Agency: Employment Standards Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Claim adjudication process for alleged presence of pneumoconiosis.

OMB Control Number: 1215-0090.

Form Numbers: CM-933; CM-933B; CM-988; CM-1159; and CM-2907.

Total Estimated Number of Respondents: 17,500.

Total Estimated Annual Burden Hours: 4,259.

Total Estimated Annual Cost Burden: \$0.

Affected Public: Business or other for-profits.

Description: 20 CFR 718 specifies that certain information relative to the medical condition of a claimant who is alleging the presence of pneumoconiosis be obtained as a routine function of the claim adjudication process. The medical specifications in the regulations have been formatted in a variety of forms to promote efficiency and accuracy in gathering the required data. These forms were designed to meet the need to gather medical evidence. For additional information, see related notice published at 73 FR 5592 on January 30, 2008.

Agency: Employment Standards Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Claim for Continuance of Compensation.

OMB Control Number: 1215-0154.

Form Numbers: CA-12.

Total Estimated Number of Respondents: 4,850.

Total Estimated Annual Burden Hours: 403.

Total Estimated Annual Cost Burden: \$1,988.

Affected Public: Individuals or households.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act, 5 U.S.C. 8133. Under the Act, eligible dependents of deceased employees receive compensation benefits on account of the employee's death. OWCP has to monitor death benefits for current marital status, potential for dual benefits, and other criteria for qualifying as a dependent under the law. The Form CA-12 is sent annually to beneficiaries in death cases to ensure that their status has not changed and that they remain entitled to benefits. In most cases, it is a matter of ensuring that a widow, widower, or child is still living and has not married so as to make them ineligible. The Form

CA-12 is established for this purpose under 20 CFR 10.414. For additional information, see related notice published at 72 FR 69230 on December 7, 2007.

Agency: Employment Standards Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act.

OMB Control Number: 1215-0158.

Form Numbers: WH-520.

Total Estimated Number of Respondents: 100.

Total Estimated Annual Burden Hours: 7.

Total Estimated Annual Cost Burden: \$0.

Affected Public: Farms.

Description: Any person who owns or controls a facility or real property to be used for housing migrant agricultural workers cannot permit any such worker to occupy the housing unless a copy of a certificate of occupancy from the state, local, or federal agency that conducted the housing safety and health inspection is posted at the site of the facility or real property. 29 U.S.C. 1823(b)(1); 29 CFR 500.135(b). The certificate attests that the facility or real property meets applicable safety and health standards. For additional information, see related notice published at 72 FR 70617 on December 12, 2007.

Agency: Employment Standards Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Notice of Recurrence.

OMB Control Number: 1215-0167.

Form Numbers: CA-2a.

Total Estimated Number of Respondents: 680.

Total Estimated Annual Burden Hours: 340.

Total Estimated Annual Cost Burden: \$299.

Affected Public: Individuals or households.

Description: The Office of Workers' Compensation Programs administers the Federal Employees' Compensation Act, (5 U.S.C. 8101, *et seq.*), which provides for continuation of pay or compensation for work related injuries or disease that result from Federal Employment. Regulation 20 CFR 10.104 designates Form CA-2a as the form to be used to request information from claimants with previously accepted injuries who claim a recurrence of disability, and from their

supervisors. The form requests information relating to the specific circumstances leading up to the recurrence as well as information about their employment and earnings. For additional information, see related notice published at 72 FR 71699 on December 18, 2007.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8-9097 Filed 4-24-08; 8:45 am]

BILLING CODE 4510-CF-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,661]

Agilent Technologies Measurement Systems Division, Loveland, CO; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated April 11, 2008, a petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on March 13, 2008. The Notice of determination was published in the **Federal Register** on March 26, 2008 (73 FR 16064).

The determination was based on the Department's findings that workers separations at the subject firm were due to a shift in production of automated X-ray inspection system prototypes (including software code and hardware design functions) to Malaysia, a country that is not a party to a free trade agreement nor a beneficiary country with the United States. The subject firm did not import automated X-ray inspection system prototypes following the shift in production to a foreign source.

The request for reconsideration alleges that Agilent Technologies might be in fact an importer of X-ray inspection systems and software. The petitioner also alleges that the customers of the subject firm also import X-ray inspection systems and software purchased directly from a production facility of Agilent Technologies in Malaysia.

The Department has carefully reviewed the request for reconsideration and will further investigate whether imports of like or directly competitive

products contributed importantly to workers separations at the subject firm.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 17th day of April 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-9103 Filed 4-24-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,875]

Bolton Metal Products Company, Bellefonte, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated April 11, 2008, a petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on March 19, 2008. The Notice of determination will soon be published in the **Federal Register**.

The initial investigation resulted in a negative determination based on the finding that imports of brass rod, wire, and low melt alloys did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding the subject firm's customers and requested the Department of Labor conduct further investigation to determine whether workers of the subject firm are eligible for TAA on the basis of the secondary impact.

The Department has carefully reviewed the requests for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of April 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-9100 Filed 4-24-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,633]

Faurecia Exhaust Systems Including On-Site Leased Workers From Industrial Distribution Group—Midwest Division, Granger, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 15, 2008, applicable to workers of Faurecia Exhaust Systems, Granger, Indiana. The notice was published in the **Federal Register** on February 1, 2008 (73 FR 6212).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive exhaust systems.

New information shows that leased workers of Industrial Distribution Group—Midwest Division were employed on-site at the Granger, Indiana location of Faurecia Exhaust Systems. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Industrial Distribution Group—Midwest Division working on-site at the Granger, Indiana location of the subject firm.

The intent of the Department's certification is to include all workers employed at Faurecia Exhaust Systems, Granger, Indiana who were adversely affected by a shift in production of automotive exhaust systems to Mexico.

The amended notice applicable to TA-W-62,633 is hereby issued as follows:

All workers of Faurecia Exhaust Systems, including on-site leased workers from Industrial Distribution Group—Midwest Division, Granger, Indiana, who became totally or partially separated from employment on or after January 2, 2007, through January 15, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-9102 Filed 4-24-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-60,804]

Fedders North America, Inc., Including On-Site Workers of Airwell North America, Effingham, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 9, 2007 to workers of Fedders North America, Effingham, Illinois. The notice was published in the **Federal Register** on February 21, 2007 (72 FR 7908).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of air conditioners, both room and central.

New information shows that Airwell North America purchased the name, distributor list, some inventory and parts of the Effingham, Illinois location of Fedders North America, Inc. Some former workers of the subject firm are

currently employed with Airwell North America working on-site at the Effingham, Illinois location of Fedders North America and are performing the same duties.

Based on these findings, the Department is amending this certification to include all workers of Airwell North America, working on-site at the Effingham, Illinois location of the subject firm.

The intent of the Department's certification is to include all workers employed at Fedders North America, Inc., Effingham, Illinois who were adversely-impacted by increased company imports of air conditioners, both room and central.

The amended notice applicable to TA-W-60,804 is hereby issued as follows:

All workers of Fedders North America, Inc., including on-site workers from Airwell North America, Effingham, Illinois, who became totally or partially separated from employment on or after December 28, 2006, through February 9, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of March 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8977 Filed 4-24-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,606]

Fantech, Inc., RB Kanalfakt, Inc., Kanalfakt, Inc., Sarasota, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 14, 2008, applicable to workers of Fantech, Inc., Sarasota, Florida. The notice was published in the **Federal Register** on February 1, 2008 (73 FR 6212).

At the request of the State agency, the Department reviewed the certification

for workers of the subject firm. The workers are engaged in the production of residential ventilation systems and premium bath fans.

New information shows that RB Kanalfakt, Inc. is the parent firm of Fantech, Inc. and that some of the workers wages at the subject firm are being reported under three Unemployment Insurance (UI) tax accounts: Fantech, Inc., RB Kanalfakt, Inc. and Kanalfakt, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Fantech, Inc. who were adversely affected by a shift in production of residential ventilation systems and premium bath fans to Canada.

The amended notice applicable to TA-W-62,606 is hereby issued as follows:

All workers of Fantech, Inc., RB Kanalfakt, Inc., and Kanalfakt, Inc., Sarasota, Florida, who became totally or partially separated from employment on or after December 20, 2006, through January 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of March 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-9101 Filed 4-24-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,796]

Manosh Hardwoods LLC, Sawmill Including On-Site Leased Workers of Westaff, Inc., Including Workers Whose Wages Were Paid by H.A. Manosh Corporation, Morrisville, VT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 14, 2008, applicable to workers of Manosh

Hardwoods LLC, Sawmill, including on-site leased workers of Westaff, Inc., Morrisville, Vermont. The notice was published in the **Federal Register** on March 26, 2008 (73 FR 16063).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of rough hardwood lumber for floors, furniture, etc.

New information shows that H.A. Manosh Corporation is the parent firm of Manosh Hardwoods LLC, Sawmill. Some workers at the subject firm are involved in the closing of the business, selling off inventory and property, and have their wages reported under a separate unemployment insurance (UI) tax account for H.A. Manosh.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Manosh Hardwoods LLC, Sawmill who were adversely affected by increased customer imports.

The amended notice applicable to TA-W-62,796 is hereby issued as follows:

All workers of Manosh Hardwoods LLC, Sawmill, including on-site leased workers of Westaff, Inc., including workers whose wages were paid by H.A. Manosh Corporation, Morrisville, Vermont, who became totally or partially separated from employment on or after January 23, 2007, through March 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-8974 Filed 4-24-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Determination of Lower Living Standard Income Level.

SUMMARY: Under Title I of the Workforce Investment Act (WIA) of 1998 (Pub. L. 105-220), the Secretary of Labor annually determines the Lower Living Standard Income level (LLSIL) for uses

described in the law. WIA defines the term "Low Income Individual" as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2008 and references the current 2008 Health and Human Services "Poverty Guidelines."

DATES: *Effective Date:* This notice is effective on the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to: Mr. Evan Rosenberg, Department of Labor, Employment and Training Administration, 200 Constitution Ave., NW., Room N-4464, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Evan Rosenberg, telephone 202-693-3593; fax 202-693-3532 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: It is the purpose of the Workforce Investment Act of 1998 "to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation."

The LLSIL is used for several purposes under WIA. Specifically, WIA section 101(25) defines the term "low income individual" for eligibility purposes, and sections 127(b)(2)(C) and 132(b)(1)(B)(v)(IV) define the terms "disadvantaged youth" and "disadvantaged adult" in terms of the poverty line or LLSIL for state formula allotments. The Governor and state/local workforce investment boards (WIBs) use the LLSIL for determining eligibility for youth, eligibility for employed adult workers for certain services and for the Work Opportunity Tax Credit (WOTC). We encourage the Governors and state/local WIBs to consult WIA regulations and the preamble to the WIA Final Rule (published at 65 FR 49294 August 11, 2000) for more specific guidance in applying the LLSIL to program requirements. The Department of Health and Human Services (HHS) published the annual 2008 update of the poverty-level guidelines in the **Federal Register** at 72 FR 3147-3148 on Jan. 23, 2008. The HHS 2008 Poverty guidelines may also be found on the Internet at: <http://aspe.hhs.gov/poverty/08fedreg.pdf>. ETA plans to have the

2008 LLSIL available on its Web site at [<http://www.doleta.gov/llsil/2008/>].

WIA section 101(24) defines the LLSIL as "that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary." The most recent lower living family budget was issued by the Secretary in the fall of 1981. The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA through which ETA develops the LLSIL tables, as provided in the Appendices.

ETA published the 2007 updates to the LLSIL in the **Federal Register** of June 4, 2007, at 72 FR 30858. This notice again updates the LLSIL to reflect cost of living increases for 2007, by applying the percentage change in the December 2007 Consumer Price Index for All Urban Consumers (CPI-U), compared with the December 2006 CPI-U to each of the June 4, 2007, LLSIL figures. Those updated figures for a family-of-four are listed in Appendix A, Table 1, by region for both metropolitan and non-metropolitan areas. Figures in all of the accompanying tables, in the Appendices, are rounded up to the nearest dollar. Since low income individuals, "disadvantaged adult" and "disadvantaged youth" may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections 101(25), 127(b)(2)(C), and 132(b)(1)(B)(v)(IV), respectively, those figures are listed as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut.
Maine.
Massachusetts.
New Hampshire.
New Jersey.
New York.
Pennsylvania.
Rhode Island.
Vermont.
Virgin Islands.

Midwest

Illinois.
Indiana.
Iowa.
Kansas.
Michigan.
Minnesota.
Missouri.

Nebraska.
North Dakota.
Ohio.
South Dakota.
Wisconsin.

South

Alabama.
American Samoa.
Arkansas.
Delaware.
District of Columbia.
Florida.
Georgia.
Northern Marianas.
Oklahoma.
Palau.
Puerto Rico.
South Carolina.
Kentucky.
Louisiana.
Marshall Islands.
Maryland.
Micronesia.
Mississippi.
North Carolina.
Tennessee.
Texas.
Virginia.
West Virginia.

West

Arizona.
California.
Colorado.
Idaho.
Montana.
Nevada.
New Mexico.
Oregon.
Utah.
Washington.
Wyoming.

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Appendix B, Table 2.

For Alaska, Hawaii, and Guam, the year 2007 figures were updated from the June 4, 2007, "State Index" based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected MSAs are also available. These are based on semiannual CPI-U changes for a 12-month period ending in December 2007. The updated LLSIL figures for these MSAs and 70 percent of the LLSIL are reported in Appendix C, Table 3.

Appendix D, Table 4 lists each of the various figures at 70 percent of the updated 2008 LLSIL for family sizes of one to six persons. Because tables 1-3 only list the LLSIL for a family of four, table 4 can be used to determine the LLSIL for families of one to six persons. For families larger than six persons, an amount equal to the difference between

the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. A modified Excel version of Appendix D, Table 4, with the area names, will be available on the Department of Labor, Employment and Training Administration LLSIL Webpage at (<http://www.doleta.gov/llsil/2008/>). Appendix E, Table 5, indicates 100 percent of LLSIL for family sizes of one to six and is used to determine self-sufficiency as noted at 20 CFR 663.230 of the WIA regulations and WIA Section 134(d)(3)(A)(ii).

Use of These Data

Governors should designate the appropriate LLSILs for use within the State from Appendices A, B, and C, containing Tables 1 through 3. Appendices D and E, which contain Tables 4 and 5, may be used with any LLSIL designated. The Governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan

areas within the State or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures for Northeast metropolitan, Northeast non-metropolitan, portions of the State in the New York City MSA, and those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one figure, the Governor may determine which is to be used.

Under 20 CFR 661.110, a State's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with the WIA and the WIA regulations.

Disclaimer on Statistical Uses

It should be noted, the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI-U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because

certain tax items were included in the 1981 LLSIL, but are not in the CPI-U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIA as defined in the law and regulations.

Lower Living Standard Income Level for 2008

Under Title I of the Workforce Investment Act of 1998 (Pub. L. 105—220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL). This Notice announces the LLSIL Tables for 2008. WIA requires the Department of Labor to update and publish the LLSIL tables annually. The LLSIL tables are used for several purposes under WIA, including determining eligibility for youth and for the Work Opportunity Tax Credit.

Signed at Washington, DC, this 18th of April, 2008.

Brent R. Orrell,

Acting Assistant Secretary, Employment and Training Administration.

Attachments

Appendix A

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS) BY REGION ¹

Region ²	2008 Adjusted LLSIL	70 Percent LLSIL
Northeast:		
Metro	\$37,441	\$26,208
Non-Metro ³	36,050	25,235
Midwest:		
Metro	33,298	23,309
Non-Metro	31,881	22,317
South:		
Metro	32,176	22,523
Non-Metro	30,740	21,518
West:		
Metro	36,664	25,665
Non-Metro ⁴	35,409	24,786

¹ For ease of use, these figures are rounded to the next highest dollar.

² Metropolitan area measures were calculated from the weighted average CPI-U's for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI-U's for city size class D.

³ Non-metropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI-U for city size class D.

⁴ Non-metropolitan area percent changes for the West region are unpublished data.

Appendix B

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS)—ALASKA, HAWAII AND GUAM ¹

Region	2008 Adjusted LLSIL	70 Percent LLSIL
Alaska:		
Metro	\$44,250	\$30,975
Non-Metro ²	44,428	31,099
Hawaii, Guam:		
Metro	47,622	33,335
Non-Metro ²	47,430	33,201

¹ For ease of use, these figures are rounded to the next highest dollar.

² Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI—Us for city size class D in the Western Region.

Appendix C

TABLE 3.—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS) 23 MSAs ¹

Metropolitan statistical areas (MSAs)	2008 Adjusted LLSIL	70 Percent LLSIL
Anchorage, AK	\$44,250	\$30,975
Atlanta, GA	31,719	22,203
Boston—Brockton—Nashua, MA/NH/ME/CT	40,864	28,605
Chicago—Gary—Kenosha, IL/IN/WI	35,158	24,611
Cincinnati—Hamilton, OH/KY/IN	33,026	23,118
Cleveland—Akron, OH	34,473	24,131
Dallas—Ft. Worth, TX	30,779	21,545
Denver—Boulder—Greeley, CO	34,312	24,018
Detroit—Ann Arbor—Flint, MI	32,312	22,618
Honolulu, HI	47,622	33,335
Houston—Galveston—Brazoria, TX	29,819	20,873
Kansas City, MO/KS	31,656	22,159
Los Angeles—Riverside—Orange County, CA	38,783	27,148
Milwaukee—Racine, WI	32,338	22,637
Minneapolis—St. Paul, MN/WI	32,544	22,781
New York—Northern NJ—Long Island, NY/NJ/CT/PA	39,572	27,700
Philadelphia—Wilmington—Atlantic City, PA/NJ/DE/MD	36,463	25,524
Pittsburgh, PA	39,203	27,442
St. Louis, MO/IL	31,291	21,904
San Diego, CA	41,459	29,021
San Francisco—Oakland—San Jose, CA	38,904	27,233
Seattle—Tacoma—Bremerton, WA	39,549	27,684
Washington—Baltimore, DC/MD/VA/WV ²	40,013	28,009

¹ For ease of use, these figures are rounded to the next highest dollar.

² Baltimore and Washington are now calculated as a single metropolitan statistical area.

Appendix D

Table 4.—Seventy Percent of Updated 2008 Lower Living Standard Income Level (LLSIL), by Family Size

To use the 70 percent LLSIL value, where it is stipulated for WIA programs, begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. After locating the appropriate region or metropolitan statistical area, find the 70 percent LLSIL amount for that location. The 70 percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a

family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult table 4 and the instructions below.

To use Table 4, locate the 70 percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the "family of four" column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure appears in a shaded block. Individuals from these size families may consult the 2008 HHS poverty guidelines found in the **Federal Register**, Vol. 72, No. 15, January 24, 2008, pp. 3147–3148 (on the Internet at <http://aspe.hhs.gov/poverty/07fedreg.htm>) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states.

BILLING CODE 4510–FT–P

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
\$7,520	\$12,321	\$16,910	\$20,873	\$24,634	\$28,809
\$7,753	\$12,701	\$17,431	\$21,518	\$25,394	\$29,698
\$7,761	\$12,718	\$17,457	\$21,545	\$25,430	\$29,737
\$7,892	\$12,928	\$17,746	\$21,904	\$25,850	\$30,227
\$7,977	\$13,076	\$17,954	\$22,159	\$26,151	\$30,584
\$7,994	\$13,102	\$17,991	\$22,203	\$26,204	\$30,642
\$8,040	\$13,171	\$18,080	\$22,317	\$26,340	\$30,804
\$8,112	\$13,292	\$18,243	\$22,523	\$26,583	\$31,089
\$8,146	\$13,346	\$18,325	\$22,618	\$26,692	\$31,214
\$8,149	\$13,357	\$18,338	\$22,637	\$26,715	\$31,241
\$8,204	\$13,444	\$18,457	\$22,781	\$26,886	\$31,443
\$8,324	\$13,645	\$18,731	\$23,118	\$27,284	\$31,906
\$8,392	\$13,756	\$18,880	\$23,309	\$27,504	\$32,172
\$8,651	\$14,176	\$19,461	\$24,018	\$28,344	\$33,149
\$8,689	\$14,244	\$19,549	\$24,131	\$28,480	\$33,303
\$8,861	\$14,526	\$19,935	\$24,611	\$29,045	\$33,970
\$9,087	\$14,895	\$20,447	\$25,235	\$29,782	\$34,824
\$9,194	\$15,063	\$20,677	\$25,524	\$30,125	\$35,225
\$9,223	\$15,113	\$20,750	\$25,616	\$30,227	\$35,354
\$9,439	\$15,469	\$21,231	\$26,209	\$30,932	\$36,170
\$9,774	\$16,017	\$21,991	\$27,148	\$32,036	\$37,470
\$9,809	\$16,073	\$22,060	\$27,233	\$32,138	\$37,587
\$9,884	\$16,197	\$22,233	\$27,442	\$32,388	\$37,875
\$9,973	\$16,335	\$22,427	\$27,684	\$32,671	\$38,206
\$9,974	\$16,347	\$22,438	\$27,700	\$32,687	\$38,233
\$10,088	\$16,532	\$22,691	\$28,009	\$33,057	\$38,660
\$10,300	\$16,879	\$23,176	\$28,605	\$33,758	\$39,476
\$10,453	\$17,124	\$23,512	\$29,021	\$34,248	\$40,055
\$11,157	\$18,282	\$25,093	\$30,975	\$36,557	\$42,746
\$11,201	\$18,350	\$25,194	\$31,100	\$36,700	\$42,918
\$11,957	\$19,594	\$26,895	\$33,201	\$39,180	\$45,820
\$12,006	\$19,669	\$27,002	\$33,335	\$39,338	\$46,010

Appendix E

Table 5.—Updated 2008 LLSIL (100%), By Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the State or local level,

begin by locating the metropolitan area or region from Table 1, 2 or 3. Then locate the appropriate region or metropolitan statistical area and then find the 2008 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of

four in the column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
\$10,743	\$17,601	\$24,157	\$29,819	\$35,191	\$41,155
\$11,075	\$18,144	\$24,902	\$30,740	\$36,277	\$42,425
\$11,087	\$18,169	\$24,938	\$30,779	\$36,328	\$42,481
\$11,274	\$18,469	\$25,351	\$31,291	\$36,928	\$43,182
\$11,396	\$18,680	\$25,649	\$31,656	\$37,359	\$43,691
\$11,420	\$18,717	\$25,702	\$31,719	\$37,434	\$43,774
\$11,486	\$18,815	\$25,829	\$31,881	\$37,629	\$44,005
\$11,589	\$18,988	\$26,062	\$32,176	\$37,975	\$44,413
\$11,637	\$19,065	\$26,178	\$32,312	\$38,131	\$44,591
\$11,642	\$19,082	\$26,197	\$32,338	\$38,164	\$44,630
\$11,720	\$19,205	\$26,367	\$32,544	\$38,409	\$44,918
\$11,892	\$19,493	\$26,759	\$33,026	\$38,977	\$45,580
\$11,988	\$19,651	\$26,972	\$33,298	\$39,292	\$45,960
\$12,358	\$20,251	\$27,801	\$34,312	\$40,491	\$47,356
\$12,413	\$20,348	\$27,927	\$34,473	\$40,685	\$47,575
\$12,658	\$20,752	\$28,478	\$35,158	\$41,493	\$48,528
\$12,981	\$21,278	\$29,210	\$36,050	\$42,546	\$49,749
\$13,134	\$21,518	\$29,539	\$36,463	\$43,035	\$50,322
\$13,175	\$21,590	\$29,643	\$36,594	\$43,181	\$50,506
\$13,484	\$22,099	\$30,330	\$37,441	\$44,188	\$51,672
\$13,963	\$22,882	\$31,416	\$38,783	\$45,765	\$53,528
\$14,013	\$22,961	\$31,514	\$38,904	\$45,911	\$53,696
\$14,120	\$23,139	\$31,762	\$39,203	\$46,268	\$54,107
\$14,247	\$23,336	\$32,039	\$39,549	\$46,673	\$54,580
\$14,248	\$23,353	\$32,054	\$39,572	\$46,696	\$54,619
\$14,411	\$23,617	\$32,416	\$40,013	\$47,224	\$55,228
\$14,714	\$24,113	\$33,109	\$40,864	\$48,226	\$56,394
\$14,933	\$24,463	\$33,588	\$41,459	\$48,926	\$57,222
\$15,938	\$26,117	\$35,847	\$44,250	\$52,224	\$61,066
\$16,001	\$26,214	\$35,991	\$44,428	\$52,428	\$61,311
\$17,081	\$27,991	\$38,422	\$47,430	\$55,971	\$65,457
\$17,151	\$28,099	\$38,574	\$47,622	\$56,197	\$65,728

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting**

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

ACTION: Maritime Advisory Committee for Occupational Safety and Health; notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health ("MACOSH" or "Committee") was established to advise the Assistant Secretary of Labor for OSHA on issues relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce the MACOSH and workgroup meetings scheduled for May 20–21, 2008.

DATES: The workgroups will meet on May 20, 2008, and MACOSH will meet on May 21, 2008.

ADDRESSES: The Committee and workgroups will meet at the Wyndham Jacksonville Riverwalk Hotel, 1515 Prudential Drive, Jacksonville, FL 32207. The Longshoring workgroup will meet in the Rope Room of the hotel; the other workgroups will meet in the Tug Room of the hotel. MACOSH will meet in the hotel's Port Room. Mail comments, views, or statements in response to this notice to Vanessa L. Welch, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone (202) 693–2086; Fax: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: For general information about MACOSH and this meeting, contact: Joseph V. Daddura, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693–2086. Individuals with disabilities wishing to attend the meeting should contact Vanessa L. Welch at (202) 693–2086 no later than May 5, 2008, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: All MACOSH meetings and workgroup meetings are open to the public. All interested persons are invited to attend

the MACOSH and workgroup meetings at the times and places listed below.

MACOSH will meet from 8 a.m. until approximately 5 p.m. on Wednesday, May 21, 2008, in the hotel's Port Room.

The Shipyards workgroup will meet on Tuesday, May 20, 2008, from 8 a.m. until 10 a.m. in the Tug Room.

The Longshoring workgroup will meet on Tuesday, May 20, 2008, from 8 a.m. until 10 a.m. in the Rope Room.

The Cranes and Falls workgroup will meet on Tuesday, May 20, 2008, from 10 a.m. until 12 p.m. in the Tug Room.

The Outreach and Safety Culture workgroup will meet on Tuesday, May 20, 2008, from 1 p.m. until 3 p.m. in the Tug Room.

The Health workgroup will meet on Tuesday, May 20, 2008, from 3 p.m. until 4 p.m. in the Tug Room.

The meeting times for each workgroup are approximate and subject to change without advance notice.

MACOSH Agenda: The agenda will include: An OSHA activities update; a review of the minutes from the previous meeting; a review of the achievements of the committee during the last 2 years; and reports from each workgroup. MACOSH may also discuss the following topics based on the workgroup reports: spray paint standards and hot work on coatings; the shipbreaking guidance document; electrical standards; the roll-on roll-off cargo guidance document; the International Maritime Organization's initiative on cargo-lashing safety; the flat-rack guidance document; working over water from aerial work platforms; working under a suspended load; the barge safety guidance document; leading indicators; substance abuse; and radiation exposure in marine terminals.

Public Participation: Written data, views, or comments for consideration by MACOSH on the various agenda items listed above should be submitted to Vanessa L. Welch at the address listed above. Submissions received by May 5, 2008, will be provided to Committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items listed above should notify Vanessa L. Welch by May 5, 2008. The request should state the amount of time desired, the capacity in which the

person will appear, and a brief outline of the content of the presentation.

Authority: Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR parts 1911 and 1912.

Signed at Washington, DC, on April 22, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–9045 Filed 4–24–08; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**Sunshine Act Meeting**

April 14, 2008.

TIME AND DATE: 10 a.m., Friday, May 2, 2008.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor v. Phelps Dodge Tyrone, Inc.*, Docket No. CENT 2006–212–RM. (Issues include whether the Administrative Law Judge erred in concluding that an unplanned fire that was not extinguished within 30 minutes occurred and therefore that the operator violated the requirement of 30 CFR 50.10 that such an accident be reported to MSHA within 15 minutes.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. E8–8963 Filed 4–24–08; 8:45 am]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-281]

Virginia Electric And Power Company Surry Power Station, Unit No. 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non- Safeguards Information

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-37 issued to Virginia Electric and Power Company for operation of the Surry Power Station, Unit No. 2 located in Surry County, Virginia.

The proposed amendment would allow a one-cycle revision to Surry Power Station, Unit No. 2 Technical Specifications (TSs). Specifically, TS 6.4.Q, "Steam Generator (SG) Program," and TS 6.6.3, "Steam Generator Tube Inspection Report," will be revised to incorporate an interim alternate repair criterion (IARC) into the provisions for SG tube repair for use during the Surry Power Station, Unit No. 2, 2008 spring refueling outage and the subsequent operating cycle. This amendment application requests approval of an IARC that requires full-length inspection of the tubes within the tubesheet but does not require plugging tubes if any circumferential cracking observed in the region greater than 17 inches from the top of the tubesheet (TTS) is less than a value sufficient to permit the remaining circumferential ligament to transmit the limiting axial loads. This amendment application is required to preclude unnecessary SG tube plugging while still maintaining tube structural and leakage integrity. This amendment application includes SUNSI (proprietary information). Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Of the various accidents previously evaluated, the proposed changes only affect the steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB), and locked rotor evaluations. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model F steam generators has shown that axial loading of the tubes is negligible during an SSE.

At normal operating pressures, leakage from PWSCC below 17 inches from the TTS is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

For the SGTR event, the required structural margins of the steam generator tubes is maintained by limiting the allowable ligament size for a circumferential crack to remain in service to 203 degrees below 17 inches from the TTS for the subsequent operating cycle. Tube rupture is precluded for cracks in the hydraulic expansion region due to the constraint provided by the tubesheet. The potential for tube pullout is mitigated by limiting the allowable crack size to 203 degrees subsequent operating cycle. These allowable crack sizes take into account eddy current uncertainty and crack growth rate. It has been shown that a circumferential crack with an azimuthal extent of 203 degrees for the 18-month SG tubing eddy current inspection interval meets the performance criteria of NEI 97-06, Rev. 2, "Steam Generator Program Guidelines" and Draft Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes." Therefore, the margin against tube burst/pullout is maintained during normal and postulated accident conditions and the proposed change does not result in a significant increase in the probability or consequence of a SGTR.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during postulated accident conditions (including locked rotor) has been shown to remain

within the accident analysis assumptions for all axial or circumferentially oriented cracks occurring 17 inches below the top of the tubesheet. Since normal operating leakage is limited to 150 gpd, the attendant accident condition leak rate, assuming all leakage to be from indications below 17 inches from the top of the tubesheet would be bounded by 470 gpd. This value is within the accident analysis assumptions for the limiting design basis accident for Surry, which is the postulated SLB event.

Based on the above, the performance criteria of NEI-97-06, Rev. 2 and Draft Regulatory Guide (RG) 1.121 continue to be met and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the interim alternate repair criteria. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97-06, Rev. 2 and RG 1.121 are used as the basis in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting GDC 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking in a tube or the tube-to-tubesheet weld, Reference 6 defines a length of remaining tube ligament that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Additionally, it is shown that application of the limited tubesheet inspection depth

criteria will not result in unacceptable primary-to-secondary leakage during all plant conditions.

Based on the above, it is concluded that the proposed changes do not result in any reduction of margin with respect to plant safety as defined in the Updated Final Safety Analysis Report or bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1

F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific

contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in

accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested

not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated April 14, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation Virginia Electric And Power Company, Docket No 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A "potential party" is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office

of the Secretary and the Office of the General Counsel are HearingDocket@nrc.gov and OGCmail@nrc.gov, respectively.¹ The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the licensing action identified in (a) if the licensing action is not sustained;

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF-85, "Questionnaire for Non-Sensitive Positions," Form FD-248 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF-85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's

Office of Administration at 301-415-0320.² The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of [\$191.00] to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: Office of Administration, Security Processing Unit, Mail Stop T-6E46, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. Note: Copies of these forms do *not* need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding³ and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable.

² The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

³ Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.⁴ Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,⁵ and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties

⁴ If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

⁵ Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.*, as with proprietary information).

¹ See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief

Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by

the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.⁶

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those [intervenors/petitioners] who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 21st day of April 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1.—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of proposed action and opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
[20, 30 or 60]	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.

⁶ As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the

filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI

requests submitted to the NRC staff under these procedures.

ATTACHMENT 1.—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING—Continued

Day	Event/activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E8-9087 Filed 4-24-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-424 and 50-425]

Southern Nuclear Operating Company, Inc.; Notice of Availability of the Draft Supplement 34 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meeting for the License Renewal of Vogtle Electric Generating Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG-1437, regarding the renewal of operating licenses NPF-068 and NPF-081 for an additional 20 years of operation for Vogtle Electric Generating Plant, Units 1 and 2 (VEGP). VEGP is located in Burke County, Georgia, approximately 15 miles east-northeast of Waynesboro, GA, and 26 miles southeast of Augusta, GA. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement 34 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or

from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at <http://adamswebsearch.nrc.gov/dologin.html>. The Accession Number for the draft Supplement 34 to the GEIS is ML081080299. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail at pdr@nrc.gov. In addition, the Burke County Library, located at 130 Highway 24 South, Waynesboro, GA 30830, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by July 16, 2008; the NRC staff is able to assure consideration only for comments received on or before this date. Comments received after the due date will be considered only if it is practical to do so. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T-6D59, Rockville, Maryland, between

7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at Vogtle_LR_EIS@nrc.gov. All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS. The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on June 5, 2008, at the Augusta Technical College, Waynesboro Campus, located at 216 Highway 24 South, Waynesboro, GA 30830. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both sessions will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered,

comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. J.P. Leous, the NRC Environmental Project Manager, at 1-800-368-5642, extension 2864, or by e-mail at Vogtle_LR_EIS@nrc.gov no later than May 16, 2008. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. J.P. Leous' attention no later than May 16, 2008, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

For Further Information Contact: Mr. J.P. Leous, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O-11F1, Washington, DC 20555-0001. Mr. Leous may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 21st day of April, 2008.

For the Nuclear Regulatory Commission.

Louise Lund,

Branch Chief, Reactor Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E8-9085 Filed 4-24-08; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. PI2008-4; Order No. 72]

Study on Reduced Postal Rates

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission seeks comments from the public on a study of a postal rule that allows certain fundraising mailings to be sent at reduced rates. The comments will assist the Commission in preparing a statutorily-required report and recommendations.

DATES: Initial comments due June 24, 2008; reply comments due July 24, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3218 (2006), directs the Commission to prepare several reports on special topics. One directive requires the Commission to examine an exception to the cooperative mail rule to determine whether this change in eligibility for reduced postage contains adequate safeguards to protect against abuses of rates for nonprofit mail and deception of consumers. The Commission is to report the results of this examination to the Postal Service, along with any recommendations it deems appropriate. If the Postal Service fails to act thereon, the Commission may take such action it deems necessary to prevent abuse of rates or deception of consumers. See section 711, 120 Stat. 3248 (2006).¹

The Commission establishes Docket No. PI2008-4 to facilitate compliance with the directive in section 711 and seeks comments from the public on the scope and nature of the examination, report, and potential recommendations. 39 U.S.C. 505 requires the designation of an officer of the Commission in all public proceedings to represent the interests of the general public. The Commission designates Katja M. Eichinger to serve as the Public Representative. Pursuant to this designation, Ms. Eichinger will direct the activities of Commission personnel assigned to assist her and, upon request, will provide their names for the record. Neither she nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

II. The Cooperative Mail Rule

The cooperative mail rule is a longstanding provision in the DMM. It traditionally has controlled access to reduced postage rates by limiting the ability of an entity that is eligible for reduced rates to "cooperate" or partner with another entity in a mailing and still retain its reduced rate eligibility for the mailing in question. The rule generally accomplishes this, in brief, by requiring that each cooperating entity independently qualify for nonprofit rates at the post office of mailing; by

requiring that the mail matter being sent be that of the eligible entity; and by prohibiting "sharing" a permit with an entity not authorized to mail at reduced rates. These restrictions effectively foreclose a nonprofit from cooperating with a for-profit entity if the mailing is to be sent at nonprofit rates, unless the cooperation involves a legitimate principal-agent relationship in a fee-for-service arrangement. See DMM § 703.1.6.3.

The traditional rationale for imposing limits on cooperative mailings has been that access to reduced rates is a privilege—initially subsidized by taxpayers, but more recently by other mailers—and that the limits help prevent abuse of this privilege. The extent of the benefit has varied in the years since its introduction, but eligible cooperative mailings currently pay 60 percent of the Regular Standard Mail rate.

III. The Emergence of the Fundraising Exception

In 2003, the Postal Service initiated an administrative rulemaking to address a revision to the cooperative mail rule. The rulemaking resulted in a revision, effective November 13, 2003, widely referred to as the Fundraising Exception. In practical effect, this revision expands eligibility in a limited respect by exempting fundraising mailings seeking only monetary donations from application of the DMM's conditions for an eligible cooperative mailing. See 68 FR 23937 (May 6, 2003) and 68 FR 58273 (October 9, 2003), setting out the proposed and final rule, respectively. The revision requires that the cooperating nonprofit entity either receive a detailed donor list (containing the name of donor, contact information, and the amount of donation) from its mailing partner or execute a written waiver of such receipt.

A. The Fundraising Exemption, as Initially Proposed

The Postal Service notice of proposed rulemaking included a discussion of the history of the cooperative mail rule and its application to fundraising mailings; the traditional role of Congress with respect to eligibility for nonprofit Standard Mail rates; recent concerns about the impact of the cooperative mail rule on fundraising mailings; and proposed legislation to exempt certain fundraising mail from the rule. It noted, with respect to the impact of the rule on fundraising mailings, that over the last several years, some nonprofit organizations have made the Postal Service aware of concerns that the application of the cooperative mail rule

¹ Section 711 of the PAEA refers to section E670.5.3 of the Domestic Mail Manual (DMM). The text of this provision now appears at DMM § 703.1.6.3 due to a reorganization of the DMM.

was having a serious effect on their ability to solicit donations and, in some cases, might threaten the existence of many nonprofit organizations, particularly given the economic climate many in the nonprofit sector were facing. It noted that the organizations that seemed to be the focus of most of the concern included those that, due to being new, of small size, or for other reasons, have to seek the assistance of professional fundraising organizations in seeking donations, rather than conduct their fundraising campaigns in-house. 68 FR 23938 (May 6, 2003). It added:

In many cases, the arrangements between the professional fundraiser and the nonprofit are cooperative under the longstanding application of the cooperative mail rule. Indeed, the Postal Service understands that some states require contractual terms between nonprofits and some (but not all) types of professional fundraisers to contain elements that would cause the resultant fundraising mailings to violate the cooperative mail rule.

Id.

The Postal Service said it was sensitive to the plight of these nonprofit organizations, but was reluctant to propose an administrative solution because expanding or reducing eligibility to mail at nonprofit or other preferred status traditionally has been a legislative function; discriminating between its customers is prohibited by statute, except where authorized by law; and expanding eligibility for nonprofit rates could create a significant competitive advantage for a newly-eligible mailer, relative to those still mailing at the commercial rate. *Id.* It also noted that some members of the nonprofit industry had raised a concern that if contractual terms between nonprofits and fundraisers were no longer a postal concern (given an exemption from application of the cooperative mail rule), some fundraisers might impose financial terms that could take advantage of unsophisticated nonprofits or even seek to create nonprofit organizations of their own to enrich themselves off of fundraising mailings, rather than to benefit the public. *Id.*

The Postal Service acknowledged the seriousness of the issues raised by the nonprofits, but characterized them as appearing primarily to raise consumer protection concerns, rather than postal concerns. It therefore considered them a type of social policy concern best addressed elsewhere, such as through Federal legislation or the state officials who regulate the relationship between professional fundraisers and nonprofit organizations. *Id.* However, noting that

Federal legislation addressing this topic had been introduced but had no guarantee of passage and reiterating its reluctance to tread in an area historically addressed through legislation, the Postal Service said it had decided to propose a rule to eliminate application of the cooperative mail rule on mailings by authorized nonprofit organizations seeking monetary donations. *Id.* As to the breadth of the proposal, the Postal Service raised six cautions. Three pertained to the scope of the exception. First, the Postal Service noted that the proposal:

* * * only exempts fundraising mailings seeking monetary donations. Mailings that include solicitations for products or services, whether through sale, lease, or other arrangements, will not be exempt from application of the cooperative mail rule. If there is a cooperative arrangement involving such goods or services, the mailpiece will not be eligible for Nonprofit Standard mail rates.

Id. at 23939. The rationale for this limitation, according to the Postal Service, was that exempting mailings that advertise goods or services from application of the cooperative mail rule would create significant potential for abuse by commercial organizations and may also place small businesses and other for-profit organizations who sell similar goods and services at a significant competitive disadvantage. *Id.*

Second, the Postal Service said the exemption was only from application of the cooperative mail rule, and that affected mailings would continue to be subject to all other applicable postal standards. *Id.* Third, it said the exemption would only apply to nonprofit organizations authorized to mail at nonprofit Standard Mail rates; other organizations so entitled, which are voter registration officials and certain qualified political committees, would not be exempt. *Id.*

The next point was that the rule, if adopted, would be a change of postal policy rather than a clarification of existing standards, and thus would be prospective only, effective on the date of adoption. It would not form the basis for a request for a refund. *Id.* The Postal Service's fifth point was that the proposed rule "would not establish safeguards to address the concern that some professional fundraisers may seek to take advantage of unsophisticated clients." *Id.* It added:

In our discussions with nonprofit representatives and Congressional representatives, no consensus was reached on an effective and administratively feasible method to accomplish this goal. However, this rulemaking does not prevent other interested federal or state agencies from regulating such practices. Moreover, it is also

hoped that the nonprofit sector may undertake educational efforts to inform potential targets of such practices.

Id.

The Postal Service's final point was that it would be alert to the consequences of the new standard, should it be adopted, and might revisit the exception and consider a further rulemaking or other appropriate administrative measures if it resulted in the types of abuses that had been discussed or any other unintended consequences. *Id.*

B. The Fundraising Exception as Adopted

In the explanation accompanying the final rule, the Postal Service characterized the 67 comments it had received as diverse in terms of types of entities represented and broad as to the range of views.² Its overall assessment was that a significant majority of the comments urged adoption of the rule as proposed. However, it acknowledged that a small number recommended the proposal be withdrawn or that it be adopted with additional restrictions, while "a lesser number" of commenters recommended that the exception be expanded. It also said that several commenters had recommended making the rule retroactive. *Id.*

In response to the comments, the Postal Service modified the proposed rule in several respects. It added a condition related to donor lists by providing that the fundraising exemption applies only where the nonprofit organization is either given a list of the donors, their contact information, and the amount of their donations, or waives, in writing, the receipt of such list. *Id.* at 58276. It extended eligibility for the exemption from authorized nonprofits to voter election officials and certain qualified political committees. *Id.* It also revised the rule to clarify two points: (1) The exception applies only where the monetary donations solicited are for the entity authorized to mail at nonprofit rates, and (2) operates prospectively only. *Id.*

The Postal Service discussed, but did not accept, commenters' suggestions that would have resulted in a regulation that:

—Prohibited or restricted close ties between the cooperating entities;

² Commenters included nonprofit organizations and organizations representing such organizations; professional fundraisers and organizations representing these commercial entities; Congressional representatives; private individuals; and an organization representing state officials that regulate charities. 68 FR 58274 (October 9, 2003).

- Required written approval of the contract by the cooperating nonprofit's board of directors; and
- Mandated inclusion of certain contractual terms related to numerous control or ownership issues, such as receipt and exclusive ownership of a donor list; direct deposit of funds into the nonprofit's bank account; and intellectual property in the mailing.

Id. at 58274–76.

IV. Invitation to Comment

The preceding summary makes clear that the Fundraising Exception expands eligibility for nonprofit Standard Mail rates for certain types of mailings, but does so in a relatively limited way. It also makes clear that the Fundraising Exception, as adopted, did not include many of the checks, or safeguards, some commenters believed should be included to ward off abuse of nonprofit rates and consumer deception. The Commission invites comments from the general public to facilitate its examination of whether the Fundraising Exception contains adequate safeguards to protect against abuse of nonprofit rates and consumer protection, and preparation of the related report and recommendations. Comments may address any relevant topic; however, the Commission also presents the following questions to help focus the discussion.

A. Abuse of Nonprofit Rates

The directive in section 711 speaks to abuse of nonprofit rates, rather than fraud. In connection with the scope and extent of abuse that may occur under the Fundraising Exemption, the Commission is especially interested in the following matters:

1. The 2003 rulemaking acknowledged that commenters had raised concerns about several types of abusive fundraising practices, including predatory credit arrangements. To what extent have these practices occurred, since the 2003 revision, in connection with mailings sent under the Fundraising Exemption?

2. Have there been any material changes in fundraising practices since the Postal Service's 2003 rulemaking that give rise to new concerns about abuse in connection with the Fundraising Exception?

3. To what extent has the nonprofit sector engaged in education efforts designed to inform nonprofits, especially those considered especially vulnerable to overreaching or predatory partners, about the scope of the Fundraising Exception and potential abuses? Also, are there reliable means of measuring or assessing the success of these efforts?

4. To what extent has the Postal Service (including any organizational division) engaged in education efforts specifically directed at the Fundraising Exception and potential abuses? Are there reliable means of measuring or assessing the success of these efforts?

5. What information and data are available about the extent to which the Fundraising Exception has been used by mailers eligible for nonprofit rates since adoption in 2003, in terms of features such as number and type of entities using the Fundraising Exception, volume, and total postage involved?

B. Deception of Consumers

The directive in section 711 also extends to deception of consumers. The Commission is interested in commenters' views on all relevant aspects of consumer deception, including:

1. The 2003 rulemaking mentioned that there were a growing number of State laws on charitable fundraising that created a potential for conflict with cooperative mail as then formulated. Has there been an increase in the number of States proposing or adopting such laws? What safeguards or protections are included in these laws? Do these laws pose any conflicts with the 2003 Fundraising Exception or did this Exception satisfactorily resolve relevant concerns?

2. To what extent has the Postal Service undertaken efforts to educate consumers (in the capacity of a donor or potential donor responding to a mailed solicitation) about abuses or potential fundraising abuses?

3. To what extent have individual States engaged in efforts to educate consumers (in the capacity of a donor or potential donor responding to a mailed solicitation) about abuses or potential fundraising abuses?

4. To what extent has deception of potential donors been reported or documented by the Postal Service, nonprofit mailer organizations, State or local consumer protection agencies, or others?

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. PI2008–4, Inquiry into Cooperative Mail Rule Exception, to facilitate compliance with section 711 of the Postal Accountability and Enhancement Act.

2. The Commission designates Katja M. Eichinger as the Public Representative representing the interests of the general public in this proceeding.

3. Comments on issues related to the directive in section 711 of the PAEA are due June 24, 2008.

4. Reply comments are due July 24, 2008.

5. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Steven W. Williams,
Secretary.

[FR Doc. E8–9210 Filed 4–24–08; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors Sunshine Act Meeting

Board Votes To Close April 14, 2008, Meeting

By telephone vote on April 14, 2008, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held via teleconference. The Board determined that prior public notice was not possible.

Items Considered

1. Strategic Planning.
2. Personnel Matters and Compensation Issues.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information: Requests for information about the meeting should be addressed to the Deputy General Counsel, William R. Gilligan, at (202) 268–2952.

William R. Gilligan,

Deputy General Counsel.

[FR Doc. E8–8865 Filed 4–24–08; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, April 29, 2008 at 2 p.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), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (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 April 29, 2008 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Adjudicatory matters; and

A matter related to an enforcement proceeding.

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: April 22, 2008.

Nancy M. Morris,
Secretary.

[FR Doc. E8-9107 Filed 4-24-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57695; File No. SR-OCC-2008-07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to streetTRACKS Gold Shares

April 21, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 7, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.²

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would clarify the jurisdictional status of options and security futures on streetTRACKS Gold Shares by adding an interpretation following the definition of "fund share" in Article I, section 1 of OCC's By-Laws.³

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.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify the jurisdictional status of options and security futures on streetTRACKS Gold Shares by adding an interpretation following the definition of "fund share" in Article I, section 1 of OCC's By-Laws. Under the proposed interpretation, OCC would clear and treat as securities options any option contracts on streetTRACKS Gold Shares that are traded on securities exchanges. Similarly, OCC would clear and treat as security futures any futures contracts on streetTRACKS Gold Shares.⁵

In its capacity as a "derivatives clearing organization" registered with the Commodity Futures Trading Commission ("CFTC"), OCC filed this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose any potential liability under the CEA based on an

(March 17, 2008). The Commission is republishing the notice to reflect the addition of footnote 6 in section IV, Solicitation of Comments.

³ The new interpretation would replace the interpretation that was added to OCC's By-Laws in File No. SR-OCC-2008-04, which was effective upon filing. At the request of the Commission, OCC has withdrawn SR-OCC-2008-04 from consideration by the Commission in conjunction with the submission of SR-OCC-2008-07.

⁴ The Commission has modified parts of these statements.

⁵ The exact language of the interpretation can be found at http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_07.pdf.

argument that the clearing by OCC of options on streetTRACKS Gold Shares as securities options or the clearing of futures on that product as security futures constitutes a violation of the CEA. This rule change was filed with the CFTC as an amendment to SR-OCC-2008-04, which is pending approval at the CFTC.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options and security futures, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission's jurisdiction or shared jurisdiction in the case of security futures over derivatives based on streetTRACKS Gold Shares. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC, including any 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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

¹ 15 U.S.C. 78s(b)(1).

² The Commission previously published notice of the proposed rule change. Securities Exchange Act Release No. 57466 (March 11, 2008), 73 FR 14297

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.⁶ 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-2008-07 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-2008-07. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2007-07 and should be submitted on or before May 12, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Nancy M. Morris,
Secretary.

[FR Doc. E8-9069 Filed 4-24-08; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 6178]

Advisory Committee on Historical Diplomatic Documentation Notice of Meeting

Summary: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street, NW., Washington, DC, June 2-3, 2008, in Conference Room 1205. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U. S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Steven Galpern, Office of the Historian (202-663-1130) no later than May 29, 2008, to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult with Steven Galpern for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, June 2, 2008, in the Department of State, 2201 "C" Street, NW., Washington, DC, in Conference Room 1205, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, June 2, 2008, and 8 a.m. until 12 p.m. on Tuesday, June 3, 2008, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463). The agenda calls for discussions of agency declassification decisions concerning

the *Foreign Relations* series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663-1123, (e-mail history@state.gov).

Dated: April 14, 2008.

Marc Susser,

Executive Secretary, Department of State.

[FR Doc. E8-9090 Filed 4-24-08; 8:45 am]

BILLING CODE 4710-11-P

DEPARTMENT OF STATE

[Public Notice 6181]

Advisory Committee on Democracy Promotion (ACDP) Meeting Notice; Notice of Partially Closed Meeting

A meeting of the Advisory Committee on Democracy Promotion will be held on Monday, May 12, 2008 in Room 1107, U.S. Department of State, 2201 C Street, NW., Washington, DC. The meeting will be open to the public from 10 a.m.-12 p.m., up to the capacity of the meeting room. The Committee members will discuss various issues relating to strategies to promote democratic governance, with Secretary Rice leading the discussion from 10:30-11 a.m. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 10(d) and 5 U.S.C. 552b(c)6, it has been determined that the meeting will be closed to the public from 12 to 2 p.m. because the Committee will be discussing sensitive information about the personal situation of human rights dissidents, disclosure of which would likely jeopardize the safety and welfare of these individuals and constitute a clearly unwarranted invasion of their personal privacy.

Entry to the main State Department building is controlled and will require advance arrangements. Members of the public wishing to attend this meeting should, by Thursday, May 8, 2008, notify Karen Chen in the Bureau of Democracy, Human Rights and Labor—telephone: 202-647-4648—of their name, date of birth, valid government-issued ID number (see below), and citizenship, in order to arrange admittance. This includes admittance for government employees as well as others.

⁶In accordance with the Memorandum of Understanding entered into between the CFTC and the Commission on March 11, 2008, and in particular the addendum thereto concerning *Principles Governing the Review of Novel Derivative Products*, novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

⁷ 17 CFR 200.30-3(a)(12).

All attendees must use the "C" Street entrance of the Department, after being screened through the exterior screening facilities, and arrive by 9:30 a.m. One of the following valid IDs will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting throughout the open portion.

For more information, contact Anne Carson, Special Assistant to the Under Secretary for Democracy and Global Affairs, Department of State, Washington, DC 20520, telephone: (202) 647-8703.

Dated: April 11, 2008.

David J. Kramer,

Assistant Secretary of the Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. E8-9091 Filed 4-24-08; 8:45 am]

BILLING CODE 4710-18-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting (teleconference) of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Tuesday, May 20, 2008 starting at 10:30 a.m. Eastern Daylight Time. Arrange for oral presentations by May 6, 2008.

ADDRESSES: Federal Aviation Administration, 800 Independence Ave., SW., Room 810, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Nicanor Davidson, Office of Rulemaking, ARM-207, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-5174, FAX (202) 267-5075, or e-mail at nicador.davidson@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held via teleconference on May 20, 2008. This ad hoc meeting is being held to review and vote on the Task 3 report (Specific Risk) from the Airplane Level Safety Analysis Working Group (ASAWG).

The agenda for the meeting is as follows:

- Opening Remarks;
- ASAWG Task 3 Report and Vote.

Attendance is open to the public, but will be limited to the availability of phone lines. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than May 6, 2008. Please provide the following information: Full legal name and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating, the call-in number is (202) 493-4180; the Passcode is "5507." To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent to participate by May 6, 2008. Anyone calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges.

If you need meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC on April 17, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8-9060 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held July 17, 2008, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting.

Note: Non-Government attendees to the meeting must go through security and be escorted to and from the conference room. Attendees with laptops will be required to register them at the security desk upon arrival and departure. Agenda items will be posted on <http://www.rtca.org> Web site.

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.

Issued in Washington, DC, on April 10, 2008.

Francisco, Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8-9030 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 217/ EUROCAE Working Group 44: Airport Mapping Databases First Joint Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 217/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217/ EUROCAE Working Group 44: Airport Mapping Databases.

DATES: The meeting will be held May 14-16, 2008, from 9 a.m.-5 p.m.

ADDRESSES: The meeting will be held at EUROCONTROL, Rue de la Fusee, 96, B-1130 Brussels, Belgium.

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> (2) Mr. Sam van der Stricht, telephone +32-2-729 3197, fax 32-2-729 9008.

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 217/EUROCAE Working Group 44 meeting.

- May 14:
- Open Plenary (Chairmen's Remarks and Introductions, Review and Approve Meeting Agenda, Discussion).
- Schedule—Completion in no more than three meetings.
- Schedule for this week.
- Schedule for next meetings.
- Presentations:
- Gap Analysis—ARINC 816 and RTCA/EUROCAE documents;
- Gap Analysis—ATXM and RTCA/EUROCAE documents.
- Begin effort to revise documents.
- May 15:
- Plenary Session.
- May 16:
- Plenary Session.
- Other Business.
- Determine and agree on action plan.
- Meeting Plans and Dates.

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.

Issued in Washington, DC, on April 17, 2008.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. E8-9044 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2008-16]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket

number involved and must be received on or before May 15, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA-2008-0394 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267-7626 or Frances Shaver (202) 267-9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 21, 2008.

Pamela Hamilton-Powell,
Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA-2008-0394.
Petitioner: James Whitehurst.
Section of 14 CFR Affected: § 103.1(d).
Description of Relief Sought: To permit Mr. James Whitehurst to operate

his unpowered ultralight glider at a weight more than 155 pounds to allow for the addition of a pilot safety device.

[FR Doc. E8-9061 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, the SR 519 Intermodal Access Project—Phase 2: Atlantic Corridor, in the State of Washington. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 22, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Stephen Boch, Major Project Oversight Manager, Federal Highway Administration, Jackson Federal Building, 915 2nd Avenue, Room 3142, Seattle, Washington, 98174; telephone: (206) 220-7356; and e-mail: Steve.Boch@fhwa.dot.gov. The FHWA Washington Division's Oversight Manager's regular office hours are between 8 a.m. and 4:30 p.m. (Pacific Time). You may also contact Allison Hanson, UCO Deputy Director of Environmental Services, WSDOT—Urban Corridors Office, 999 Third Ave., Ste. 2424, Seattle, WA 98104; telephone: 206-716-1136; and e-mail: HansonA@wsdot.wa.gov. The SR 519 Project's regular office hours are between 8 a.m. and 5:00 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions by issuing licenses, permits, and approvals for the following highway project: SR 519 Intermodal Access Project—Phase 2: Atlantic Corridor. The purpose of the project is

to provide for increased mobility and safety, including pedestrian safety, by improving connections between I-5/I-90, the Port of Seattle, freight centers, waterfront commercial interests (including State ferries) and recreational/sports facilities in the downtown area. The project is located in the south downtown (SODO) area of Seattle, King County. The project also proposes to eliminate the remaining safety issues related to surface-level rail crossings at South Royal Brougham Way.

The actions by the FHWA on this project, and the laws under which such actions were taken, are described in the February 2008 Environmental Assessment (EA), April 2008 Finding of No Significant Impact (FONSI), and in other documents in the FHWA administrative record for the project. The EA, FONSI and other documents in the FHWA administrative record are available by contacting the FHWA or the Washington State Department of Transportation at the addresses provided above.

The EA can be viewed and downloaded from the project Web site at <http://www.wsdot.wa.gov/Projects/SR519> or viewed at the Seattle Public Library as well as local neighborhood service centers in the project area.

This notice applies to all Federal agency decisions on the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air*: Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land*: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources*: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials*: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: April 21, 2008.

Stephen P. Boch,

Major Project Oversight Manager, Seattle, Washington.

[FR Doc. E8–9059 Filed 4–24–08; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2008–0009]

Qualification of Drivers; Exemption Applications; Diabetes

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt fifty-six individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective April 25, 2008. The exemptions expire on April 25, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, fmcsamedical@dot.gov, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Background

On March 5, 2008, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifty-six

individuals, and requested comments from the public (73 FR 11982). The public comment period closed on April 4, 2008 and no comments were received.

FMCSA has evaluated the eligibility of the fifty-six applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These fifty-six applicants have had ITDM over a range of 1 to 38 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated

and discussed in detail in the March 5, 2008, **Federal Register** Notice (73 FR 11982). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the fifty-six exemption applications, FMCSA exempts Ryan N. Adams, Clay B. Anderson, Michael B. Bessinger, Douglas D. Brown, Kenneth T. Clark, Joseph F. Colbert, Daniel E. Coufal, Stuart A. Dietz, John J. Durrence, Michael B. Elzey, Candy C. Eubank, Thomas S. Faucette, Jr., Earl S. Fibish, Stanley R. Folkerts, Timothy L. Gahring, Donald W. Giesbrecht, Todd W. Gillespie, Stephen W. Golden, Richard E. Grunden, Jack L. Guffey, Mark Hall, Teresa M. Hansen, Jason A. Henry, Michael B. Heuett, John M. Hickey, Joe Ibarra, Anthony L. Lambert, Paul F. Lanich, Ronald M. Lavalley, Eric R. Ledvina, Kenneth L. Lefeld, Steven J. Leite, Daryl G. Lewis, George A. Lucietto, Robert A. Manning, Ottis N. McCoy, Joseph G. McDonald, Richard L. McDonald, David D. Millard, Jr., Raymond E. Miller, Victor E. Millwood, Walter G. Minshall, Alan J. Mitchell, Raymond P. Mora, Sr., John M. Murray, John R. Pile, Forest T. Porter, John Rubillo, Jason E. Saunders, Christopher D. Singleton, Brian Slover, Steven T. Slowey, Jacob A. Small, Richard S. Synakowski, Sabrina F. Thomas, and Scott D. Wimer from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 17, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8-8994 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket Nos. FMCSA-05-22727, FMCSA-05-23099]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 8 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, maggi.gunnels@dot.gov, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on March 20, 2008.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition

to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 8 renewal applications, FMCSA renews the Federal vision exemptions for John R. Alger, Gene Bartlett, Jr., Marland L. Brassfield, Billy R. Jeffries, John P. Rodrigues, Robert V. Sloan, Gary N. Wilson, and William B. Wilson.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: April 17, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8-8987 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration**

[FTA Docket No. 2008-0022]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: Reporting of Technical Activities by FTA Grant Recipients. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on February 4, 2008. No comments were received in response to that notice.

DATES: Comments must be submitted before May 27, 2008. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: LaStar Matthews, Office of Administration, Office of Management Planning, (202) 366-2295 or e-mail: LaStar.Matthews@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Technical Activities by FTA Grant Recipients (OMB Number: 2132-0549).

Abstract: 49 U.S.C. 5305 authorizes the use of federal funds to assist metropolitan planning organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve future transportation needs of urbanized areas and nonurbanized areas throughout the nation. As part of this effort, MPOs and states are required to consider a wide range of goals and objectives and to analyze alternative transportation system management and investment strategies. These objectives are measured by definable activities such as planning certification reviews and other related activities.

The information collected is used to report annually to Congress, the Secretary, and to the Federal Transit Administrator on how grantees are responding to national emphasis areas and congressional direction, and allows FTA to track grantees' use of federal planning funds.

Estimated Total Annual Burden: 156 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department,

including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: April 17, 2008.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E8-8992 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-0042; Notice 2]

General Motors Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain model year 2005, 2006 and 2007 Cadillac STS passenger cars equipped with sunroofs do not fully comply with paragraph S4(e) of 49 CFR 571.118, Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-Operated Window, Partition, and Roof Panel Systems*. On October 3, 2007, GM filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* identifying approximately 60,042 model year 2005, 2006 and 2007 Cadillac STS passenger cars that do not comply with the paragraph of FMVSS No. 118 cited above.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, GM has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on December 10, 2007 in the **Federal Register** (72 FR 69727). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2007-0042."

For further information on this decision, contact Mr. Stuart Seigel, Office of Vehicle Safety Compliance, the

National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5287, facsimile (202) 493-0073.

GM certified these vehicles to paragraph S4(e) of 49 CFR 571.118, which requires in pertinent part:

S4. Operating requirements. * * * power operated window, partition, or roof panel systems may be closed only in the following circumstances: * * *

(e) During the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of either of its front doors;

GM explains that for 60 seconds after the vehicles are started, if the engine is turned off and a front door is opened, the sunroof module software allows the sunroof to be closed if someone in the vehicle activates the control switch. If more than 60 seconds elapses from the starting of the vehicle, this condition will not occur.

GM stated that it is not aware of any incidents or injury related to the subject condition.

GM included an analysis of the risk associated with the subject condition and a detailed explanation of the reasons why it believes the noncompliance to be inconsequential to motor vehicle safety.

In summary, GM states that for all of the subject vehicles:

- The subject condition affects only the sunroof, not the power windows.
- The subject condition requires multiple actions that must occur within a 60 second time period. First, the following sequence of actions must occur: driver starts engine, driver turns off engine, and driver or front passenger opens a front door. After this sequence of actions and still within the 60 second time frame, occupants must take additional actions: Push the sunroof close switch and position an occupant to create the risk of sunroof entrapment. All of these actions must occur within one 60 second time frame.
 - If the sunroof switch is pushed steadily and then released, the sunroof promptly stops moving.
 - The sunroof incorporates an auto-reverse system. This system will activate whenever the sunroof is closing in the express close mode. Therefore, sunroof entrapment requires the completion of the initial sequence of engine start/engine stop/front door open actions, and also requires an occupant to press and hold the sunroof closure switch and position an occupant within the sunroof—all within the 60 second window and in such a manner that the

auto-reverse is not effective in preventing sunroof entrapment.

- The Agency has granted similar petitions in the past.
- GM is not aware of any injuries or incidents related to the subject condition.

GM states that it believes that because the noncompliance is inconsequential to motor vehicle safety that no further corrective action is warranted. GM has also informed NHTSA that it has corrected the problem that caused these errors so that they will not be repeated in future production.

NHTSA Decision

The following explains our rationale.

The purpose of paragraph S4 of FMVSS No. 118 is to minimize the likelihood of death or injury to occupants from accidental operation of power windows, partitions, and roof panels. We believe that this noncompliance is inconsequential to motor vehicle safety for a number of reasons. It is very unlikely that the entire sequence of events—starting the engine, turning the engine off, opening a front door, a person becoming positioned in the sunroof opening, and pushing the sunroof close button—will occur in less than 60 seconds. We also believe that the risk exposure time is likely further reduced as the sunroof, normally closed at the time of engine start, would have to first be opened then closed, with the opening time subtracted from the 60 second interval.

The noncompliant situation does not involve power windows, where entrapment is rare but a realistic possibility. Power window openings are physically more accessible to occupants than the sunroof opening and thus present a higher risk of entrapment to persons in the vehicle, especially unattended occupants (normally children).

The subject vehicle sunroof can be closed either by continuous actuation of the sunroof switch, or by a momentary touch and release of the same switch which initiates an express-close mode. In the first mode, the sunroof ceases movement upon release of the switch. This allows immediate operator sunroof closure control minimizing the entrapment risk. During the express-close mode, the vehicle incorporates an auto-reverse feature that is designed to reverse sunroof motion before it can exert a force of 100N (22.5lbf.) or more on a foreign object or person. We believe this added feature will further minimize the risk of entrapment to an occupant (normally a child).

Lastly, GM indicates that it is not aware of any injuries, owner complaints

or field reports related to this noncompliance.

Based on the above, NHTSA has decided that GM has met its burden of persuasion that the sunroof noncompliance described is inconsequential to motor vehicle safety. Accordingly, GM's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliances under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 18, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E8-8989 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0067; Notice 1]

Automobili Lamborghini SpA, Receipt of Petition for Decision of Inconsequential Noncompliance

Automobili Lamborghini SpA (Lamborghini), has determined that certain vehicles that it manufactured during the period June 8, 2007 to December 18, 2007, did not fully comply with paragraph S5.5 of 49 CFR 571.205 Federal Motor Vehicle Safety Standards (FMVSS) No. 205 *Glazing Materials*. Lamborghini has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Lamborghini has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Lamborghini's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 152 model year 2008 Lamborghini Gallardo Superleggera coupe passenger cars produced during the period June 8, 2007 to December 18, 2007. Paragraph S5.5 of 49 CFR 571.205 requires in pertinent part that:

S5.5 Item 4A Glazing. Item 4A glazing may be used in all areas in which Item 4 safety glazing may be used, and also for side

windows rearward of the "C" pillar. I.e., Item 4A glazing may be used under Item 4A paragraph (b) of ANSI/SAE Z26.1-1996 only in side windows rearward of the "C" pillar.

Lamborghini explained that due to a configuration mistake on the production line an incorrect component made of polycarbonate (item 4A glazing) was used in the rear windows of certain U.S. version coupes (hardtops). Lamborghini further explained that based on the requirements of paragraph S5.5 of FMVSS No. 205 item 4A glazing is permitted in European specification vehicle rear windows and in U.S. convertible rear windows, but not in U.S. coupe (hardtop) rear windows.

Lamborghini stated its belief that the reason why FMVSS No. 205 excludes item 4A from the rear windows of coupe (hardtop) vehicles is twofold:

(1) The breaking of rigid plastic windows in a crash could leave sharp, pointed shards in the window frame which could easily be contacted by an occupant's head. There is also concern about occupant injury resulting from large shards of rigid plastic glazing being propelled inward by vehicle impacts with trees, poles, or other vehicles.

(2) Second, The reduction in visibility through rear windows using plastic glazing due to abrasion and weathering creates significant safety concerns because a driver may have insufficient visibility to avoid a crash in the first place.

Lamborghini also stated that it believes the noncompliance is inconsequential to motor vehicle safety in the case of the Superleggera because neither of the safety concerns discussed above is present because:

(1) The use of polycarbonate glazing creates no greater danger because FMVSS No. 201 conformance testing has shown that a passenger head cannot physically contact the rear window given its small size and location. Also, the rear window is so small and located in a protected position between the "buttresses" of the vehicle's roof such that impacts with trees, poles, or other vehicles, would not create the danger of posed by large shards.

(2) Reduction in visibility due to abrasion and weathering is not an issue with the Superleggera. In this vehicle, the driver's rear visibility is based on the twin rear side mirrors. Even with no abrasion or weathering, the design of the vehicle (and in particular the "buttresses" of the roof) precludes a large degree of rearward visibility. Lamborghini additionally states that it believes that this situation is common for performance sports cars.

Lamborghini further explains that in its opinion NHTSA has previously given other reasons that a noncompliance similar to the instant one are inconsequential to motor vehicle safety including:

(1) Such a noncompliance is "expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers."

(2) Under FMVSS No. 205, item 4A glazing is permitted in the rear window of a "convertible", including hardtop convertibles.

(3) NHTSA previously held that as regards an exotic vehicle, a noncompliance is inconsequential because the vehicle at issue was not an ordinary passenger automobile designed for daily use, not designed to be used as a family's primary passenger vehicle, and more of a collector's piece, produced in very low numbers and driven a low number of miles.

Lamborghini additionally states that no customer complaints related to this noncompliance have been received.

Lamborghini requested that NHTSA consider its petition and grant an exemption from the notification and recall requirements of the National Traffic and Motor Vehicle Safety Act on the basis that the noncompliance described above is inconsequential as it relates to motor vehicle safety.

Lamborghini also states that it has corrected the problem that caused these errors so that they will not be repeated in future production.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open

on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically*: by logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to 1-202-493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov/>, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov/> by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 27, 2008.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: April 18, 2008.

Claude H. Harris,
Director, Office of Vehicle, Safety
Compliance.

[FR Doc. E8-8991 Filed 4-24-08; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 18, 2008.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 27, 2008 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1548.

Type of Review: Extension.

Title: Revenue Procedure 2003-45 Late Election Relief for S Corporations; Revenue Procedure 2004-48, Deemed Corporate Election for Late Electing S Corporations.

Description: The IRS will use the information provided by taxpayers under this revenue procedure to determine whether relief should be granted for the relevant late election.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 50,000 hours.

OMB Number: 1545-1395.

Type of Review: Extension.

Title: Consent to Extend the Time to Assess Tax Under Section 367-Gain Recognition Agreement.

Form: 8838.

Description: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 5,482 hours.

OMB Number: 1545-1912.

Type of Review: Extension.

Title: Election of Partnership Level Tax Treatment.

Form: 8893.

Description: IRC section 6231(a)(1)(B)(ii) allows small partnerships to elect to be treated under the unified audit and litigation procedures. Form 8893 will allow IRS to better track these elections by providing a standardized format for this election.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 227 hours.

OMB Number: 1545-1757.

Type of Review: Extension.

Title: REG-105344-01 (Final) Disclosure of Returns and Return Information by Other Agencies.

Description: In general, under the regulations, the IRS is permitted to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code to redisclose returns and return information based on a written request and with the Commissioner's approval, to any authorized recipient set forth in Code section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

Respondents: Federal Government.

Estimated Total Burden Hours: 11 hours.

OMB Number: 1545-1760.

Type of Review: Extension.

Title: Payments From Qualified Education Programs (Under Sections 529 and 530).

Form: 1099-Q.

Description: Form 1099-Q is used to report distributions from private and state qualified tuition programs as required under Internal Revenue Code sections 529 and 530.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 33,000 hours.

OMB Number: 1545-0416.

Type of Review: Revision.

Title: Election by a Small Business Corporation.

Form: 2553.

Description: Form 2553 is filed by a qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 8,190,000 hours.

OMB Number: 1545-1626.

Type of Review: Extension.

Title: U.S. Return of Income for Electing Large Partnerships (Form 1065-B), Partner's Share of Income (Loss) From an Electing Large Partnership (Schedule K-1).

Form: 1065-B, Schedule K-1.

Description: Code sections 771-777 allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 487,225 hours.

OMB Number: 1545-1465.

Type of Review: Extension.

Title: PS-54-94 (Final) Environmental Settlement Funds—Classification.

Description: Section 7701 and the regulations thereunder classify entities for federal tax purposes as partnerships, associations, and trusts. Section 671 requires a grantor treated as an owner of a portion of a trust to include items in income. This regulation provides reporting rules.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 2,000 hours.

OMB Number: 1545-1915.

Type of Review: Extension.

Title: Notice 2005-04, Fuel Tax Guidance, Request for Comments.

Description: This notice provides guidance on certain excise Code provisions that were added or effected by the American Jobs Creation Act of 2004, Public Law 108-357. The information will be used by the IRS to verify that the proper amount of tax is reported, excluded, refunded, or credited.

Respondents: Businesses or other for-profit institutions

Estimated Total Burden Hours: 76,190 hours.

OMB Number: 1545-1420.

Type of Review: Extension.

Title: Claim for Refund of Excise Taxes.

Forms: 8849, Schedules 1, 2, 3, 5, 6, 8.

Description: IRC sections 6402, 6404, 6511 and sections 301.6402-2, 301.6404-1, and 301.6404-3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 3,032,610 hours.

OMB Number: 1545-0143.

Type of Review: Extension.

Title: Heavy Highway Vehicle Use Tax Return.

Form: 2290.

Description: Form 2290 is used to compute and report the tax imposed by

section 4481 on the highway use of certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 27,548,640 hours.

Clearance Officer: Glenn P. Kirkland (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8-9029 Filed 4-24-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before June 24, 2008.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- formcomments@ttb.gov (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form, or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments

received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone 202-927-8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following records and forms:

Title: Applications—Volatile Fruit-Flavor Concentrate Plants, TTB REC 5520/2.

OMB Number: 1513-0006.

TTB Form Number: 5520.3.

TTB Recordkeeping Requirement Number: 5520/2.

Abstract: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application and keep records to support the manufacture of these concentrates. Persons who wish to amend their activities must also file an application and keep records. TTB uses the application information to identify persons responsible for such

manufacture since these concentrates contain ethyl alcohol and have potential for use as alcoholic beverages with consequent revenue loss. TTB uses the records to ensure that the concentrates are manufactured properly and are not used for beverage purposes. The application constitutes registry of a still, a statutory requirement.

Current Actions: There is an increase in the number of respondents which results in an increase in burden hours. Also, we have made minor corrections to this information collection, and we are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 160.

Title: Application for Basic Permit under the Federal Alcohol Administration Act.

OMB Number: 1513-0018.

TTB Form Number: 5100.24.

Abstract: TTB F 5100.24 is completed by persons intending to engage in a business involving beverage alcohol operations at distilled spirits plants, bonded wineries, or wholesaling/importing business. The information allows TTB to identify the applicant and the location of the business, and to determine whether the applicant qualifies for a permit.

Current Actions: We made changes to this form by adding page numbers, the name of the office where labels are submitted, and "financial institution name, city, and State" in parenthesis in Item 8. Also, we made minor corrections to this information collection, and we are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Total Annual Burden Hours: 2,800.

Title: Application for Amended Basic Permit under the Federal Alcohol Administration Act.

OMB Number: 1513-0019.

TTB Form Number: 5100.18.

Abstract: TTB F 5100.18 is submitted by permittees who change their operations in a manner that requires TTB to issue a new permit or receive a new notice. The information allows TTB to identify the permittee, the changes to the permit or business, and to determine whether the applicant qualifies.

Current Actions: We corrected the title of the form by adding "the" before

"Federal." We are submitting this information collection as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Total Annual Burden Hours: 600.

Title: Formula and Process for Nonbeverage Product.

OMB Number: 1513-0021.

TTB Form Number: 5154.1.

Abstract: Businesses using taxpaid distilled spirits to manufacture nonbeverage products may receive drawback (*i.e.*, a refund or remittance) of tax, if they can show that the spirits were used in the manufacture of products unfit for beverage use. This showing is based on the formula for the product, which is submitted on TTB F 5154.1.

Current Actions: We are adding a check box for "Dietary Supplement" in box 7 and adding a request for an e-mail address in box 14. Also, we are making minor grammatical correction to this information collection, and we are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 611.

Estimated Total Annual Burden Hours: 2,500.

Title: Annual Report of Concentrate Manufacturers and Usual and Customary Business Records—Volatile Fruit-Flavor Concentrate, TTB REC 5520/1.

OMB Number: 1513-0022.

TTB Form Number: 5520.2.

TTB Recordkeeping Requirement Number: 5520/1.

Abstract: Manufacturers of volatile fruit-flavor concentrate must provide reports as necessary to ensure the protection of the revenue. The report accounts for all concentrates manufactured, removed, or treated so as to be unfit for beverage use. The information is required to verify that alcohol is not being diverted, thereby jeopardizing tax revenues.

Current Actions: The number of respondents has decreased, and, as a result, the burden hours have decreased. Also, we are making minor corrections to the content of this information collection, and we are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 27.

Titles: Environmental Information; and Supplemental Information on Water Quality Consideration Under 33 U.S.C. 1341(a).

OMB Number: 1513-0023.

TTB Form Numbers: 5000.29 and 5000.30, respectively.

Abstract: TTB F 5000.29 is used to determine whether an activity will have a significant effect on the environment and to determine if a formal environmental impact statement or an environmental permit is necessary for a proposed operation. TTB F 5000.30 is used to make a determination as to whether a certification or waiver by the applicable State Water Quality Agency is required under section 21 of the Federal Water Pollution Control Act (33 U.S.C. 1341(a)). Manufacturers that discharge a solid or liquid effluent into navigable waters submit this form.

Current Actions: We are making minor corrections to these forms, and we are submitting them as revisions.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Total Annual Burden Hours: 4,000.

Titles: Specific Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six; and Continuing Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six.

OMB Number: 1513-0031.

TTB Form Numbers: 5100.12 and 5110.67, respectively.

Abstract: TTB F 5100.12 and TTB F 5110.67 are specific bonds that protect the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The forms identify the shipment, the parties involved, the date, and the amount of bond coverage.

Current Actions: We are making minor corrections to this information collection and we are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: One (1).

Estimated Total Annual Burden Hours: One (1).

Title: Offer in Compromise of Liability Incurred under the Federal Alcohol Administration Act, as amended.

OMB Number: 1513-0055.

TTB Form Number: 5640.2.

Abstract: Persons who have committed violations of the Federal Alcohol Administration Act may submit an offer in compromise. The offer is a request by the party in violation to compromise penalties for the violations in lieu of civil or criminal action. TTB F 5640.2 identifies the violation(s) to be compromised by the person committing them, amount of offer, plus justification for acceptance.

Current Actions: We made minor corrections to this information collection, and we are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Total Annual Burden Hours: 24.

Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report.

OMB Number: 1513-0065.

TTB Recordkeeping Requirement Number: 5170/2.

Abstract: TTB uses these records and reports as an accounting tool to ensure protection of the revenue. Records of receipt and disposition are the basic documents that describe the activities of wholesale dealers, and they provide an audit trail of taxable commodities from point of production to point of sale. Records of disposition are required only for distilled spirits. TTB requires the monthly report only in exceptional circumstances to ensure that a particular wholesale dealer is maintaining the required records. The records retention requirement is 3 years.

Current Actions: There are no changes to this information collection, and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden Hours: 1,200.

Title: Manufacturers of Nonbeverage Products—Records to Support Claims for Drawback.

OMB Number: 1513-0073.

TTB Recordkeeping Requirement Number: 5530/2.

Abstract: The recordkeeping requirements included in TTB REC 5530/2 are part of the system necessary to prevent diversion of drawback spirits to beverage use. The records are necessary to maintain accountability over these spirits. Required source records kept at the manufacturing plant include information about distilled spirits received, the gauge records recording the receipts, the identification of the person from whom received, evidence of the taxes paid on the spirits, the date the spirits were used, the quantity and kind used in each product (including usage of Puerto Rican and Virgin Islands spirits for compliance with the Caribbean Basin Initiative), receipt and usage of other ingredients (to validate formula compliance), inventory records, records of recovered alcohol, the quantity of intermediate products transferred to other plants, the disposition of each nonbeverage product produced, and the purchasers (except for retail sales). These elements make it possible to trace spirits using audit techniques, thus enabling TTB officers to verify the amount of spirits used in nonbeverage products and subsequently claimed as eligible for drawback of tax. The record retention requirement for this information collection is 3 years.

Current Actions: There is a decrease in the number of respondents, resulting in a decrease in the number of burden hours. We are submitting this information collection as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 501.

Estimated Total Annual Burden Hours: 10,521.

Title: Proprietors or Claimants Exporting Liquors.

OMB Number: 1513-0075.

TTB Recordkeeping Requirement Number: 5900/1.

Abstract: Distilled spirits, wine, and beer may be exported from bonded premises without payment of excise taxes, or, if the taxes have been paid, the exporter may claim drawback of the taxes paid. This export drawback or "refund" allows the manufacturer to recover the amount of the tax paid to the government. Obviously, substantial losses in tax revenues would occur if untaxed liquors were allowed to enter the domestic market, or if the government allowed drawback to be claimed on liquors used for domestic consumption. This recordkeeping requirement makes it possible to trace spirits using audit techniques, thus

enabling TTB officers to verify the amount of spirits, beer, and wine eligible for exportation without payment of tax or exportation subject to drawback. The retention requirement for this information collection is 2 years.

Current Actions: There are no changes to this information collection, and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Total Annual Burden Hours: 7,200.

Title: Federal Firearms and Ammunition Excise Tax Return.

OMB Number: 1513-0094.

TTB Form Number: 5300.26.

Abstract: This information is needed to determine how much excise tax is owed for firearms and ammunition. TTB uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms and ammunition. Businesses, including small to large, and individuals may be required to use this form.

Current Actions: There are no changes to this information collection, and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,860.

Estimated Total Annual Burden Hours: 27,020.

Title: Administrative Remedies—Closing Agreements.

OMB Number: 1513-0099.

TTB Form Number: None.

TTB Recordkeeping Requirement Number: None.

Abstract: This is a written agreement between TTB and regulated taxpayers used to finalize and resolve certain tax-related issues. Once an agreement is approved, it will not be reopened unless fraud or misrepresentation of material facts is proven.

Current Actions: There are no changes to this information collection, and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: One (1).

Estimated Total Annual Burden Hours: One (1).

Title: Marks and Notices on Packages of Tobacco Products.

OMB Number: 1513-0101.

TTB Recordkeeping Requirement Number: 5210/13.

Abstract: TTB requires that manufacturers or exporters place a mark and notice indicating a product's tax classification and quantity on packages, cases, or containers. TTB uses this information to validate the receipt of excise tax revenue, to determine tax liability, and to verify claims.

Current Actions: There are no changes to this information collection, and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Total Annual Burden Hours: One (1).

Title: Drawback of Tax on Tobacco Products and Cigarette Papers and Tubes—Export Shipment.

OMB Number: 1513-0102.

TTB Recordkeeping Requirement Number: 5210/2.

Abstract: Exporters may file claim for drawback of tax on tobacco products and cigarette papers and tubes on which they have paid the taxes and exported. Appropriate records are needed to ensure that drawback of tax is properly documented and justified. TTB uses the claim information to carry out its statutory responsibility to protect the revenue by requiring proprietors to maintain accountability over tobacco products and cigarette papers and tubes exported.

Current Actions: There are no changes to this information collection and we are submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: One (1).

Estimated Total Annual Burden Hours: 5.

Title: Certificate of Taxpaid Alcohol.

OMB Number: 1513-XXXX.

TTB Form Number: 5100.4.

Abstract: This form is required by a Port Director of Customs and Border Patrol (Customs) to support refunding taxes paid on nonbeverage products that are exported. When the nonbeverage product is exported, the industry member submits TTB F 5100.4 and supporting documentation to TTB. TTB certifies the form and then submits it to Customs.

Current Actions: There are no changes to this information collection, and it is being submitted as an existing collection in use without an OMB control number.

Type of Review: Existing collection in use without an OMB control number.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 100.

Dated: April 22, 2008.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E8-9105 Filed 4-24-08; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4684

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4684, Casualties and Thefts.

DATES: Written comments should be received on or before June 24, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622-6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Casualties and Thefts.

OMB Number: 1545-0177.

Form Number: 4684.

Abstract: Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to

summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 113,333.

Estimated Time per Respondent: 4 hrs., 7 min.

Estimated Total Annual Burden Hours: 466,932.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 17, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8-9027 Filed 4-24-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Forms 1042, 1042-S, and 1042-T**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, and Form 1042-T, Annual Summary and Transmittal of Forms 1042-S.

DATES: Written comments should be received on or before June 24, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622-6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, and Form 1042-T, Annual Summary and Transmittal of Forms 1042-T.

OMB Number: 1545-0096.

Form Numbers: 1042, 1042-S, and 1042-T.

Abstract: Form 1042 is used by withholding agents to report tax withheld at source on payment of certain income paid to nonresident alien individuals, foreign partnerships, or foreign corporations. The IRS uses this information to verify that the correct amount of tax has been withheld and paid to the United States. Form 1042-

S is used to report certain income and tax withheld information to nonresident alien payees and beneficial owners. Form 1042-T is used by withholding agents to transmit Forms 1042-S to the IRS.

Current Actions: Forms 1042, 1042-S and 1042-T were revised, adding 3 line items and deleting 2 line items to accommodate the treatment of substitute payments prescribed by Notice 97-66. These changes resulted in an increase of burden hours to 1,360,940.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit organizations and individuals or households.

Estimated Number of Respondents: 22,000.

Estimated Time per Respondent: 61 hours, 52 minutes.

Estimated Total Annual Burden Hours: 1,360,940.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 18, 2008.

R. Joseph Durbala,
IRS Reports Clearance Officer.

[FR Doc. E8-9028 Filed 4-24-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****Branch Offices**

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 27, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from [RegInfo.gov](http://www.reginfo.gov/public/do/PRAMain) at <http://www.reginfo.gov/public/do/PRAMain>.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395-6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, ira.mills@ots.treas.gov, (202) 906-6531, or facsimile number (202) 906-6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the

approval process, we invite comments on the following information collection.

Title of Proposal: Branch Offices.

OMB Number: 1550-0006.

Form Numbers: 1450 and 1558.

Description: Pursuant to 12 CFR 545.93, a Federal savings association must file an application or notice and receive OTS approval or non-objection under § 545.95 before the applicant can change the permanent location of, or establish a new, home or branch office, except as provided in this section. Pursuant to 12 CFR 545.95, applications and notices under § 545.93 are subject to expedited or standard treatment under the application processing procedures at part 516 of this chapter.

Such applications or notices must be in a form prescribed by OTS. OTS's Applications for Permission to Establish a Branch Office and Change of Location of an Office are designed to provide the minimum amount of information necessary to determine whether the request meets OTS's criteria for approval of these activities.

Pursuant to 12 CFR 516.80, the applicant must publish a notice in a newspaper printed in the English language. If the OTS determines that the primary language of a significant number of adult residents of the community is a language other than English, the OTS may require that the applicant simultaneously publish additional notice(s) in the community in the appropriate language.

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 requires each insured depository institution to give 90 days prior written notice of any branch closing to its primary federal regulator and to branch customers. The notice to the regulator must include a detailed statement of the reasons for the decision to close the branch and information in support of those reasons.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 584.

Estimated Number of Responses: 584.

Estimated Burden Hours per

Response: 1 hour and 29 minutes for the application; 1 hour for Third Party Disclosure; and 10 minutes for a change application.

Estimated Frequency of Response: Other; Prior to branching activity.

Estimated Total Burden: 611 hours.

Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 21, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8-9078 Filed 4-24-08; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Financial Management Policies—Interest Rate Risk

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 27, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at <http://www.reginfo.gov/public/do/PRAMain>.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395-6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, ira.mills@ots.treas.gov, (202) 906-6531, or facsimile number (202) 906-6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift

Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Financial Management Policies—Interest Rate Risk.

OMB Number: 1550-0094.

Form Numbers: N/A.

Description: The purpose of this collection requirement is to ensure that institutions are appropriately managing their exposure to interest rate risk. To comply with this reporting requirement, institutions need to maintain sufficient records for determining how their interest rate risk exposure is being internally monitored and managed, and how their exposure compares with that of other institutions.

OTS uses the information in connection with a model to advise savings associations in OTS's supervision of their activities related to interest rate risk.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 832.

Estimated Number of Responses: 832.

Estimated Burden Hours per

Response: 8 hours.

Estimated Frequency of Response: Quarterly; Annually.

Estimated Total Burden: 33,280 hours.

Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 21, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8-9080 Filed 4-24-08; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Request for Service Corporation Activity

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below

has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 27, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at <http://www.reginfo.gov/public/do/PRAMain>.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395-6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, ira.mills@ots.treas.gov, (202) 906-6531, or facsimile number (202) 906-6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information

collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Request for Service Corporation Activity.

OMB Number: 1550-0013.

Form Numbers: Form 1566.

Description: The information will be used by OTS to ensure that the principles of safety and soundness are adhered to in the issuance of securities. It was determined that all supervisory concerns would be satisfied if the information previously reported is available for inspection by OTS examiners.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Burden Hours per

Response: 15 minutes.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 10 hours.

Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 21, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8-9081 Filed 4-24-08; 8:45 am]

BILLING CODE 6720-01-P

VETERANS AFFAIRS DEPARTMENT

Veterans' Advisory Committee on Rehabilitation (VACOR); Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-

463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Rehabilitation will be held on May 21-22, 2008, at the Department of Veterans Affairs, 811 Vermont Avenue, Washington, DC. The meeting sessions will be held in the Kenneth Eaton Room 819, from 8 a.m. to 4:30 p.m. on May 21 and 8 a.m. to 1 p.m. on May 22. The meeting is open to the public.

The purpose of the Committee is to provide recommendations to the Secretary of Veterans Affairs on the rehabilitation needs of veterans with disabilities and on the administration of VA's rehabilitation programs.

During the meeting, committee members will be briefed on various VA rehabilitation-related initiatives. The Committee will also be discussing research on rehabilitation needs of veterans with disabilities.

No time will be allocated at this meeting for oral presentations from the public. Any member of the public wishing to attend the meeting is requested to contact Mr. Joseph Tucker, Designated Federal Officer, at (202) 461-9637. The Committee will accept written comments. Comments can be addressed to Mr. Tucker at the Department of Veterans Affairs, Veterans Benefits Administration (28), 810 Vermont Avenue, NW., Washington, DC 20420. In communication with the Committee, writers must identify themselves and state the organizations, associations, or person(s) they represent.

By Direction of the Secretary.

Dated: April 21, 2008.

E. Philip Riffin,

Committee Management Officer.

[FR Doc. E8-8996 Filed 4-24-08; 8:45 am]

BILLING CODE 8320-01-M



Federal Register

**Friday,
April 25, 2008**

Part II

Election Assistance Commission

**Publication of State Plan Pursuant to the
Help America Vote Act; Notice**

ELECTION ASSISTANCE COMMISSION**Publication of State Plan Pursuant to the Help America Vote Act**

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107-252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to the HAVA State plans previously submitted by Alaska, Florida, Minnesota, New Jersey, Nevada, Oregon, and South Dakota.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202-566-3100 or 1-866-747-1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates.

The revised State plans from Florida, New Jersey, Oregon, South Dakota, Nevada, and Alaska address material changes in the respective budgets of the previously submitted State plans. South Dakota and New Jersey submitted certifications under HAVA section 251(b)(2) allowing the State to use requirements payments for activities other than meeting the requirements of Title III. Minnesota and Oregon have provided updates to how the states plan to meet the Title III requirements, including implementation of the HAVA section 301 voting system standards and the HAVA section 303 statewide voter registration list.

In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. The States all confirm that these material changes to their respective State plans were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from April 25, 2008, the States are eligible to implement the material changes addressed in the plans that are published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Officials

Ms. Gail M. Fenumiai, Director, Alaska State Division of Elections, 240 Main Street, Suite 400, P.O. Box 110017, Juneau, Alaska 99811-0017, Phone: (907) 465-4611, Fax: (907) 465-3203

The Honorable Kurt Browning, Secretary of State, Department of State, R.A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, Phone: (850) 245-6500, Fax: (850) 245-6125, E-mail: secretaryofstate@dos.state.fl.us

The Honorable Mark Ritchie, Secretary of State, 180 State Office Building, 100 Martin Luther King Blvd., St. Paul, Minnesota 55155-1299, Phone: (651) 201-1324, Fax: (651) 215-0682

Ms. Donna Kelly, Assistant Attorney General, Office of the Attorney General, Department of Law and Public Safety, Division of Law, 25 Market Street, P.O. Box 112, Trenton, New Jersey 08625-0112, Phone: (609) 599-6877, Fax: (609) 292-0690

Mr. Matthew M. Griffin, Deputy Secretary for Elections, Office of the Secretary of State, 101 N. Carson Street, Suite 3, Carson City, Nevada 89701-4786, Phone: (775) 684-5708, Fax: (775) 684-5725

The Honorable Bill Bradbury, Secretary of State, 136 State Capitol, Salem, Oregon 97310-0722, Phone: (503) 986-1523, Fax: (503) 986-1616

The Honorable Chris Nelson, Secretary of State, State Capitol, Suite 204, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070, Phone: (605) 773-3537, Fax: (605) 773-6580, E-mail: sdsos@state.sd.us

Thank you for your interest in improving the voting process in America.

Dated: April 9, 2008.

Rosemary Rodriguez,
Chair, U.S. Election Assistance Commission.

BILLING CODE 6820-KF-P



STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

Director's Office
 PO Box 110017
 Juneau, Alaska 99811-0017
 907.465.4611 907.465.3303 FAX
www.elections.alaska.gov

Regional Offices
 Anchorage 907.522.8683
 Mat-Su 907.573.8952
 Fairbanks 907.451.2335
 Juneau 907.465.5021
 Nome 907.443.5285

State of Alaska

HAVA State Plan 2008 Updated

February 8, 2008

United States Election Assistance Commission
 1225 New York Avenue, NW, Suite 1100
 Washington, DC 20005

Dear Commissioners:

In accordance with section 255 of the Help America Vote Act of 2002 (HAVA), I am pleased to file with the United States Election Assistance Commission (EAC), for publication in the *Federal Register*, this letter and the enclosed 2008 State of Alaska HAVA State Plan.

As required by section 254(a)(12) of HAVA, Section 12 of Alaska's State Plan as amended, describes the material changes that Alaska made to the State Plan filed in 2005. The 2008 Alaska State Plan contains material changes throughout each section of the Alaska State Plan. In addition, Sections 6 and 8 contain important information on how Alaska's budget to implement the requirements of HAVA changed and how Alaska succeeded thus far in meeting the specific HAVA requirements.

The amendments to the Alaska State Plan were developed in accordance with section 255 of HAVA and the requirement for public notice and comment prescribed by section 256 of HAVA.

On behalf of the State of Alaska, I thank the EAC for its assistance and look forward to our continued collaboration to improve the administration of elections in Alaska.

Sincerely,


 Gail Fenumiai
 Director

Enc: 2008 State of Alaska HAVA State Plan

Gail M. Fenumiai, Director
Alaska State Division of Elections
240 Main Street, Suite 400
P.O. Box 110017
Juneau, Alaska 99811-0017
(907) 465-4611

www.elections.alaska.gov

As required by Public Law 107-252,
 Help America Vote Act 2002, Section 253 (b)

“Although Alaska initially had few changes to make to our election laws, our voter registration system, and election equipment to comply with HAVA, Alaska has improved, and will continue to improve. Our election processes will comply with both state and federal legal requirements in order to maintain public trust and confidence in the election process and ensure that democracy is upheld through the ballot box.”

Lieutenant Governor Sean Parnell, State of Alaska

Table of Contents

ALASKA STATE PLAN INTRODUCTION.....	4
SECTION 1. TITLE III REQUIREMENTS AND OTHER ACTIVITIES	10
SECTION 2. ALASKA'S DISTRIBUTION OF REQUIREMENTS PAYMENT	17
SECTION 3. VOTER EDUCATION, ELECTION OFFICIAL EDUCATION AND TRAINING, AND POLL WORKER TRAINING.....	19
SECTION 4. VOTING SYSTEM GUIDELINES AND PROCESSES	27
SECTION 5. ALASKA'S HAVA ELECTION FUND	34
SECTION 6. ALASKA'S BUDGET FOR IMPLEMENTING HAVA	35
SECTION 7. MAINTENANCE OF EFFORT	41
SECTION 8. HAVA PERFORMANCE GOALS AND MEASURES.....	42
SECTION 9. STATE-BASED ADMINISTRATIVE COMPLAINT PROCEDURE.....	44
SECTION 10. EFFECT OF TITLE I PAYMENTS	45
SECTION 11. ALASKA'S HAVA STATE PLAN MANAGEMENT	48
SECTION 12. CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR	50
SECTION 13. STATE PLAN DEVELOPMENT AND COMMITTEE	52

ALASKA STATE PLAN INTRODUCTION

The Lieutenant Governor of Alaska is responsible for the overall direction of the Division of Elections. The Lieutenant Governor appoints a director and under the Director of Elections, the Division is responsible for planning, implementing and conducting all statewide and federal elections as well as all voter registration activities and maintenance of Alaska's voter registration database.

The Division is divided into four geographically-based election regions managed by Election Supervisors. The Election Supervisors are responsible for voter registration and election management activities for all elections within their region, as designated by the Director. In addition to the four regional offices located in Juneau, Anchorage, Fairbanks and Nome, the Division has opened a satellite office of the Region II Elections Office in the fastest growing municipality in Alaska, the Matanuska-Susitna Borough. The Division also opened an Absentee and Petition Office in Anchorage to facilitate and improve absentee voting by mail and by fax. The Region II satellite office in the Matanuska-Susitna Borough and the Absentee office were both opened in the spring of 2006 and continue to provide improved access to voter registration and voting.

Alaska Statute Title 15 and Alaska Administrative Code Title 6 govern the federal and state election process. Alaska falls under Section 5 of the Voting Rights Act of 1965 which requires U.S. Department of Justice preclearance for any substantive change in the election process that directly affects the voter.

The Division of Elections maintains a statewide electronic voter registration mainframe database, implemented in 1985, referred to as the Voter Registration and Election Management System (VREMS). Each election office has real-time access to VREMS for viewing and updating voter information. The Division processes all voter registration applications in VREMS and assigns each applicant a unique voter registration number. Immediately upon entering information in the system, any state election office can view the information processed. Because the old mainframe system is antiquated, the Division began working on the development and implementation of a new pc-based, statewide voter registration database in 2005. Although the new system is not completed, the Division has prepared the technical requirements of a new system and will continue our work on the development of a new system.

2/8/2008

4

Alaska has nearly 470,000 registered voters. According to the Alaska Department of Labor and Workforce Development, the estimated voting age population in 2005 was 454,226. Alaska attributes its inflated registration rolls to the fact that Alaska Statute Title 15 allows a person who is temporarily out of state to remain registered in Alaska if that person has the "intent" to return. Because of Alaska's Permanent Fund Dividend program benefits, many Alaskans choose to maintain their Alaska residency even if they currently live outside the state.

Voter registration is available in each state election office and other numerous locations throughout the State of Alaska. The Director of Elections has appointed as voter registration agencies all Division of Motor Vehicles offices, Public Assistance offices, Armed Forces Recruitment offices, Municipal Clerks' offices, and various offices that provide services to persons with disabilities. In addition to the registration agencies, voter registration is available in most libraries throughout the State, village council offices, schools, the University of Alaska, and through individually appointed voter registrars. Voter registration applications are also available on the Division's website www.elections.alaska.gov for easy access.

Individuals may register to vote in person, by mail, by fax machine or by scanning a completed voter registration application and sending via email. Voters must be registered to vote at least 30 days before an election. If a voter's registration application is incomplete, the Division notifies the voter in writing and provides the voter an opportunity to complete a new voter registration application. The only exception to the registration deadline is during Presidential elections. A voter may register and have their vote count for President and Vice President on Election Day.

Alaska has 40 State House districts and 20 State Senate districts. Within these districts, there are 439 precincts, each with a designated polling place. Following is a breakdown of voter turnout during the past several general elections:

1996 = 59.1%
1998 = 50.1%
2000 = 60.8%
2002 = 50.5%
2004 = 66.6%
2006 = 51.1%

2/8/2008

5

Alaska has 151 rural communities with precincts that are isolated from connecting road systems; the only way to access these communities is by airplane or boat. Of the 439 precincts in Alaska, 34 have 100 or fewer registered voters.

In 1998, the Division of Elections replaced all punch card voting systems used in statewide and federal elections with an Optical Scan voting system. Since that time, Alaska has and continues to expand the use of the Optical Scan voting system throughout the State. There are 149 hand count precincts and 290 Optical Scan precincts, all of which use a uniform paper ballot regardless of how the ballots are tallied. All absentee, questioned, and special needs ballots voted in Alaska's primary and general elections are counted using the Optical Scan ballot tabulators.

In addition to hand count and Optical Scan units, Alaska makes available a touch screen voting unit in every precinct during an election in which a federal race appears on the ballot to comply with the requirements of HAVA. The touch screen voting units, which were first introduced during the 2006 Primary election, allow voters with disabilities the ability to cast a private and independent ballot. In accordance with Alaska Statute, each touch screen voting unit is equipped with a voter-verifiable paper audit trail (VVPAT). The VVPAT is considered the "official ballot" during recounts. With the implementation of touch screen voting, the Division has and continues to develop a variety of forms, brochures and instructions in an effort to train election officials and educate the public about touch screen voting.

In 2003, the Division of Elections updated many sections of the election law to comply with HAVA, namely HB 266, signed into law by the Governor on June 16, 2003. This bill addressed improving the questioned ballots (Alaska's form of provisional voting), the definition of a questioned voter, voter registration, training of election officials, preparation of election materials, forms, and supplies for polling places, voter identification, absentee voting, and counting ballots. In 2005, HB 94 passed additional amendments also affecting voting. These bills updated several forms to conform with HAVA standards, specifically:

- a) a new voter acknowledgement card;
- b) a revised by-mail ballot return envelope;

2/8/2008

6

- c) a revised by-mail ballot return envelope used by military and overseas voters;
- d) a revised voted ballot envelope used by voters who must submit proof of identification when voting by mail;
- e) a revised poster instructing voters how to complete the ballot and providing information regarding questioned voting used during primary and general elections;
- f) a revised poster displaying specific election information, and how to report fraud;
- g) a revised poster which details the types of identification which voters may present when voting in-person;
- h) an informational flier regarding questioned voting used during primary and general elections; and
- i) a new voter registration application, questioned and absentee-in person voted ballot envelope.

There are several alternative voting methods available to Alaska voters who are unable to vote at their assigned polling place. For many voters in remote areas of Alaska the only voting method available is by mail absentee ballot.

Absentee By Mail – Any qualified voter in Alaska may apply to receive an absentee ballot by mail. Alaska Statute 15.20.081 was amended in 2003 to improve accommodation for absentee uniformed services and overseas voters to allow a single absentee by mail ballot application to be valid through the next two general elections. In addition, this statute was further amended in both 2005 and 2006, to reduce the number of witness signatures required on an absentee by mail ballot from two witnesses to a single witness and to change the deadline for when an absentee by mail ballot application must be received by the Division. The deadline changed from seven days prior to an election to ten days prior to an election.

Early and Absentee In Person Voting – Beginning 15 days prior to Election Day, any qualified voter may vote early in the office of the Election Supervisor overseeing the jurisdiction where the voter is registered. In addition to early voting, any qualified voter may vote an absentee in person ballot through an absentee voting official. Alaska has numerous absentee voting locations available throughout the State, and all locations are published on the Division's website at least 45 days prior to an election. The dates and hours of the absentee voting locations are advertised in local papers, and all absentee voting locations are listed in the Official Election Pamphlet that is mailed to every household where there is a registered voter. An absentee voting location may have ballots available to voters for a single, multiple, or all 40 house districts.

2/8/2008

7

Absentee By Fax Voting – Beginning 15 days prior to Election Day, any qualified voter may apply for a faxed ballot. Absentee by fax applications are available on the Division's website, from any elections office, and in the Division's election pamphlets that are mailed to all voters. When a voter chooses to vote via fax, the voter is faxed a ballot to the fax number specified, and the voter may return the voted ballot either by fax or by mail. Alaska Statute 15.20.066 was amended in 2005 to require only one witness signature to sign and attest to the date on which the voter signs the certificate.

Special Needs Voting – If a voter is unable to vote at his or her assigned polling place due to age, illness, or disability, the voter may assign a personal representative to pick up and deliver the ballot and other voting material to the voter. After the voter votes the ballot, the representative returns the voted ballot to the election official. Special Needs voting is available at the polls on Election Day or through any absentee voting official.

Questioned Voting – Questioned, or Provisional, voting is available for any voter who does not have identification and is not personally known by the election official, or whose name does not appear on the precinct register at the polling place where the voter is attempting to vote. Following an election, questioned ballots are delivered to the appropriate regional election office for verification in the statewide voter registration database of eligibility before being counted.

Each absentee, questioned, and special needs ballot cast is placed inside a secrecy sleeve and then sealed inside an envelope. The outside of the envelope contains voter information: name, address, identifier, and signature. A bipartisan review board located in each regional office reviews the voter's ballot envelope, the data is entered into the voter registration database, and the envelope is assigned a sequence number. At the time the ballot envelope is reviewed, the registration database searches for other voting activity by that voter for the same election and reports if the voter has voted more than once.

In addition to conducting all statewide and federal elections, the Division of Elections is also responsible for conducting elections in areas of the State that are not incorporated into municipal governments. These elections include rural school board, coastal resource area, liquor option, incorporation, dissolution and consolidation elections. In 2004, the Division conducted a by mail election for Alaska Seafood Marketing Institute as well. Although the Division is not responsible for

2/8/2008

8

conducting local municipal elections such as those for borough assembly or city council, it provides voter registration lists, precinct registers and voter history for municipal elections. The Division also assists municipalities by providing for the use of the Division's polling place equipment and in some areas, ballot counting equipment.

Since the 2005 State Plan, the State has become compliant with more Help America Vote Act (HAVA) requirements such as:

- An accessible touch screen voting unit, equipped with a voter verifiable paper trail, is available in every precinct during elections where a federal race appears on the ballot.
- The requirements for a new statewide voter registration database have been developed to replace the antiquated, existing voter registration database, and the Division continues to work on implementation of this new database.
- With new office locations in Anchorage and the Matanuska-Susitna Borough, the Division is even more accessible to voters.
- The Division has expanded its HAVA section to include a HAVA Election Systems Manager position responsible for the overall supervision and administration of the Division's HAVA program and a new HAVA Program Assistant position responsible for improving polling place accessibility and outreach to the disability community statewide.
- Other projects, such as the development of the Division's media plan, will increase voter participation and outreach.

The Alaska State Plan is organized as specified in HAVA, Section 254, providing a description of current election procedures used in Alaska and outlining how Alaska will meet the requirements mandated by HAVA.

2/8/2008

9

Section 1. Title III Requirements and Other Activities

How the State of Alaska will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251 (a)(2), to carry out other activities to improve the administration of elections.

1. A Section 301(a), Voting Systems Standards Requirements

The State of Alaska transitioned from a punch card voting system to an Optical Scan voting system in 1998. Prior to 2006, the State used a hybrid of two types of voting systems in its 439 established polling locations: 149 precincts use a hand count paper ballot system, and 290 precincts use an Optical Scan (Accu-Vote OS 2000) paper ballot system. Since the 2005 State Plan, the State has transitioned an additional 2 communities from hand count to Optical Scan and has implemented the use of one touch screen voting unit in each polling place and each early voting location. The State will continue to expand the use of the electronic voting system in hand count precincts to improve the overall administration of elections. Absentee and questioned ballot counting is also conducted using the Optical Scan voting system.

In 2002, the State enacted legislation requiring that the new voting systems purchased allow voters with disabilities or visual impairments to use the systems privately and independently. With the passage of HAVA, the State was required to purchase DRE units for each established polling location. The Division requested and received a capital appropriation for FY04 to purchase 55 Accu-Vote touch screen voting units. The Division used HAVA funds to purchase an additional 45 units, bringing the statewide total to 100 touch screen units. In July, 2006, the Division purchased an additional 405 units, bringing the statewide total to 505 touch screen voting units. Every unit is equipped with a voter verifiable paper audit trail (VVPAT), which allows the voter to confirm their selections before casting their ballot. The touch screen voting units were first used statewide during the 2006 Primary election, and were used again during the 2006 General election. The touch screen voting units will be used during Primary and General elections for state and federal offices.

The touch screen voting units provide a variety of accessible features for blind and visually impaired voters, including: alternative language capability, headsets offering audio ballots, as well as keypad

2/8/2008

10

and stylus options for voters with dexterity difficulties. The Division will also work to add an audio translation of Alaska's unwritten native languages to the touch screen voting units.

The State purchased transport cases for the touch screen voting units in May 2006 and used them during the 2006 election year. The transport cases were intended to provide a stable platform and secure container in which to ship the touch screen voting units through the United States Postal Service to Alaska's remote and often frigid polling locations. The transport cases were sent on small aircraft and upon arriving in many communities were transported to the polling place by ATV. Many cases returned damaged due to the transportation methods available in rural Alaska. The Division is currently looking into whether the damaged cases should be repaired, or if an entirely new case should be designed to better handle the shipping stress to and from remote polling locations.

Transporting the touch screen units and training election officials to use the new technology in rural Alaska is a significant expense to the Division for each election the voting units are used. The Division provided extensive training programs for election staff in preparation for the 2006 election cycle and will continue to improve upon our training programs. The manufacturer of the touch screen units, as part of the contract, will continue training division staff in the proper use of the new equipment.

During the summer of 2006, the Division hosted public demonstrations in Juneau, Anchorage and Fairbanks to familiarize the public with the units, and educate voters on the accessible features of the touch screen units. The Division advertised the demonstrations using local newspapers, media releases, public service announcements, the Division's website and through personal invitation. Representatives from local disability agencies were contacted, and invited to attend the demonstration. During the event, people were invited to try out the machines and cast a sample ballot. Brochures, instructions and forms were available for the public to learn more about the touch screen units. Feedback received during the demonstrations helped prepare better instructions on how to train election workers on the touch screen unit. Separate demonstrations were also held for state legislators and media members to report accurately to Alaska's constituency on the use of the new voting equipment.

Due to the increased public scrutiny of electronic voting systems, Alaska has continuously had to defend the testing, security and auditing processes used in Alaska to ensure safe and accurate elections. With recent studies that have identified vulnerabilities in the voting system used in Alaska and

2/8/2008

11

elsewhere, the Division will begin working with the University of Alaska to review the testing and security procedures used in Alaska and make recommendations for improvements. The Division intends to implement the findings and recommendations provided by the University of Alaska in anticipation of the 2008 Primary and General elections.

Maintenance

To accommodate and house the 505 touch screen voting units, the State acquired additional storage space. Heated and accessible storage space was needed for the elections offices as well as some of the communities that have multiple units stored at their locations. In some cases, the Division relocated regional offices to ensure access to the new voting equipment.

The Division has developed procedures for the shipping and storage of the touch screen voting units to the polling locations. Election workers in these rural locations are responsible for setting up and operating the units; training and familiarity is very important. The touch screen voting units are shipped by small bush plane and then may be transported to the polling place by four-wheeler, snow machine, dog sled or by foot on dirt paths to the polling locations. Based on the 2006 election cycle, the Division found that the cost to ship the touch screen voting units one way to rural locations was \$55 per unit.

In 2006, the Division created procedures to contract with rural election workers to store the touch screen voting units in the community between the Primary and General elections in order to avoid significant damage and costs associated with the transport of the voting units. Based on the contract, the election worker agrees to:

1. Provide heated storage of the touch screen voting unit and printer in a secure, locked location;
2. Charge the touch screen voting unit battery, and conduct an election readiness check on the voting unit and printer for use in the General Election as directed by the regional supervisor;
3. Deliver the touch screen voting unit and printer to polling place for the General Election;

2/8/2008

12

4. Deliver the touch screen voting unit and printer to the US Postal Service for return shipment after Election Day, or as directed by the regional supervisor.

In return, the State of Alaska pays the election worker a storage fee of \$75.00 after the election, provided that the election worker complies with the terms of the agreement.

The State budgets for increased costs associated with shipping election materials to polling locations. Currently the State mails election materials (ballots, supplies, etc.) to its remote polling locations. In addition to these election materials, each precinct receives a touch screen unit.

Due to transportation issues, limited space and lack of resources available in the Division's Nome office, the Division developed a program to utilize the Matanuska-Susitna Borough satellite office for storage, maintenance and shipping of the touch screen units used in the polling places assigned to the Nome region.

The Division has begun design of an inventory and equipment maintenance program to ensure that all election equipment is maintained and repaired in a timely manner. In addition, the Division will need to develop a program and procedures for modification to the voting system based on EAC certification. In preparation for the 2008 election year, staff in the regional offices and the satellite and absentee offices are tasked with conducting routine maintenance inspections and identifying potential problems on the units before breakdowns occur. The inventory system will increase user accountability and allow for better equipment tracking.

1. B Section 302, Provisional Voting and Voting Information Requirements

The State currently has a provisional voting process established, known as "Questioned Voting."

State law requires that any voter who votes at a polling location where his or her name does not appear on the precinct register, or if the voter does not have identification and is not personally known by the election official, to vote a questioned ballot.

2/8/2008

13

In 2004, the Division established a toll-free access system to provide voter information. This system allows the voter to determine if his or her questioned ballot was counted and, if not counted, why the vote or a portion of the vote did not count.

The Division has two toll free-access systems, as outlined below:

- a. The Division currently uses an interactive toll-free telephone system that allows voters to determine their assigned polling place based on their current voter registration record. Additionally, voters can determine their party affiliation for determining ballot type eligibility during the Primary Election. At this time, the Division has not expanded the current polling place locator system to include ballot count automation. The Division plans to implement this system in the future with the new voter registration system.
- b. The Division provides a toll-free telephone number that allows voters to determine whether their questioned ballot was counted. When a voter casts a questioned ballot, the election official provides them with written instructions on how to access the system to determine whether their ballot was counted, partially counted, or rejected.

In addition, the Division anticipates that in 2008 voters will have the opportunity to check the status of their absentee ballot application and verify their vote count by using an absentee ballot locator portal on the Division's website.

In accordance with Alaska Statute, the Division sends a letter to each absentee and questioned voter whose vote was not counted or was only partially counted. The Division will continue this practice in addition to the systems outlined above.

Voting Information

The Division of Election, under current State law, is required to mail an *Official Election Pamphlet (OEP)* to each registered voter's household prior to the General election. In addition, the Division

2/8/2008

14

distributes to each registered voter's household a *Primary Voter Pamphlet* if a ballot measure appears on the Primary ballot.

State law requires full public notice of an election (AS 15.15.070). This public notice is achieved through newspaper advertisements and posting notices in communities that do not have newspapers of general circulation. Advertisements include information regarding the date and time of the election, the offices up for election or retention, absentee voting, any questions or propositions that appear on the ballot and information on polling place changes. Other methods of informing voters include radio advertisements, media releases and conferences, public service announcements, direct mailings, and information posted on the Division of Elections website. In addition, there are sample ballots, posters, informational flyers and instructions posted in polling locations as well as at all elections offices.

The Division modified registration, questioned and absentee voting forms as well as other election materials to meet HAVA requirements. In 2003, the Division submitted the forms to the U.S. Department of Justice (DOJ) Civil Rights Division and received preclearance. The Division will continue to make modifications to election materials based on "best practices" produced by the EAC.

1. C Section 303, Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register By Mail

Alaska has a statewide voter registration and election management system (VREMS) in use; however, it is not a fully interactive system. VREMS is an antiquated system, maintained in the Natural programming language and is on a mainframe. As technology has advanced, it has become difficult for the Division to find programmers knowledgeable in Natural programming.

In 2005, the Division prepared and released a request for proposal for vendors to develop and implement a new statewide voter registration system. Since that time, the Division has worked with a vendor on the development of a new registration system that will meet updated technology requirements and allow for better management of the State's voter registration and election processes. Although the system was not fully implemented by the anticipated date of December, 2007, the importance of upgrading the voter registration system is not diminished and the Division will continue to assign resources to the development of the system.

2/8/2008

15

Section 2. Alaska's Distribution of Requirements Payment

The State of Alaska is in full compliance with the requirement to verify voter registration information as required in Section 303(a)(5). A Memorandum of Agreement dated August 2003 between the Division of Elections and the Division of Motor Vehicles (DMV) allows the Division of Elections to match identifying information provided by a first-time, by mail registrant on his or her registration application to information maintained in the DMV database. The Alaska DMV has completed the process of verifying the last four digits of the social security number information with the American Association of Motor Vehicle Administrators (AAMVA). The verification program is currently used by the Division staff processing voter registration applications received by mail or by fax to verify the identity of voters.

How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of --

- (A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and*
- (B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).*

(A) The State of Alaska, Division of Elections conducts all Federal elections. Therefore, there will be no distribution of requirement payments to local governments or entities.

The Division serves Alaskans through four regional offices located in Juneau, Anchorage, Fairbanks, and Nome in addition to the Matanuska-Susitna satellite office and the Absentee & Petition Office in Anchorage. The Division of Elections manages funds necessary for improving the elections' system, voter registration, voter access and education, outreach, and to ensure the regional needs are met and that the State remains in compliance with the Act.

The criteria will be measured in terms of achieving compliance while maximizing improvements to all aspects of the election process, as well as the responsible use of available funds. The Division will use standard financial reporting and accounting practices to track expenditure of authorized funds.

(B) The Division monitors the funds in accordance with the statewide performance measures adopted under section 254 (a)(8). The Division centrally manages the distribution of all funds appropriated to the Election Fund, including but not limited to the requirements payments. Alaska incorporates priorities and timelines into the budgeting process to ensure it implements mandates and improvements in a wise and timely manner.

The Division of Legislative Audit annually audits the State of Alaska. The Statewide Single Audit is conducted in accordance with auditing standards generally accepted in the United States of America;

2/8/2008

16

2/8/2008

17

Section 3. Voter Education, Election Official Education and Training, and Poll Worker Training

How the State of Alaska will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

Voter Education and Outreach

Voter education and outreach efforts in Alaska vary depending on the type of election and level of changes affecting voters. The Director's Office coordinates all outreach efforts for statewide and federal elections. These outreach efforts include numerous public notices, newspaper and radio advertising, public service announcements, direct mail, other publications (such as brochures and pamphlets), speeches and presentations, and continuous direct contact with the statewide media. As an ongoing effort to provide voter education and outreach to Alaska's minority language groups, the Division will continue to make improvements to the language assistance plan.

When a ballot measure appears during a Primary election, the Division distributes a *Primary Voter Pamphlet (PI/P)* to every registered voter household in Alaska. The *PI/P* contains detailed information regarding the ballot measure(s) and general information regarding the election. Before every General election, each registered voter household in Alaska is mailed an *Official Election Pamphlet (OEP)*. The Division of Elections produces a specific guide for each of the four election regions. The *OEP* contains information about candidates appearing on the ballot (including photographs), information about the retention of judges (including photographs), information about ballot measures (including statements of support and opposition), sample ballots, polling place information, absentee and alternate voting information, voter assistance information, and election district maps. The election pamphlets are translated onto an audio tape which is made available at the State Library and the regional offices so the election information contained in the books is in an accessible format for disabled voters. The Division also prepares and distributes a Filipino (Tagalog) version of every pamphlet to voter's registered in House District 36, in compliance with Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

In addition to printed materials, the Division's website provides a vast array of information on voter registration, election issues, election results, historical information and electronic versions of all election pamphlets. In 2005, the Division launched a new, streamlined website to increase public

2/8/2008

19

Government Auditing Standards, issued by the Comptroller General of the United States; and compliance with the Federal Single Audit Act Amendments of 1996 and the related Circular A-133 issued by the U.S. Office of Management and Budget.

The State of Alaska Division of Elections monitors the duties and hours of staff and HAVA funded offices by requiring a bi-monthly justification to be completed and used to exhibit accountability.

Additionally, the Division of Elections conducts quarterly meetings to ensure the focus and scope of responsibilities is in alignment with improving federal elections within the State of Alaska. The first quarterly meeting was held on September 10, 2007.

2/8/2008

18

access and usability. New additions to the website include information on the touch screen voting unit, expanded explanations of voting methods, and increased information on ballot measures and the initiative process. The Division will continue to expand the website, and plans to add additional polling place accessibility and language assistance information to the website's offerings.

The Division provides an interactive toll-free telephone system for voters to obtain their polling place location, and determine their party affiliation. An additional, separate toll-free system allows voters to determine whether their questioned ballot was counted.

As new voting systems and election laws are implemented, Alaska continues its voter outreach efforts. With the implementation of the new touch screen voting units in 2006, demonstrations were held in locations around the state to educate voters on the accessible features and security measures of the units. The Division targeted the demonstrations specifically at assisting the disability community. Local disability agencies were contacted, and invited to attend the demonstrations. Furthermore, the Division prepared supplemental brochures for election officials which review proper etiquette for voters with special needs. The Division's HAVA Program Assistant will continue to prepare and conduct outreach demonstrations during future elections.

Before implementing a new, complex Primary Election system in 2002, Alaska instituted a well-funded, comprehensive outreach plan aimed at educating voters specifically about primary ballot choices. Division staff continues to provide voters with information on what ballots are available during each Primary election, and who is eligible to vote each ballot.

The Division strives to enhance its educational efforts through positive relationships with the media. The Division is currently working to develop a Media Plan, which will detail the Division's outreach programs. The Division continues to participate in radio and television interviews and responds to questions from the print media regularly, beginning several months before a statewide election.

The Division recognizes the need to enhance its outreach and communications program to continue educating the voting public. The Division currently offers a variety of methods to communicate with and educate the public, including:

2/8/2008

20

- Launching a redesigned website for increased accessibility and usability.
- Providing two toll-free access systems for voters to obtain voter registration and election information as well as determine whether their ballot was counted.
- Publishing the Division's election security and testing procedures.
- Coordinating public outreach/training with organizations assisting the disability community on use of the new touch screen voting units.
- Developing the Youth Vote Ambassador Program, where students have the opportunity to serve as election poll workers on Election Day.
- Creating two new Division offices in the Matanuska-Susitna Borough, and Anchorage to better serve voters.
- Improving Election Day signage, including signs that help voters identify the accessible features available at the polling place.
- Increasing public outreach through advertisements, public service announcements and media releases and taking steps to provide copies of all outreach in required minority languages.

In addition to the efforts described above, the Division continues to strive to:

- Implement an interactive statewide database.
- Coordinate voter education and awareness efforts with Alaska Native organizations and community groups, including groups providing services to individuals with disabilities.
- Target voter education efforts to address the needs of the disability community and individuals with alternative language needs.
- Develop a college student voter education program.
- Provide awareness training for all Division employees and election officials to recognize the special needs of voters with disabilities.

2/8/2008

21

Election Official Training

Election officials are essential to achieve an efficient, secure, and reliable election process. In Alaska, the four regional election supervisors are responsible for providing a comprehensive training program to election officials in their respective regions prior to statewide and federal elections. Training needs are determined by the election supervisors and are community-based and targeted towards the following election officials:

- Precinct election boards
- Absentee voting officials
- Accu-Vote coordinators
- Accu-Vote field workers
- Absentee ballot review boards
- Questioned ballot review boards
- Regional Accu-Vote boards
- State Review Board

With the implementation of touch screen voting, Alaska recognized the need to re-shape its precinct election boards to improve the election process. Prior to 2006, Alaska used a precinct election board consisting of an election chairperson and election judges. The chairperson is responsible for supervising the overall election activities in the polling place. In 2006, an additional worker was added to each precinct election board as the "co-chairperson". The co-chairperson was the election worker responsible for the touch screen voting unit in that polling place.

Improving and implementing statewide training resources and procedures is an ongoing process improved upon each election year. Working as a team, the HAVA section and the four election supervisors develop uniform training materials that are coordinated with election official handbooks and distributed with Election Day ballots and supplies. All training materials and handbooks are created for the type of ballot counting utilized at each precinct: hand count or Optical Scan. In addition, every precinct receives training on and instructional materials for the touch screen voting

2/8/2008

22

unit. Among the materials developed for use with the touch screen units are: the *Touch Screen Voting Unit Handbook*, the *Touch Screen Voting Unit Brochure*, *Touch Screen Voting Procedures Poster* and the *Touch Screen Opening and Closing Instructions*. In 2006, the regional offices conducted hands-on training sessions in two modules; election procedures and equipment procedures. The equipment procedures module provided an opportunity for election workers to experience the operation of the touch screen voting equipment and practice setting it up, voting, printing election results and taking the unit down. This module added an additional 2-3 hours to each training session.

Alaska faces many unique challenges when providing election official training, especially for precinct election boards in the field on Election Day. Due to the State's vast size and the large number of precincts not connected by a road system, our training programs are categorized into two groups: urban and rural.

Prior to 2004, in order to train precinct polling place officials in rural Alaska, Election Supervisors and their assistants spent several months prior to an election traveling in small bush planes, ferries and boats to Alaskan communities to conduct training. Due to limited flights scheduled to these remote communities, chartered flights were often required and the election training official could train only one community per day. With 439 precincts throughout the state, the challenge to provide training is formidable. Because traveling for training was so time intensive, election workers were trained so far in advance of the election that training materials were not always finalized. In addition, election workers may not have been appointed or agreed to serve in all precincts, and those who did receive training may not retain the procedures at the time of the election.

During the 2004 and 2006 election year, the Division used "hub training" for the training of its election workers in rural areas of Alaska. The purpose of this training method is for the Division to more effectively train election workers closer to Election Day. When utilizing "hub training", the Division sends the chairperson and co-chairperson from each selected rural precinct to one larger, more "central" community where all the workers are trained simultaneously. The chairperson and co-chairperson then return home and train the election judges at their precinct. "Hub training" has enabled the Division to train rural election workers closer to Election Day, and has provided an improvement to the conduct of elections in rural areas of Alaska.

2/8/2008

23

Office Expansion

Using HAVA funds appropriated in 2002, the Division of Elections created three new elections offices across the State. Opened in the spring of 2006, the offices provide additional ways for voters to access the Division, and allow for more staff to focus on improving HAVA compliance. The three new office locations – the Absentee & Petition Office in Anchorage and the two satellite offices in Kenai and Matanuska-Susitna Borough – employ a total of 6 full time employees. In 2006, the satellite offices prepared for the Primary and General elections by doing tasks such as voter registration and outreach.

In 2007, it was determined that the Kenai satellite office had not been utilized by the public as had been initially projected, and was closed in October, 2007. The Matanuska-Susitna satellite office and the Absentee & Petition Office remain funded by HAVA due to their heavy usage by voters. The staff and resources in the offices are utilized entirely for the preparation of the 2008 election year and for improving the election process. During the 2007 year, projects for the offices included: developing a statewide media plan, testing and repairing voting equipment and assisting with polling place accessibility surveys in preparation for the 2008 election cycle. Between June 2007 and January 2008, the Division performed monthly tracking and submitted to the Election Administration Commission quarterly reports justifying the use of HAVA monies to fund the offices. In addition, the reports identified what progress was made on each project. In preparation for 2008 Presidential election, the Absentee and Petition Office will be contacting all military and overseas voters to verify the ballot mailing address on file is still accurate.

Accessibility

The Division continues to improve accessibility in polling places across the State. In August 2007, the Division created a HAVA Program Assistant position using Health and Human Services accessibility grant funds. The HAVA Program Assistant's responsibility is to focus on the improvement of voter accessibility, including: creating and maintaining the statewide accessibility information database, conducting polling place accessibility surveys, updating the Division's website, and the purchasing and administration of all polling place equipment.

Prior to the 2008 election cycle, the HAVA Program Assistant will work with other election officials to survey newly established polling places as well as older locations to find areas where accessibility

25

Urban-based training is generally conducted closer to the Election Day. However, travel is required to some urban communities and these officials may be trained 30 – 45 days before the election. Election boards in Anchorage, Fairbanks, Juneau and Nome are trained one-two weeks prior to the election. In urban areas, training sessions for precinct election boards are usually conducted with multiple election boards present. In some areas, training is presented using a PowerPoint presentation.

With the many challenges the Division faces to properly train election workers, handbooks for the various types of officials are critical to their ability to conduct their duties correctly. The Division continues to develop the handbooks in such a way that if an election official has not received in person training, the official will still be able to clearly understand and implement proper procedures on Election Day by receiving telephone instructions and looking at the handbooks.

In an effort to ensure all election officials have the training and resources available to conduct successful elections, the Division started to implement a systematic approach to training that includes:

- Development of a new regional and community-needs comprehensive statewide training plan. This includes improved training methods and the hiring of regional training coordinators, bringing the rural-based training closer to Election Day.
- Improvement of training and Election Day materials and handbooks that are more flexible, accommodating updates and changes. New materials include information on the touch screen voting units and awareness training materials for assisting voters with disabilities.
- Continued research for implementation of better election officials training options, including DVD and VHS videos, interactive web-based training, and conference style training.
- Recognizing the differences between urban and rural training and coordinating training needs, methods, and approaches with various Alaska Native organizations to obtain input and guidance on delivering training to individuals with diverse cultural backgrounds.
- Incorporating recommendations provided by the EAC for successful practices for poll worker recruitment and training.

24

2/8/2008

Section 4. Voting System Guidelines and Processes

equipment can enhance the polling location. With the help of the State ADA Coordinator, the Division will identify equipment needs for each location, and make arrangements for the purchase and installation of accessibility equipment prior to the 2008 Primary election. The HAVA Program Assistant will also work with the Alaska Disability Law Center to survey Alaskans with disabilities on their satisfaction with the voting process.

If significant accessibility improvements are made to polling places statewide, the Division may chose to include a summary of polling place improvements in the Official Election Pamphlet (OEP) to educate voters on the enhancements. A summary of changes may also be incorporated on the Division's website.

How the State of Alaska will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

In 2005, the Alaska Legislature enacted Alaska Statute 15.20.910, which provides for "Standards for voting machines and vote tally systems." Under this law, the Division Director may approve voting systems or vote tally systems depending on relevant factors, including whether the Federal Election Commission (FEC) has certified the system to be in compliance with the voting system standards approved by the FEC. According to State law, the voting system or vote tally system must be equipped with a voter verifiable paper audit trail (VVPAT).

The Division meets all of the voting system requirements required under HAVA as outlined in the attached matrix. The State's touch screen voting units are equipped with a VVPAT that can be used during any recount or election contest. The VVPAT also allows for compliance with Alaska Statute 15.15.430(a)(3) which now requires that, "unless a ballot for an election district contains nothing but uncontested offices, a hand count of ballots from one randomly selected precinct in each election district that accounts for at least five percent of the ballots cast in that district." According to Alaska Statute, if there is a difference of over one percent between the results of the hand count and the results certified by the election board, the entire house district must be recounted. The hand count procedure was first used in the 2006 Primary election, and again during the 2006 General election. During the 2006 election cycle, the hand count results did not differ significantly from the results certified by the election board, and a district-wide recount was not necessary for any race.

To maintain compliance with the Act and Alaska Statute, Alaska will continue providing one touch screen voting unit in every polling location during elections where a federal race appears on the ballot.

2/8/2008

26

2/8/2008

27

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
Section 301. VOTING SYSTEM STANDARDS		
REQUIREMENTS - Each voting system used in an election for federal office shall meet the following requirements: (1) IN GENERAL (A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical-scanning voting system, or direct recording electronic system) shall--		
(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before ballot is cast and counted;	Meets requirements.	No action necessary.
(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and	Meets requirements.	No action necessary.

2/8/2008

28

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
(iii) if the voter selects votes for more than one candidate for a single office - (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.	Meets requirements.	No action necessary.
(B) A State or jurisdiction that uses a paper ballot voting system, a punch-card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots) may meet the requirements of subparagraph (A)(iii) by--		

2/8/2008

29

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and	Meets requirements.	No action necessary.
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.	Meets requirements.	No action necessary.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.	Meets requirements.	No action necessary.
(2) AUDIT CAPACITY -		
(A) IN GENERAL - The voting system shall produce a record with an audit capacity for such system.	Meets requirements.	No action necessary.
(B) MANUAL AUDIT CAPACITY -		

2/8/2008

30

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.	Meets requirements.	No action necessary.
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.	Meets requirements.	No action necessary.
(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.	Meets requirements.	No action necessary.
(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES - The voting system shall--		
(A) be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;	Meets requirements.	No action necessary.
(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other	Meets requirements.	No action necessary.

2/8/2008

31

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
voting system equipped for individuals with disabilities at each polling place; and		
(C) if purchased with funds made available under Title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).	Not applicable.	
(4) ALTERNATIVE LANGUAGE ACCESSIBILITY - The voting system shall provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).	Meets requirements.	No action necessary.
(5) ERROR RATES - The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.	Meets requirements.	No action necessary.

2/8/2008

32

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE - Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting systems used in the State.	Meets requirements.	No action necessary.

2/8/2008

33

Section 5. Alaska's HAVA Election Fund

How the State has established an election fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

In accordance with State law and in coordination with the Alaska Department of Administration, Division of Finance and the Department of Revenue, Division of Treasury, the Division of Elections established an election fund within the State's treasury whose appropriations are accounted for separately within the State accounting system. The General Fund and Other Non-Segregated Investments (GeFONSI) fund contain both federal and general funds. Accounting structures are in place to ensure that federal fund receipts and expenditures are tracked separately from the general funds portion relating to the 5% state match required under HAVA. The Election Fund consists of the following amounts:

- a. Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part.
- b. The requirements payment made to the State under this part.
- c. Such other amounts as may be appropriated under law.
- d. Interest earned on deposits of the fund.

The Governor's Finance Officer and the Division of Elections' Administrative Supervisor works with the Department of Administration, Division of Finance to ensure compliance with all mandated fiscal controls and policies.

02/08/08

34

Section 6. Alaska's Budget for Implementing HAVA

The State's proposed budget for activities under this part (HAVA Section 254 (a)(1)), based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on-

- (A) the costs of the activities required to be carried out to meet the requirements of Title III;
- (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
- (C) the portion of the requirements payment which will be used to carry out other activities.

Title I-Early payments:

HAVA authorized \$650 million in one-time payments to states: \$325 million for making improvements to the administration of elections and \$325 million for the replacement of punch card and lever voting machines. States are not required to provide matching funds for Title I monies.

Title I mandated that each eligible state receives a minimum of \$5,000,000. Alaska's portion was determined by the small state minimum and received \$5,000,000 in April 2003 for making improvements to elections. Alaska was not eligible to receive funds under Section 102 since Alaska replaced its punch card voting system before 2000. However, Alaska did receive a one-time reimbursement payment made to states that replaced such equipment prior to 2000. (See "reimbursement payment" on Page 36-37.)

All Title I money has been distributed to the states.

02/08/08

35

Title II- Requirements payments:

Title II authorizes \$3 billion in additional payments to states over a three year period, annually for meeting the requirements of Title III and for activities to improve the administration of elections if all Title III requirements have been satisfied.

Congress appropriated \$830 million for FY 2003 and just under \$1.5 billion for FY 2004 requirements payments to states. While the FY 2003 funding fell short of the \$1.4 billion authorized in HAVA, FY 2004 funding exceeded the \$1.0 billion authorized. Distribution of these funds began in June 2004.

Payments under Title II are formula based and require a 5% State match for all funds spent in each fiscal year. However, the State may draw down funds each fiscal year without providing the match if the State's Election Plan accounts for the 5% funds in future use. To determine the 5% State match based on the federal requirements payment, multiply Alaska's requirement's payment portion by .0526 (5 divided by 95). See Table 6.1 for Alaska's requirements payment amounts and State match funds.

Accessibility Grants:

Title II also authorizes the Secretary of Health and Human Services to distribute payments to states to assure access for individuals with disabilities. Alaska has applied for and received \$400,000 in accessibility grants for FY 2003, FY 2004, FY 2005 and FY 2006. To date, the Division has not spent these funds; however, using these funds, the Division has created a new HAVA Assistant position, which is responsible for statewide accessibility. In 2007, the Division submitted an application for another accessibility grant for Election Assistance for Individuals with Disabilities (EAID). All accessibility grant funds will be expended in accordance with the requirements of Title II Section 261.

Reimbursement Payment:

The Consolidated Appropriations Resolution, Public Law 108-7, signed February 20, 2003, provided \$15,000,000 in Federal appropriated funds to the General Services Administration

(GSA), for Election Reform Reimbursements. This one-time reimbursement was for states that purchased electronic voting equipment to replace punch card and lever voting machines prior to 2000 making them ineligible to receive funds under Title I Section 102 of HAVA. Alaska qualified for and received a one-time reimbursement of \$1.1 million deposited back into the State's General Fund for electronic voting machines purchased in 1998 to replace all punch card voting equipment.

Table 6.1 outlines the portion of funds available according to GSA Estimates Requirements Payments to States FY02-FY04.

Table 6.1

Federal Fiscal Year	Federal Funds	Alaska's Payment Portion	5% State Match Requirement
(§ 101) 2002	\$650,000.0	\$5,000.0	None
Title I Section 101			
(§ 252, 257) 2003	\$830,000.0	\$4,150.0	\$298.6
Title II Section 251			
(§ 252, 257) 2004	\$1,500,000.0	\$7,446.8	\$469.2
Title II Section 251	(\$ rounded up)		
Total	\$3,580,000.0	\$19,596.8	\$768.0

Alaska's budget in Table 6.2 is based on the levels of funding as shown in Table 6.1 and represents the cost of implementing requirements of Title III and "other" activities as specified in Title I of HAVA through calendar year 2006. Costs associated with the maintenance and operations of implementing these requirements are also reflected in the budget. It is important to note that the maintenance and operation costs associated with these requirements will have an impact on the State's budget in future years when federal funding is no longer available.

02/08/08

36

02/08/08

37

Table 6.2

Replace VREMS to DIMS (EN# 0166374)	1992208	\$2,651,173	\$0	\$2,651,173
Grand Totals		\$7,303,396	\$220,696	\$7,524,092

Additional Notes for Title III requirements:

- (1) *Voting System* - Alaska purchased Optical Scan units in 1998 to replace its punch card voting system. Alaska has 439 voting precincts. Sixty-six percent of the precincts are equipped with Optical Scan and 34 percent are hand-count precincts. The estimated \$5.5 million will be used to implement a HAVA-compliant DRE voting system and to purchase additional Optical Scan units for a portion of Alaska's precincts. In addition, the Division plans to purchase more memory cards for the Accu-Vote Optical Scan voting machines. Installation, training and maintenance costs are included in this figure.

Since Alaska purchased its computerized statewide voting system, replacing punch card voting equipment, prior to November of 2000, Alaska is not eligible to seek reimbursement under Title I, Sec 102 for these expenditures. However, outside of HAVA, PL 108-7 included \$15 million in funds to states who purchased Optical Scan systems prior to the 2000 election. So far, only five states, which include Alaska, were eligible for compensation from the \$15 million appropriation. Alaska received a \$1.1 million reimbursement that was deposited into the State's general fund and is not included in the State's budget for implementing requirements of HAVA.

- (2) *Provisional Voting* - Provisional voting, known as *Questioned* voting in Alaska, has been available to voters in Alaska since the early 1980s. There were minimal changes needed to meet the provisional voting requirements of HAVA.

- (3) *Computerized Statewide Voter Registration System* - Alaska is working on replacing the antiquated Voter Registration Election Management System (VREMS) with a new pc-based database system.

The estimated costs associated with implementing the requirements in HAVA are based on the funding information available at the time that the plan was updated. The budget will be revised

02/08/08

39

Description	Collocation	Inception to Date Actuals	Encumbrances	Total Obligated
AR 2217 HAVA Title II First Requirement Pmt				
Voter Registration System	1222701	\$413,452	\$158,629	\$572,081
Voter Verifiable	1222702	\$757	\$0	\$757
Voter Education	1222703	\$0	\$0	\$0
Accessibility for Voters	1222704	\$1,275,656	\$9,990	\$1,285,646
Language Accessibility	1222705	\$30,363	\$0	\$30,363
Provisional Voting	1222706	\$0	\$0	\$0
Voting Info Requirements	1222707	\$0	\$0	\$0
Computerized List Maintenance	1222708	\$0	\$0	\$0
Technological Security	1222709	\$0	\$0	\$0
DMV Requirements	1222710	\$21,957	\$28,043	\$50,000
SSN Requirements	1222711	\$0	\$0	\$0
By Mail Requirements	1222712	\$0	\$0	\$0
Military & Overseas	1222713	\$0	\$0	\$0
Polling Place Requirements/Improvements	1222714	\$2,971	\$0	\$2,971
AR 2217 Totals		\$1,745,156	\$196,662	\$1,941,818

AR 2218 HAVA Title I - Meeting Requirements				
Meeting Requirements w/ Title I	1992218	\$256,911	\$0	\$256,911
Accessible Voting Equipment	1221801	\$491,547	\$22,864	\$514,431
Voter Registration System	1221802	\$206,029	\$0	\$206,029
Military & Overseas	1221803	\$0	\$0	\$0
Polling Place Accessibility Improvements	1221804	\$42,319	\$0	\$42,319
Provisional Voting	1221805	\$0	\$0	\$0
Voter Education	1221806	\$75	\$0	\$75
Admin Complaint Procedures	1221807	\$0	\$0	\$0
Management of State Plan	1221808	\$495	\$0	\$495
Language Accessibility	1221809	\$5,585	\$1,150	\$6,735
Free Access	1221810	\$2,103	\$0	\$2,103
DMV Requirements	1221811	\$3,734	\$0	\$3,734
Forms	1221812	\$34,179	\$0	\$34,179
AR 2218 Totals		\$1,042,977	\$24,034	\$1,067,011

AR 2219 Title I Improve Election Administration				
Absentee Office	1922125	\$484,368	\$0	\$484,368
Wasilla Satellite Office	1922190	\$439,302	\$0	\$439,302
Kenai Satellite Office (closed 10/15/07)	1922200	\$565,514	\$0	\$565,514
Primary CC Early HAVA	1992219	\$374,906	\$0	\$374,906
AR 2219 Totals		\$1,864,090	\$0	\$1,864,090

AR 2208 VREMS Replacement to DIMS				
--	--	--	--	--

02/08/08

38

appropriately to reflect the most current information available on federal funding and according to changes that may be made in the implementation schedule.

Section 7. Maintenance of Effort

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

In accordance with HAVA section 254 (a)(7), Alaska will maintain the same level of expenditures on similar activities funded by the requirements payment that was spent in the fiscal year ending prior to November 2000. Alaska's expenditures for these activities totaled \$537,500.

The Division of Elections administers all state and federal elections. These elections occur in even calendar years. The Division receives an increment to the annual operating budget in an odd fiscal year beginning July 1 in order to conduct primary and general elections. This increment provides for the expenditures associated with election officials, polling place recruitment, temporary employees, ballot printing and distribution, election supplies, Election Day support, and other costs associated with conducting an election.

Other expenditures in an even-numbered calendar year are spent in preparation of election activities that occur after July 1. These activities include election official training, voter education, advertising, production of election pamphlets, information technology support, and the purchasing of equipment and supplies. The maintenance of effort for the State's FY00 budget represents a portion of the total operating budget that is appropriated to carry out election administrative activities in an even fiscal year.

02/08/08

41

02/08/08

40

Section 8. HAVA Performance Goals and Measures

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

The Division of Elections will establish performance goals in conjunction with the Alaska State Legislature during the deliberation of the annual operating budget. The "Missions and Measures" process undertaken by the Legislature in concurrence with the consideration of the annual operating budget has been established as a respected means for developing performance measures that accurately quantify program success.

The Director of the Division of Elections, as the "Chief State Election Official" under section 253(e), is responsible for coordination of the State's responsibilities under this Act. Therefore, the Director is ultimately responsible for ensuring that the Division meets each performance goal. In addition, the Legislature will be monitoring the Division's efforts through the annual preparation of the State's operating budget.

Plan Elements		Official	Time frame
Voting Systems		Director of Elections	Completed
§301			
Provisional Voting		Director of Elections	Completed
§302			
Voter Registration		Director of Elections	§303(a) Implemented §303(b) Implemented
§303(a)			
§303(b)			
Other Activities			
§101 (b)(1), §251 (b)(2)			

02/08/08

42

02/08/08

43

Technical Infrastructure	Election Admin. Supervisor	Continuous
Free-Access System	Admin Asst. Supervisor HAVA Coordinator	Implemented
Education and Training	Regional Supervisors Election Special Assistant HAVA Section	Continuous
§254(a)(3)		
Budget and Fiscal Controls		Continuous
§254(a)(2)	Admin. Asst. Supervisor Election Administrative Supervisor Director	State monitors HAVA account each month
§254(a)(6)		
§254(a)(7)		
§254(a)(10)		
Complaint Procedures	Director of Elections	Completed
§254(a)(9)		
§402		

Section 9. State-based Administrative Complaint Procedure

A description of the uniform, nondiscriminatory State-based administrative complaint procedure in effect under section 402.

The State of Alaska, Division of Elections has developed administrative regulations to establish the required complaint procedure. These regulations constitute a new article 6 AAC 25.400 -- 490 that is now a part of the Division's administrative regulations set out at Title 6, Chapter 25 of the Alaska Administrative Code.

These regulations satisfy the requirements of HAVA section 402 by providing a uniform and nondiscriminatory complaint procedure. Under these procedures, any person who believes there has been a violation of HAVA Title III may file a complaint. The complaint must in writing, sworn, and notarized. At the complainant's request, there will be a hearing on the record. If the State finds a violation, it shall provide an appropriate remedy. If there is no violation, the State will dismiss the complaint and publish the results. The Division will make a final determination on a complaint within 90 days. If the Division cannot meet this deadline, the complaint will proceed under alternative dispute resolution procedures.

The Division adopted these administrative regulations on August 29, 2003.

Additionally, the Division developed an Administrative Complaint form that can be found at any Division of Elections office and on the Division's web site.

02/08/08

44

Section 10. Effect of Title I Payments

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Under Section 103, Guaranteed Minimum Payment, Alaska received the minimum payment of \$5 million and established an Election Fund.

Current activities carried out under the plan have improved the administration of elections for federal office and the election process as a whole.

Upon receipt of Title I monies, the Division of Elections is using the funds for one or more of the following:

- **Developing the State plan for requirements payments to be submitted under Part I of Subtitle D of Title II.**

The State plan is created and updated by the HAVA Project Coordinator, and costs for plan maintenance are tracked by that position.

- **Educating voters concerning voting procedures, voting rights, and voting technology.**

Implementation and development of the Division's website, the maintenance of the free-access systems, and preparation of training materials used by voters have been completed to comply with the Act. In addition, the Division provides touch screen voting unit demonstrations to the public and specifically targets members and groups of the disabled community.

- **Training election officials, poll workers, and election volunteers.**

02/08/08

45

The Division has improved training systems with the goal of training more election workers closer to an election. The challenge continues to be training citizens with diverse physical, social and cultural differences across a vast geographical area in a short time period. In order to bring election worker training closer to Election Day, the Division has created a new training assistant position for each region. In some regions of the state, the Division trained election workers one month before the election.

- **Improving, acquiring, leasing, modifying and/or replacing voting systems and technology and methods for casting and counting votes.**

The Division is continuing the process of implementing a new statewide voter database to replace the antiquated VREMS system.

In addition, the Division has developed methods to improve how the touch screen voting units are shipped, and has created procedures that result in less transportation costs and damage to the units.

- **Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Indigenous Native citizens, and to individuals with limited proficiency in the English language.**

The Division has developed a polling place survey and worked in coordination with the State ADA coordinator on the assessment of polling places within Alaska. In 2007, the Division plans to evaluate newly established polling places in preparation for the 2008 election year. Improvements to polling places for 2008 will be made using the Health and Human Services accessibility grant funds.

Using Health and Human Services accessibility grant funds, the Division is obtaining a new HAVA Program Assistant position, which will be solely responsible for surveying polling

places statewide, assisting with training of staff, and developing methods to inform the public about the improvements made to locations.

In addition, the Division is working on developing an updated statewide language assistance program that specifies what type of assistance is available to minority language voters across the state.

- **Establishing free-access telephone systems for voters to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.**

The Division currently uses an interactive toll-free telephone system for voters to verify their polling location and party affiliation. Additionally, voters may contact another toll-free number to determine the count of their ballot or file an administrative complaint. With the development and implementation of the new DIMS registration system, the Division hopes to make the information provided by those telephone systems also available on the Division's website.

Voters also have the option of checking the status of their absentee ballot by using the Division's absentee ballot locator. Using this web-based tool, voters can log on with an identifier such as a social security number and see if their application has been processed, a ballot has been sent, and if a voted ballot was received back.

Section 11. Alaska's HAVA State Plan Management

How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

- (A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;*
- (B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and*
- (C) takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register in accordance with subparagraph (A).*

The Lieutenant Governor, as the "Chief State Election Official" under Section 253(e), is responsible for coordination of the State's responsibilities under this Act. The Division Director, appointed by the Lieutenant Governor, oversees the day-to-day operations of the Division. Therefore, the Lieutenant Governor is ultimately responsible for continuous management and implementation of the State Plan. These responsibilities include tracking resource requirements, managing HAVA funds, and ensuring that additional implementation projects are in compliance and on schedule.

The Division employs both a HAVA Project Coordinator and a HAVA Election Systems Manager to oversee the implementation of HAVA-related projects and activities. Under the purview of the Director, the HAVA Project Coordinator and HAVA Election Systems Manager strive to continually improve polling place accessibility and language assistance programs, increase voter outreach efforts, and manage the implementation and use of all voting equipment and the voter registration database. In addition, the HAVA Project Coordinator is responsible for updating the HAVA State Plan.

The updated HAVA State Plan is an essential component in the Division's continuing efforts to improve accessibility and accountability in the election process. Alaska has already implemented many aspects of HAVA, and the Division sees the ongoing management of the

State Plan as a continuation of the State's commitment to election reform. Each element is being managed closely to achieve compliance, maximize improvements to all aspects of the election process, and continue responsible use of available funds.

The State understands and agrees to comply with HAVA requirements related to ongoing management of the State Plan. More specifically, the State agrees that it may not make any material change in the administration of the State Plan unless the change:

- (A) is developed and published in the Federal Register in accordance with HAVA Section 255 in the same manner as the State Plan;
- (B) is subject to public notice and comment in accordance with HAVA Section 256 in the same manner as the State Plan; and
- (C) takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register.

02/08/08

48

02/08/08

49

Section 12. Changes to State Plan from Previous Fiscal Year

In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.

The State of Alaska's 2008 HAVA Updated State Plan remains consistent, with steady progress towards the goals established in the initial 2003 and the updated 2005 State Plan. The State of Alaska passed legislation to bring the state into compliance with HAVA requirements; developed new staff positions to manage HAVA; updated forms and training materials; and continues to design improved voter outreach programs.

Since the 2005 State Plan, the Division has launched a new, improved website, developed additional educational brochures for voters and election workers, and created two new offices to increase the Division's accessibility to voters around the state. The Division now also distributes to every registered voter household an election pamphlet during all Primary elections where a ballot measure appears on the ballot.

Since the 2005 State Plan, the Division purchased 405 touch screen units using HAVA Funds, and, during the 2006 election year, fully implemented the touch screen voting units in compliance with Sec. 301. Each unit was retrofitted with a VVPAT to allow the voter to confirm their selections before casting their ballot and for use during the hand count verification process or a recount. Shipping containers for the units were designed and procured to safely ship the touch screens to and from the polling place locations. The Division developed and distributed informational brochures and training manuals for voters and election workers, highlighting the accessible features of the units and how to use them. The Division also held public demonstrations across the State to educate the public on the new voting units.

The Division established procedures for conducting a hand count verification procedure following every election in accordance with Alaska Statute. The Division is required to hand

02/08/08

50

count ballots from one randomly selected precinct in each election district that accounts for at least five percent of the ballots cast in that house district. These procedures were utilized in the 2006 Primary and General Elections.

The Division commissioned the University of Alaska, Anchorage to conduct a study to examine the security and accuracy of the State's voting system and to make recommendations for improvements.

The State of Alaska is in full compliance with the requirement to verify voter registration information as required in Section 303(a)(5). A Memorandum of Agreement dated August 2003 between the Division of Election and the Division of Motor Vehicles (DMV) allows the Division of Elections to match identifying information provided by a first-time, by-mail registrant on his or her registration application to information maintained in the DMV database. The Alaska DMV has completed the process of verifying the last four digits of the social security number information with the American Association of Motor Vehicle Administrators (AAMVA). The verification program is now fully operational.

The Division continues to make progress with the implementation of the new voter registration system which will replace the outdated mainframe system. The Division continues to commit resources to development and technical requirements of the new system.

In 2005, the Alaska Legislature enacted A.S. 15.20.910, which defines "Standards for voting machines and vote tally systems".

02/08/08

51

Section 13. State Plan Development and Committee

A description of the committee that participated in the development of the State Plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The draft of Alaska's State Plan was created by the Division of Elections with the legal guidance of the State's Attorney General's Office. The Division continues to seek consultation from the State Attorney General's office in our implementation of HAVA.

No public meetings are planned for this year. The Division will provide the State Plan Committee with a copy of the updated 2008 HAVA State Plan for review and comment. Additionally, the 2008 State Plan will be posted on the State's online public notice system and on the Division of Elections' website.

In 2007, Lieutenant Governor Sean Parnell updated the membership of the State Plan Committee. The State Plan Committee members continue to reflect a cross section of election stakeholders throughout the State, in accordance with Section 255 of the Act.

The Lieutenant Governor named the following Alaskans to serve on the State Plan Committee:

Whitney Brewster, former Director of the Division of Elections, Chair of the Committee

Alyce Houston, Region I Election Supervisor, Juneau

Carol Thompson, Absentee & Petition Manager, Anchorage

Michelle Speegle, Region III Election Supervisor, Fairbanks

Edna Baker, Region IV Election Supervisor, Nome

02/08/08

52

Jim Beck, Executive Director, Access Alaska

Lynne Koral, First Vice-President, Alaska Independent Blind

Jason Burke, State of Alaska ADA Coordinator

Sarah Felix, Assistant Attorney General, State of Alaska

02/08/08

53



FLORIDA DEPARTMENT OF STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

April 30, 2007

The Honorable Donetta Davidson, Chair
United States Elections Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, D.C. 20005

Dear Commissioner Davidson:

In accordance with Section 255 of the Help America Vote Act of 2002 (HAVA), I am submitting a paper version and a disk containing the revised State of Florida HAVA Plan (2006 update) for publication in the Federal Register.

The HAVA State Plan (2006 Update) complies with section 253(b)(1) regarding conditions for receipt of funds, with section 254(a) regarding description and material changes to the State Plan from prior fiscal years, and with section 255 regarding development and filing of the State Plan. We regret that due to time constraints, the HAVA Plan (2006 Update) weaves both material and non-substantive changes into the existing HAVA Plan, rather than highlighting the changes in a separate supplement.

As you aware, the 2007 Florida Legislature is in session and there are a few pending election legislative proposals, at least one of which, if enacted, may necessitate a revision to our budget projections contemplated in the attached plan. We will obviously apprise the Commission in the appropriate manner of any material changes to the State of Florida's HAVA Plan.

On behalf of the State of Florida, thank you and the other members for your assistance and I look forward to continuing our collaborative effort to improve election administration.

Sincerely,

Kurt S. Browning
Secretary of State

Enclosures

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125
www.dos.state.fl.us

STATE OF FLORIDA HAVA PLAN

2006 UPDATE



As required by the
HELP AMERICA VOTE ACT
OF 2002 (HAVA)



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 2

INTRODUCTION BY THE CHIEF ELECTION OFFICER

I am pleased to present the 2006 Update to Florida's HAVA State Plan in accordance with the Help America Vote Act. This state plan represents Florida's ongoing long-range plans for implementing the election reforms initiated by HAVA for federal elections.

This most recent revision is the product of the thoughtful guidance, dedication and input of former Secretary Sue M. Cobb and the new HAVA Planning Committee that she appointed in September 2006. Chaired by former Secretary of State Jim Smith, the 13-member Committee included individuals from various constituency groups and governmental interests. At the time, I served on the Committee in my capacity as the Supervisor of Elections for Pasco County. The Committee was tasked with revising the plan to reflect compliance with HAVA and include substantive changes and updates on ongoing activities since the Plan's last update in June 2004. In the interim of finalizing and submitting the 2006 update to the HAVA State Plan, Secretary Cobb's term expired and I was honored by being appointed as her successor.

The HAVA State Plan (2006 Update) complies with section 253(b)(1) regarding conditions for receipt of funds, with section 254(a) regarding description and material changes to the State Plan from prior fiscal years, and with section 255 regarding development and filing of the State Plan. This update also weaves in non-substantive changes (e.g. corrections to spelling, punctuation, reformatting, etc.).

Most importantly, this plan projects a budget for HAVA activities through Fiscal Year 2010-11. The projected budget recognizes that Supervisors of Elections have a continuing need for funds to provide voter education and to recruit and train qualified poll workers. As the Chief Election Officer, I am committed to working with and supporting our Supervisors as we continue to ensure that elections in Florida are a model for the rest of the nation.

Kurt S. Browning
Secretary of State



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE

TABLE OF CONTENTS

Introduction from Secretary Kurt S. Browning	2
Introduction	3
Element #1 – A. Section 301 Voting Systems	7
Element #1 – B. Section 302 Provisional Voting and Voting Information	19
Element #1 – C. Section 303 Voter Registration	27
Element #2 – Local Government Payments and Activities	38
Element #3 – Voter Education, Election Official Training, Poll Worker Training	44
Element #4 – Voting System Guidelines and Process	61
Element #5 – Election Fund	63
Element #6 – Proposed Budget	65
Element #7 – Maintenance of Effort	75
Element #8 – Performance Goals and Measures	77
Element #9 – Complaint Procedures	86
Element #10 – Title I Budget and Activities	88
Element #11 – State Management	93
Element #12 – Changes to State Plan	95
Element #13 – HAVA Planning Committee and Procedures	103
State of Florida HAVA State Plan Chart	107
Appendices	110



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 3

Introduction

Since the aftermath of the General Election of 2000, Florida has led the nation in its election reform efforts to ensure that every registered voter should have the opportunity to vote and to ensure that every vote counts.

The goal is perfection. Reaching that goal in an ever changing democracy and within a diverse population is an ongoing task that requires constant experimentation and learning. The people and the leadership of Florida have dedicated themselves to this course of action.

The struggle for improving our election process occurs in many ways. Citizens have increased their involvement by serving on local and State election task forces, researching new voting technologies, debating new standards for poll worker training, increasing voter education opportunities, and registering new voters. The people of Florida continue to make election reform a top priority.

The leadership of Florida has also acted decisively. Florida has enacted legislative and local reforms that lead the nation. These reforms include cutting-edge voting system standards, millions of dollars for new voting technology, expanded voter education efforts, and thousands of newly trained poll workers. Statewide polls taken the day of the 2002 and 2004 General Elections found that Floridians gave high marks to the election reform changes including a 91% "excellent-good" rating for poll workers and an 88% confidence rating from voters that their votes will count. These results are not "perfect," but Florida is moving in a positive direction to make all facets of the election process better each time an election is held.

With the passage and signing of the Help America Vote Act of 2002 (HAVA) on October 29, 2002, election reform is spreading throughout the nation. The new federal law asks States to develop election reform plans that will improve election administration in many areas. Florida embraces the new federal law and hopes that other States will use it as an opportunity to share new election reform ideas and practices with one another.

The people of Florida have learned many things about election reform. Yet, there are enduring principles which are reflected within many recommendations and changes of Florida's election reform efforts. These principles were developed by Florida's first task force in the aftermath of the 2000 General Election:

Enduring Principles of Elections

- Elections are first and foremost acts of millions of individual people: citizens who register and vote; candidates who offer themselves and their platforms for public judgment; poll workers who put in long days at precincts; and election officials who



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 4

supervise the process. Honest, responsible, intelligent people will make most technology systems work well.

- Voting should be a simple, convenient and friendly process that encourages each citizen to express his or her choices.
- Voting systems should be designed to determine voter intent, to the extent that is humanly possible.
- Voting methods for statewide and national elections should meet uniform standards and national standards for fairness, reliability and equal protection of voting opportunity.
- Elections must meet two competing objectives: certainty (making every vote count accurately) and finality (ending elections so that governing can begin).
- While voting should be individual and private, procedures for counting and challenging votes should be open, transparent, and easily documented to ensure public confidence in the results.

Fulfilling the promises of these enduring principles will require continued vigilance and action. With this HAVA Plan, Florida continues its journey to mount an increasingly open and fair system of determining the will of the people.

The Help America Vote Act of 2002 (Public Law 107-252 – October 29, 2002) requires all States to develop and implement a statewide plan. Specifically section 254 requires the state plan to include and describe the following thirteen primary elements:

Element 1.

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Element 2.

How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

- A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and*
- B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).*

Element 3.

How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 5

Element 4.

How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

Element 5.

How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

Element 6.

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

- A) *The costs of the activities required to be carried out to meet the requirements of Title III;*
- B) *The portion of the requirements payment which will be used to carry out activities to meet such requirements; and*
- C) *The portion of the requirements payment which will be used to carry out other activities.*

Element 7.

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

Element 8.

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

Element 9.

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 6

Element 10.

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Element 11.

How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change —

- A) *Is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;*
- B) *Is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and*
- C) *Takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (4).*

Element 12.

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Element 13.

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 8

Only two types of voting methods are certified for use in Florida's 67 counties— Direct Recording Electronic (DRE or "touch screen") voting systems and Marksense with precinct-based tabulation. There are three manufacturers who have certified voting systems for use in Florida: Diebold Election Systems, Inc. (DES); Elections Systems and Software, Inc. (ES&S); and Sequoia Voting Systems, Inc. (SP).

The following chart details the types of voting systems used in Florida, the respective manufacturer, and the number of counties using the voting systems.

**Voting Systems and Number of Counties in Use
For Precinct and Absentee Voting***

Florida Certified Voting System	Precinct Equipment	Accessible Equipment	Central Count Method	Counties
Diebold Voting System Release 1-18-19, Version 2	AccuVote OS	AccuVote TSx DRE	Optical scan	22
Diebold Voting System 2005 B (Blended) + (Plus Audio)	AccuVote OS	AccuVote TSx DRE	Optical scan	9
ES&S Voting System Release 4.5, Version 1	Optech III P Eagle	IVotronic DRE	Optical scan	7
ES&S Voting System Release 4.5, Version 2	Model 100	IVotronic DRE	Optical scan	14
ES&S Voting System Release 4.5, Version 2	IVotronic DRE	IVotronic DRE	Optical scan	11
Sequoia AVC "Edge" Voting System Release 4.3.320	Edge I DRE	Edge I DRE	Optical scan	4

*Current for time period October 2006

The Help America Vote Act of 2002 (HAVA) establishes new minimum requirements for administering federal elections. These new voting system requirements are found in Title III of the federal law. The new requirements shape the performance and the administration of voting systems. Florida is in compliance with these new federal directives and these are addressed in the HAVA State Plan. Section 301(a) of HAVA requires that Florida's voting systems meet the following requirements by January 1, 2006:



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 7

ELEMENT 1. USE OF TITLE III REQUIREMENTS PAYMENTS

A. VOTING SYSTEMS

Section 251(b)(1): How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections.

1. Introduction

Following the 2000 General Election, the people of Florida made a concerted effort to improve all facets of its election procedures, standards and voting systems. The first major changes were the recommendations advanced by the 2001 Governor's Select Task Force on Election Procedures, Standards and Technology followed by the passage of the Florida Election Reform Act of 2001. A central component of Florida's new election law mandated the replacement of punch card voting systems, lever machines, paper ballots and central count optical scanning systems with precinct tabulated Marksense voting systems or the Direct Recording Electronic (DRE or "touch screen") voting systems. The new voting systems were put into service to reduce voter error, to improve tabulation accuracy, and to restore voter confidence in Florida's elections.

Florida has adopted voting system standards which meet and exceed 2002 Voting System Standards (VSS) established by the Federal Election Commission. Florida's voting system standards are reviewed every two years to determine whether they are adequate and effective in carrying out fair and impartial elections. The Bureau of Voting Systems Certification within the Department of State has statutory authority to adopt rules which establish minimum standards for voting systems purchased and used in Florida. The Bureau is currently in the process of reviewing and comparing Division rules on voting system standards against the 2005 Voluntary Voting Systems Guidelines adopted by the Elections Assistance Commission. The federal guidelines augment and update the 2002 VSS and take effect December 2007.

Florida's 67 counties have authority to purchase and to maintain the appropriate certified voting system for their registered voters. Following the 2000 General Election, the State of Florida provided \$24 million to assist counties in purchasing new certified voting systems. For the fiscal year 2004-05 the Florida Legislature additionally appropriated \$11.6 million to assist Supervisors of Elections with purchasing DREs in order to provide one accessible voting system at each polling place. For the fiscal year 2005-06 the Legislature appropriated \$13,406,163 to reimburse sixteen counties that acquired accessible voting systems prior to July 1, 2004. In addition, there were eight counties that received a total of \$63,215 as reimbursement for existing DREs that were not included in the fiscal year 2004-05 appropriations.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 10

2. Section 301(a) Voting System Standards and Requirements

a. Section 301(a)(1)(A)i.: Do Florida's voting systems permit the voter to verify in a private and independent manner the votes selected by the voter before the ballot is cast and counted as required?

Yes, and no further actions are required.

Section 101.5606(1), *Florida Statutes*, states that no voting system in Florida shall be approved by the Department of State unless it "permits and requires voting in secrecy."

The Florida Voting System Standards (Rule 1S-5.001, Florida Administrative Code, rev. 01/05) state that "the voter must be able to review the candidate selections, which he or she has made. Prior to the act of casting a ballot, the voter must be able to change any selection previously made and confirm the new selection." Additionally, these standards state that the voting function standards applicable to all Electronic Voter Interfaces must provide "after the initial instructions, which the system requires election officials to provide to each voter, the voter should be able to independently operate the voter interface through the final step of casting a ballot without assistance."

b. Section 301(a)(1)(A)(ii): Do Florida's voting systems provide the voter with the opportunity in a private and independent manner to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error)?

Yes, and no further actions are required.

Section 101.5606(12), *Florida Statutes*, requires that electronic voting systems should "permit each voter to change his or her vote for any candidate or upon any question appearing on the official ballot up to the time that the voter takes the final step to register his or her vote and to have the vote computed." Additionally, the Florida Voting System Standards state that "the voter must be able to review the candidate selections, which he or she has made. Prior to the act of casting a ballot, the voter must be able to change any selection previously made and confirm the new selection."

Section 101.5608(2)(b), *Florida Statutes*, requires that "[a]ny voter who spoils his or her ballot or makes an error may return the ballot to the election official and secure another ballot, except that in no case shall a voter be furnished more than three ballots. If the vote tabulation device has rejected the ballot, the ballot shall be considered spoiled and a new ballot shall be provided to the voter unless the voter chooses to cast the rejected ballot. The election official, without examining the original ballot, shall state the possible reasons for the rejection and shall provide instruction to the voter pursuant to Section 101.5611, *Florida Statutes*. A spoiled ballot shall be preserved, without examination, in an envelope

provided for that purpose. The stub shall be removed from the ballot and placed in the envelope."

Section 101.5611(1), *Florida Statutes*, requires that the "Supervisor of Elections shall provide instruction on the proper method of casting a ballot for the specific voting system utilized in that jurisdiction. Such instruction shall be provided at a place which voters must pass to reach the official voting booth."

c. Section 301(a)(1)(A)(iii): If the voter selects votes for more than one candidate for a single office, do Florida's voting systems: (1) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (2) notify the voter before the ballot is cast and counted of the effect of casting the multiple votes for the office; and (3) provide the voter with the opportunity to correct the ballot before the ballot is cast?

Yes, and no further actions are required.

Section 101.5606(3), *Florida Statutes*, requires voting systems to immediately reject "a ballot where the number of votes for an office or measure exceeds the number which the voter is entitled to cast or where the tabulating equipment reads the ballot as a ballot with no votes cast." Subsection (4) of that same section requires systems using paper ballots to accept a rejected ballot if the voter chooses to cast the ballot after it has been rejected, but the ballot will record no vote for any office that has been over voted or under voted.

Section 101.5608(2)(b), *Florida Statutes*, provides that "Any voter who spoils his or her ballot or makes an error may return the ballot to the election official and secure another ballot, except that in no case shall a voter be furnished more than three ballots. If the vote tabulation device has rejected the ballot, a ballot shall be considered spoiled and a new ballot shall be provided to the voter unless the voter chooses to cast the rejected ballot. The election official, without examining the original ballot, shall state the possible reasons for the rejection and shall provide instruction to the voter pursuant to s. 101.5611. A spoiled ballot shall be preserved, without examination, in an envelope provided for that purpose. The stub shall be removed from the ballot and placed in an envelope."

Section 101.5611(1), *Florida Statutes*, requires that the "Supervisor of Elections shall provide instruction on the proper method of casting a ballot for the specific voting system utilized in that jurisdiction. Such instruction shall be provided at a place which voters must pass to reach the official voting booth."

The Florida Voting System Standards (Rule 1S-5.001, F.A.C.) state that "the system must prevent the voter from over voting any race." In addition, "there must be a clear, identifiable action, which the voter takes to 'cast' the ballot. The system must make clear to the voter how to take this action, such that the voter has minimal risk of taking the action accidentally, but when the voter intends to cast the ballot, the action can be easily



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 12

performed." The standards also state that "Marksense systems shall reject blank ballots and ballots with overvoted races. Electronic voter interfaces shall prevent a voter from overvoting a race, and shall provide a means of indicating, to the voter, any races that may have been undervoted before the last step necessary to cast the ballot."

- d. Section 301(a)(1)(B): Does Florida's mail-in absentee and mail-in ballot process meet the requirements of subparagraph (A)(iii) by: (i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple ballots for an office; and (ii) providing the voter instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)?

Yes, and no further actions are required.

The Florida Legislature amended Section 101.65, *Florida Statutes*, to require the instructions for absentee voters to include the following language:

Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one candidate, your vote in that race will not be counted.

In addition, Rule 1S-2.032, *Florida Administrative Code* (F.A.C.), (Uniform and General Election Ballot Design) instructs all voters on how to correct their ballots and how to request a replacement ballot if the voter is unable to change or correct the original ballot. The instructions for how to correct the error through issuance of a replacement ballot are:

If you make a mistake, don't hesitate to ask for a new ballot. If you erase or make other marks, your vote may not count.

The HAVA Planning Committee (2003) also suggested that absentee voters should be given clear notification that the deadline for submitting absentee ballots is by 7:00 p.m. of election night and that mailing the ballot may not ensure that it will arrive in time to be counted. Section 101.65, *Florida Statutes*, requires the printed instructions to include the following statement:

1. **VERY IMPORTANT:** In order to ensure that your absentee ballot will be counted, it should be completed and returned as soon as possible so that it can reach the Supervisor of Elections of the county in which your precinct is located no later than 7 p.m. on the day of the election.

- e. Section 301(a)(1)(C): Does Florida's absentee and mail-in ballot process preserve the privacy of the voter and the confidentiality of the ballot?

Yes, and no further actions are required.

Section 101.65, *Florida Statutes*, requires Supervisors of Elections to enclose with each absentee ballot a separate printed instruction form, a secrecy envelope, a Voter's Certificate and a mailing envelope. The instructions provide the following guidelines:

- Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.
- Place your marked ballot in the enclosed secrecy envelope.
- Insert your secrecy envelope into the enclosed mailing envelope which is addressed to the supervisor.

Section 101.68(2)(d), *Florida Statutes*, details the policy and procedure local canvassing boards are to follow for handling absentee ballots to ensure that the confidentiality of the ballot is maintained.

- f. Section 301(a)(2)(A): Do Florida voting systems produce a record for audits?

Section 301(a)(2)(B): Do the voting systems produce a permanent paper record with a manual audit capacity?

Section 301(a)(2)(C): Is the paper record produced in subparagraph (A) available as an official record for any recount conducted with respect to any election in which the system is used?

Yes, and no further actions are required.

The HAVA Planning Committee (2003) determined through research conducted by staff, through testimony offered by Congressional staff, and through testimony given by staff from the Division of Elections that Florida complies with the HAVA audit requirement. Florida voting system standards require DRE machines to maintain a random sorted file of ballot images for every vote cast, and they also have to maintain detailed logs for each election from the time they are first programmed for an election until the results are copied to archival media. Certified voting systems in Florida are required to print out a paper tape of summary totals in each precinct. The paper record is produced to reconcile the consolidated totals for the county in the event of a recount.

Staff from the Division of Elections testified before the HAVA Planning Committee (2003) that Florida's State and local security measures make it highly unlikely any tampering could take place with the voting systems. In addition, staff also testified that Florida's certified voting systems are tested in public forums for logic and accuracy before the election. There are also thorough procedural and security controls in place at the local level to safeguard against someone tampering with the voting systems. The Division of Elections' staff cited Rule 1S-2.015(5)(m)3.a., F.A.C., relating to minimum election security procedures which requires the "printing of precinct results and results from



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 14

- Procedures relating to candidate and petitioner representatives

g. Section 301(a)(3)(A): Does Florida have certified voting systems for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters?

Section 301(a)(3)(B): Does Florida meet the requirement in subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place?

Yes, and no further actions are required.

Prior to the enactment of HAVA, the Secretary of State appointed the 2001 Select Task Force on Voting Accessibility to conduct a comprehensive review of Florida's election laws and procedures relative to the obstacles for voters with disabilities and to develop solutions for overcoming those obstacles. The Task Force recommended legislation to ensure that such voters could fully exercise their right to a secret ballot, as guaranteed by section 1 of article VI of the Florida Constitution. In 2002, many of the Task Force's recommendations of the task force were passed by the Legislature and signed into law. (See Chapter 2002-281, *Laws of Florida*). Several sections of the law, including sections setting forth specific standards that voting systems must meet, did not become effective immediately, however. They were made contingent on further appropriations by the Legislature, in expectation of the receipt of federal funding as now provided in HAVA.

Although HAVA's definition of what constitutes a voting system as found in Section 301(b), is comprehensive, it did not specifically define the standards necessary for making a voting system accessible to persons with disabilities. Florida had already performed the difficult and time consuming work of defining what makes a Florida voting system accessible for persons with disabilities. Those accessible voting systems standards are found in Section 101.56062, *Florida Statutes* (Chapter 2002-281, *Laws of Florida*). Moreover, the intent of the Legislature to comply fully with Federal requirements is clearly set out in section 101.56063, *Florida Statutes*, as follows:

It is the intent of the Legislature that this state be eligible for any funds that are available from the Federal Government to assist states in providing or improving accessibility of voting systems and polling places for persons having a disability. Accordingly, all state laws, rules, standards, and codes governing voting systems and polling place accessibility must be maintained to ensure the state's eligibility to receive federal funds. It is the intent of the Legislature that all state requirements meet or exceed the minimum federal requirements for voting systems and polling place accessibility.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 13

individual tabulating devices" for every election. In addition, the Florida Legislature has authorized the Department of State to promulgate rules which would require supervisors to check those paper totals against electronic totals during machine recounts. The following statutes and rules lay the groundwork for Florida's ability to comply with the audit requirements of HAVA:

Section 101.015(5)(a), *Florida Statutes*, requires the Department of State to adopt rules which establish standards for voting systems, including audit capabilities. Pursuant to that authority, the Florida Voting System Standards (Rule 1S-5.001, F.A.C., last rev. 01/05 but under current bi-ennial review):

- Provides general functional requirements of voting systems which "shall include the capability to produce records generated by the system components, or in some cases, by the system operators from which all operations may be audited. Except for the storage of vote images, which shall be maintained in a random sequence, the records shall be created and maintained in the sequence in which the operations were performed."
- Requires precinct count systems to provide a means for obtaining a printed report of the votes counted on each voting device, and to provide a means for extracting this information to a transportable memory device or data storage medium.
- Requires the generation of reports by the system to be performed in a manner which does not erase or destroy any ballot image, parameter, tabulation or audit log data. The system shall provide a means for assuring the maintenance of data integrity and security for a period of at least 22 months after the closing of the polls.

Section 101.5606(11 & 13), *Florida Statutes*, requires the Department of State to approve only voting systems that are capable of automatically producing precinct totals in printed, marked, or punched form or a combination thereof. The voting systems must be capable of providing records from which the operating system of the voting system may be audited.

Section 102.166(5)(d), *Florida Statutes*, requires the Department of State to adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable. Rule 1S-2.031, F.A.C., addresses at a minimum, the following areas:

- Security of ballots during the recount process
- Time and place of recounts
- Public observance of recounts
- Objections to ballot determinations
- Record of recount proceedings



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 16

Accordingly, the HAVA Planning Committee (2004) recommended that the Division require that all new certified voting systems comply with the requirements of Section 101.56062, *Florida Statutes*. That section requires any voting system certified in the state to have the capability to include an accessible voter interface device that would allow the system to meet 14 categories of accessible standards. This section also mandated that at least one accessible voter interface device actually be installed in each precinct in elections after July 1, 2005. The section was later amended in 2005 to require the installation of at least one accessible voter interface device in each polling place in lieu of each precinct. This change conformed to language in HAVA. Further, any purchase of a voting system by a governmental entity after July 1, 2004 is required to include a contract for future upgrades and sufficient equipment to meet the general standards and the accessibility standards for certifying voting systems under section 101.5606 and section 101.56062, *Florida Statutes*, respectively.

The 2004 Florida Legislature triggered the accessibility standards found in Section 101.56062, *Florida Statutes*, (Chapter 2002-281, Laws of Florida) by making HAVA funds available to counties through the Department of State. The language read as follows:

From the funds in Specific Appropriation 28711, \$11,600,000 shall be distributed by the Department of State to county Supervisors of Elections for the purchase of Direct Recording Equipment (DRE) or other state approved equipment that meets the standards for disability requirements which is accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place.

The funds were distributed according to the number of machines that are accessible for persons with disabilities that were needed in order for each county to have one per polling place. No Supervisor of Elections was to receive any funds until the county Supervisor of Elections certified to the Department of State: 1) the number of precincts in the county; 2) the number of polling places in the county; 3) the number of voting machines the county has that meet the disability requirement; 4) the county's plan for purchasing the DREs; and 5) the date that the county anticipates being in compliance. The Department of State determined the number of DREs needed in each county based on the certifications provided by the Supervisors of Elections. Any county that received funds from Specific Appropriation 28711 and was not in compliance with the accessibility requirements in Section 301(a)(3) Title III of the Help America Vote Act by January 1, 2006, was required to return those funds to the State.

In January 2006 the Division of Elections surveyed each of the 67 Supervisors of Elections to determine whether counties had accessible voting systems for each polling place or if signed contracts were in place to acquire accessible voting systems in the event delivery had yet not taken place. Two counties did not have signed contracts for purchasing

accessible voting systems by January 1, 2006. Both counties had to return the funds pursuant to the conditions of the memorandum of agreement between the Department of State and the Supervisors of Elections as well as language included in the Appropriations Act. In 2006, the Florida Legislature re-appropriated the funds to redistribute the voting systems assistance funds to those two counties. Pursuant to language in the Appropriations Act, distribution of the funds was contingent upon the Department of State receiving a certificate from each county certifying that "accessible voting equipment meeting the requirements of section 301(a) of Title III of the Help America Vote Act had been delivered, accepted by the county, and was ready for use in an election."

The HAVA Planning Committee (2004) also encouraged the Legislature to continue to support accessible voting for persons with disabilities by mandating that provisional ballots for voters with disabilities be provided to them by a system that meets the requirements of Section 101.56062, *Florida Statutes*, by January 1, 2006. Section 101.048, *Florida Statute* specifically states "...the Supervisor of Elections may, and for persons with disabilities shall, provide the appropriate provisional ballot to the voter by electronic means that meet the requirements of section 101.56062, as provided for by the certified voting system."

Florida is currently in compliance with HAVA requirements for accessibility equipment. By 2004, all three vendors (Diebold Election Systems, Inc., Elections Systems and Software, Inc., and Sequoia Voting Systems, Inc.) had certified accessible voting equipment with audio ballot capability. By 2005, two of the three vendors being used in Florida had certified accessible voting equipment with the electronic provisional ballot capability. The third vendor obtained certification for their system with the electronic provisional ballot capability in January 2006.

The HAVA Planning Committee (2004) also discussed polling place accessibility even though this topic is not required to be addressed in the HAVA plan. It was noted that the State of Florida had taken the initiative to contract with the Disability Relations Group to help it comply with HAVA. In addition, the Division of Elections applied for polling place accessibility funding with the U.S. Department of Health and Human Services (HHS). To date, the Department has received four grants from HHS for a total amount of \$2,203,909.

Several members of the HAVA Planning Committee (2004) noted there is a sense of urgency to bring polling places into compliance. One Committee member referred to a United States Supreme Court decision that required government to comply with the Americans with Disabilities Act. The HAVA Planning Committee (2004) recommended that the State of Florida address the polling place issue quickly by asking the Governor to provide emergency funding to bring polling places into ADA compliance.

The HAVA State Planning Committee (2006) recommends that the Florida Legislature encourage vendors to continue to develop enhancements and new technologies that meet or



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 18

Commission, to the extent reasonably feasible and logistically adopted by the Election Assistance Commission, the Division of Elections will review its standards against the 2005 Voluntary Voting System Guidelines (effective 2007) and to the extent reasonably feasible, logistically possible and compliant with state law, the Division shall consider those standards and any subsequent standards in any update to its state standards.

k. Section 301(a)(6): *Has Florida adopted uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting systems used in the State?*

Yes, and no further actions are required.

Section 102.166(4)(a), *Florida Statutes*, states that "a vote for a candidate or ballot measure shall be counted if there is a clear indication on the ballot that the voter has made a definite choice." Subsection (b) further requires the Department of State to "adopt specific rules for each certified voting system prescribing what constitutes a 'clear indication on the ballot that the voter has made a definite choice.' The rules may not:

- Exclusively provide that the voter must properly mark or designate his or her choice on the ballot; or
- Contain a catch-all provision that fails to identify specific standards, such as 'any other mark or indication clearly indicating that the voter has made a definite choice.'"

Rule 1S-2.027, *F. A. C.*, entitled "Clear Indication of Voters Choice on a Ballot" provides specific standards for determining votes on optical scan ballots.

3. 2006 Auditor General Findings

In 2006, the Auditor General conducted an operational audit on the Department of State's administration of the Federal Help America Vote Act of 2002 during the period July 1, 2004 through February 28, 2006, and other select activities through May 23, 2006. See Report 2006-194, "Department of State - Help America Vote Act (HAVA) and the Florida Voter Registration System (FVRS) - Operational Audit." In Finding #1: Voting System Certification Checklist, the Auditor General states that the Department had implemented voting system certification procedures that incorporated the requirements included in Section 101.5606, *Florida Statutes*. However, the report notes that a procedure was not in place to evidence for the public record that the voting systems being certified had met the requirements of Florida law.

The Division of Elections web site provides public access to information on all certified voting system vendors by system title, county, vendor or precinct voting method. In addition, the Department has drafted a document (Florida Voting Systems certification Checklist & Test Record) that could provide a mechanism to document the Department's processes performed relating to Section 101.5606, *Florida Statutes*.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 17

exceed federal and state requirements for accessibility in voting systems and polling places. For example, legislation could be enacted that provides for limited provisional certification and use of innovative hardware and software for voting systems that have not yet been proven to meet full certification requirements. The Committee also encourages the Division of Elections to continuously review and update voting systems certifications standards that allow for new technologies to be appropriately certified for use in elections.

Section 101.294, *Florida Statutes*, now states that vendors may not provide an uncertified voting system, voting system component or voting system upgrade. In addition, vendors are required to provide the local governing body or Supervisor of Elections with a sworn certification that the voting system, voting system component or voting system upgrade being provided has been certified by the Division of Elections.

h. Section 301(a)(3)(C): *Will Florida purchase voting systems with funds made available under Title II on or after January 1, 2007, that meet the voting system standards for disability access (as outlined in this paragraph)?*

Yes, and no further actions are required.

i. Section 301(a)(4): *Does Florida have certified voting systems that provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a)?*

Yes, and no further actions are required.

In order to be certified for use in Florida, DRE voting systems must provide alternative language accessibility for all interfaces in order to meet the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa through 1a). Additionally, the Florida Voting System Standards (Rule 1S-5.001, F.A.C., rev. 01/05) require that all configurations must support all voter interface functions at a minimum, in English, Spanish, and Haitian Creole. Counties using Marksense voting systems must meet the requirements of Section 203 of the Voting Rights Act by printing ballots in the required languages.

j. Section 301(a)(5): *Does Florida have certified voting systems that comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Elections Commission which are in effect on the date of the enactment of this Act?*

Yes, and no further actions are required.

Florida Voting System Standards meet the error rate established by the 1990 Federal Elections Commission and is in compliance with HAVA requirements. The Division of Elections is committed to periodic update of its voting systems standards which are under current review. Although not bound by guidelines adopted by the Election Assistance



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 20

voter of the county in which he or she is attempting to vote, and has not previously voted in the election. If it is determined that the person voting the provisional ballot was not registered or entitled to vote at the precinct where the person cast a vote in the election, the provisional ballot shall not be counted and the ballot shall remain in the envelope containing the Provisional Ballot Voter's Certificate and Affirmation and the envelope shall be marked "Rejected as Illegal."

Currently, in Florida, in order for provisional ballots to count they must be cast in the precinct in which the voter is registered. This means that votes for President, U.S. Senate or other statewide officials such as Governor and Attorney General, would not be counted if a voter cast a provisional ballot at a wrong precinct. Section 302 of HAVA does not specify what constitutes the appropriate jurisdiction for casting and counting a provisional ballot. The section requires: If an individual states that [s/he] is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place...such individual shall be permitted to cast a provisional ballot...

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation ...stating that the individual is—

- (A) A registered voter in the jurisdiction in which the individual desired to vote; and
- (B) Eligible to vote in that election.

The HAVA State Plan Committee (2006) finds that the issue before the Committees in 2003 and 2004 regarding the definition of jurisdiction for purposes of determining whether someone is in the appropriate place to vote has since been resolved by the Florida Legislature and the courts. They have determined that jurisdiction refers to precincts and that in order to vote a provisional ballot a person must be in his or her designated precinct location.

- c. Section 302(a)(3): *Do Florida's election laws require a completed provisional ballot be given to an appropriate State or local election official to determine whether the individual is eligible under State law to vote?*

Yes, and no further actions are required.

Section 101.048(1), *Florida Statutes*, states that all provisional ballots are placed in a secrecy envelope and then sealed in a provisional ballot envelope. All provisional ballots shall remain sealed in their envelopes for return to the Supervisor of Elections.

Section 101.048, *Florida Statutes*, was amended in 2005 (effective January 1, 2006) in several places to permit a person casting a provisional ballot to have the right to present written evidence supporting his or her eligibility to vote to the Supervisor of Elections by not later than 5 p.m. on the 3rd day following an election. Section 101.111, *Florida Statutes*,



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 19

ELEMENT 1. USE OF TITLE III REQUIREMENTS PAYMENTS

B. PROVISIONAL VOTING AND VOTING INFORMATION

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections.

1. Section 302(a) Provisional Voting Requirements

The Help America Vote Act of 2002 (HAVA) requirements for provisional voting state that if an individual declares that he or she is a registered voter in the jurisdiction in which he or she is attempting to vote but his or her name does not appear on the official list of eligible voters, the individual is permitted to cast a provisional ballot.

- a. Section 302(a)(1): *Do Florida's election laws require election officials at the polling place to notify individuals that they may cast a provisional ballot?*

Yes, and no further actions are required.

Section 101.031(2), *Florida Statutes*, states that the Supervisor of Elections in each county shall post at each polling place in the county the Voter's Bill of Rights and Responsibilities. Included in the Voter's Bill of Rights is the right of each registered voter to cast a provisional ballot, if his or her registration or identity is in question. The Division of Elections' Polling Place Procedures Manual (DS-DE 11) instructs poll workers to read informational signs that appear in print on the walls of the polling place and to offer magnifying sheets for visually impaired voters. Additionally, pursuant to Section 101.043(3), *Florida Statutes*, (effective January 1, 2006), persons who fail to provide photo identification and signature must be allowed to cast a provisional ballot.

- b. Section 302(a)(2): *Do Florida's election laws state that any person attempting to vote whose name does not appear on the official list of eligible voters be permitted to cast a provisional ballot at the polling place upon the execution of a written affirmation by the individual that they are: (A) a registered voter in the jurisdiction in which the individual desires to vote; and (B) eligible to vote in that election.*

Yes, and no further actions are required.

Section 101.048, *Florida Statutes*, states that any voter claiming to be properly registered and eligible to vote at a particular precinct, but whose eligibility cannot be determined or whose eligibility is challenged by any person, will be given a provisional ballot. A Provisional Ballot Voter's Certificate and Affirmation must be completed by the individual casting a provisional ballot indicating that he or she is registered to vote and is a qualified



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 22

instructions shall also include the following statement: "If this is a primary election, you should contact the Supervisor of Elections' office immediately to confirm that you are registered and can vote in the general election."

(6) Each Supervisor of Elections shall establish a free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot was counted in the final canvass of votes and, if not, the reasons why. Information regarding provisional ballots shall be available no later than 30 days following the election. The system established must restrict information regarding an individual ballot to the person who cast the ballot.

It is recommended that each county, as a minimum, provide to voters who cast provisional ballots written notification by mail informing them of whether their ballot was counted and, if not, why it was not counted. Supervisors of elections are also strongly encouraged to develop a toll-free number or access to this information via the Internet. Each Supervisor of Elections has established the free access system for his or her county.

g. Section 302(a)(5)(B) *Has the appropriate State or local official established procedures to protect the security, confidentiality and integrity of the personal information collected and stored by the free access system, restricting access to the individual who cast the ballot?*

Yes, and no further actions are required.

Section 101.048, *Florida Statutes*, requires the free access system established by the Supervisors of Elections to restrict access to information regarding an individual ballot to the person who cast the ballot.

2. Section 302(b) Voting Information Requirements

HAVA requirements for voting information state that the appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

a. Section 302(b)(2)(A): *Is a sample version of the ballot that will be used for that election posted?*



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 21

permits any elector or poll watcher to challenge the eligibility of any elector, including one who casts a provisional ballot, by filing an oath, using a specified form.

Section 101.048(2)(a), *Florida Statutes*, states the county canvassing board shall examine each provisional ballot envelope, other evidence presented by the provisional voter and any evidence presented by a challenger to determine by a preponderance of the evidence if the person voting that ballot was entitled to vote at the precinct where the person cast a vote in the election and that the person had not already cast a ballot in the election.

d. Section 302(a)(4): *Is the provisional ballot counted if the appropriate State or local election official determines the individual is eligible under State law to vote?*

Yes, and no further actions are required.

Section 101.048(2)(b)1., *Florida Statutes*, states that if it is determined that the person was registered and entitled to vote at the precinct where the person cast a ballot, the canvassing board will compare the signature on the provisional ballot envelope with the signature on the voter's registration record and, if it matches, will count the ballot.

e. Section 302(a)(5)(A): *Are the individuals who cast a provisional ballot given written information that states that any individual who casts a provisional ballot will be able to ascertain whether the vote was counted and, if not, the reason that the vote was not counted?*

Yes, and no further actions are required.

Subsections (5)-(6) of section 101.048, *Florida Statutes*, provide that each person casting a provisional ballot shall be given written instructions and information on how to determine whether his or her vote was counted.

f. Section 302(a)(5)(B): *Has the appropriate State or local election official established a free access system to provide this information to individuals casting provisional ballots?*

Yes, and no further actions are required.

Subsections (5) and (6) of Section 101.048(5), *Florida Statutes*, require each Supervisor of Elections to establish a free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot was counted in the final canvass of votes and, if not, the reasons why:

(5) Each person casting a provisional ballot shall be given written instructions regarding the person's right to provide the Supervisor of Elections with written evidence of his or her eligibility to vote and regarding the free access system established pursuant to subsection (6). The instructions shall contain information on how to access the system and the information the voter will need to provide to obtain information on his or her particular ballot. The



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 24

In addition, section 101.5611, *Florida Statutes*, requires the Supervisor of Elections to provide instructions at each polling place on the proper method for casting a ballot for the specific voting system used in that jurisdiction.

Section 97.026, *Florida Statutes* amended in 2002, states the intent of the Legislature that all forms required to be used under Florida's elections laws shall be made available, upon request, in alternative formats. It was further amended, in 2005 (effective January 1, 2006), to permit the Department of State to adopt rules to administer this provision. The Department produces, upon request, instructions and forms in alternative formats.

The Division of Elections distributes periodically to all 67 counties posters that include instructions to voters that are to be displayed at each polling place on Election Day. A copy of the poster in English and Spanish is included in Appendices A-B. In Miami-Dade County, the posters are printed in English, Spanish and Creole. These posters inform voters about what specific forms of identification are acceptable, when they would need to vote a provisional ballot, instructions on how to cast a provisional ballot, and instructions on how to provide written evidence of eligibility. Effective as of January 1, 2006, sections 101.031, and 101.043, *Florida Statutes*, now provide that a voter can no longer prove his or her identity by signing an affidavit. Specific forms of identification are required without which the person must be allowed to vote a provisional ballot.

e. Section 302(b)(2)(D): *Are instructions for mail-in registrants and first-time voters under section 303(b) posted on Election Day?*

Yes, and no further actions are required.

Under Section 101.031(1), *Florida Statutes*, the Department of State is required to print, in large type on cards, instructions for the electors to use in voting. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary. The cards must also include the list of rights and responsibilities afforded to Florida voters.

The Division of Elections distributes periodically to all 67 counties posters that provide instructions to mail-in registrants and first-time voters. A copy of the poster in English and Spanish is included in Appendices A-B. In Miami-Dade County, the posters are printed in English, Spanish and Creole.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 23

Yes, and no further actions are required.

Section 101.20, *Florida Statutes*, states that two sample ballots shall be furnished to each polling place by the officer whose duty it is to provide official ballots. The sample ballots shall be in the form of the official ballot as it will appear at the polling place on Election Day. Sample ballots shall be open to inspection by all electors in any election.

b. Section 302(b)(2)(B): *Is information regarding the date of the election and the hours during which polling places will be open posted on election day?*

Yes, and no further actions are required.

Currently, all cards that are posted in accordance with section 101.031, *Florida Statutes*, in polling places include the hours the polls will be opened. Section 101.031, *Florida Statutes*, requires the Department of State, or in case of municipal elections the governing body of the municipality, to print, in large type on cards, instructions for the electors to use in voting. Each Supervisor of Elections shall send a sufficient number of these cards to the precincts prior to an election. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary.

Currently, all sample ballots posted in polling places in accordance with section 101.20(1), *Florida Statutes*, include the date of the election. Section 101.20(1), *Florida Statutes*, states that two sample ballots shall be furnished to each polling place by the officer whose duty it is to provide official ballots. Sample ballots shall be open to inspection by all electors in any election, and a sufficient number of reduced-size ballots may be furnished to election officials so that one may be given to any elector desiring same.

d. Section 302(b)(2)(C): *Are instructions on how to vote, including how to cast a vote and how to cast a provisional ballot posted on Election Day?*

Yes, and no further actions are required.

Section 101.031, *Florida Statutes*, states the Department of State, or in case of municipal elections the governing body of the municipality, shall print, in large type on cards, instructions for the electors to use in voting. It shall provide not less than two cards for each voting precinct for each election and furnish such cards to each supervisor upon requisition. Each Supervisor of Elections shall send a sufficient number of these cards to the precincts prior to an election. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 26

h. Section 302(b)(2)(F): Is information on laws regarding prohibitions on acts of fraud and misrepresentation posted?

Yes, and no further actions are required.

Section 101.5611(2), *Florida Statutes*, requires the Supervisor of Elections to post at each polling place a notice that reads: "A person who commits or attempts to commit any fraud in connection with voting, votes a fraudulent ballot, or votes more than once in an election can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years."

i. Section 302(c): Are individuals who vote in an election as a result of a court order or any other order extending the time established for closing the polls by a State law required to cast a provisional ballot? This provisional ballot must be separated and held apart from other provisional ballots cast by those not affected by the order.

Yes, and no further actions are required.

Section 101.049, *Florida Statutes*, permits, under special circumstances, any person voting in an election after the regular poll-closing time pursuant to a court or other order extending the statutory polling hours to vote a provisional ballot. Once voted, the provisional ballot shall be placed in a secrecy envelope and sealed in a provisional ballot envelope. All such provisional ballots will remain sealed and transmitted to the Supervisor of Elections separate and apart from all other ballots. The supervisor shall ensure that late-voted provisional ballots are not commingled with other ballots. Provisions related to persons with disabilities were added in 2005 (effective January 1, 2006) and are described in another section of this report.

j. Section 302(d): The effective date for complying with the Provisional Voting and Voting Information requirements is on and after January 1, 2004.

The Provisional Voting and Voting Information Requirements were completed as required by HAVA on January 1, 2004.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 25

f. Section 302(b)(2)(E): Is general information on voting rights, including information on the right of an individual to cast a provisional ballot posted on Election Day?

Yes, and no further actions are required.

Section 101.031(2), *Florida Statutes*, last amended in 2005, requires the Supervisor of Elections in each county to post at each polling place the Voter's Bill of Rights and Responsibilities. The Voter's Bill of Rights states that each registered voter in this State has the right to:

1. Vote and have his or her vote accurately counted.
2. Cast a vote if he or she is in line at the official closing of the polls in that county.
3. Ask for and receive assistance in voting.
4. Receive up to two replacement ballots if he or she makes a mistake prior to the ballot being cast.
5. An explanation if his or her registration or identity is in question.
6. If his or her registration or identity is in question, cast a provisional ballot.
7. Written instructions to use when voting, and, upon request, oral instructions in voting from elections officers.
8. Vote free from coercion or intimidation by elections officers or any other person.
9. Vote on a voting system that is in working condition and that will allow votes to be accurately cast.

g. Section 302(b)(2)(E): Is contact information posted for voters who allege their rights have been violated?

Yes, and no further actions are required.

As indicated before, the Department of State is required to print, in large type on cards, instructions for the electors to use in voting. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary. The cards must also include the list of rights and responsibilities afforded to Florida voters.

Additionally, the Division of Elections has updated and reprinted the Voter's Bill of Rights and Responsibilities, as modified in 2005, on to the posters. These posters are distributed to all 67 counties and displayed at each polling place on Election Day. The posters have been updated to provide voters with contact information if they believe their voting rights have been violated. The specific instruction states: *You may have other voting rights under state and federal laws. If you believe your voting rights have been violated, please contact Florida Department of State, Division of Elections, 1-877-868-3737, a toll-free number.*

A copy of the poster in English and Spanish is included as Appendices C and D. In Miami-Dade County, the posters are printed in English, Spanish and Creole.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 27

ELEMENT 1. USE OF TITLE III REQUIREMENTS PAYMENTS

C. VOTER REGISTRATION

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable, under section 251(b)(2), to carry out other activities to improve the administration of elections

1. Introduction

The Help America Vote Act of 2002 (HAVA) establishes minimum requirements for a single, centralized, computerized statewide voter registration list that will serve as the single system for storing and managing the official list of registered voters throughout the State. The basis for developing and maintaining a single registration system is (1) to ensure with accuracy and timeliness that all eligible voters can vote and (2) to ensure that all ineligible persons cannot vote.

The Florida Legislature authorized the Secretary of State to create and administer a statewide voter registration system as required by HAVA. In addition, the Florida Legislature authorized the Secretary of State to delegate voter registration duties and records maintenance activities to voter registration officials whose responsibilities shall be performed in accordance with state and federal law. These changes were effective January 1, 2006.

2. Computerized Statewide Voter Registration List Requirements

a. Section 303(a)(1)(A)(i)-(vii) through 303(a)(5): Does Florida's existing statewide database meet requirements for implementing and maintaining a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State and includes information specified in HAVA?

Yes, and no further actions are required.

Florida Voter Registration System Implementation

The Department of State began designing a new statewide voter registration system in 2003 which would comply with HAVA. The new system known as the Florida Voter Registration System (FVRS) is designed to interface and operate with the 67 county voter registration systems to maintain a single, uniform, official, centralized, interactive computerized voter registration system. The local Supervisor of Elections is responsible for updating voter registration information, entering new voter registrations, and acting as the official custodian of voter registration documents at the county level. In addition, each



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 28

local Supervisor of Elections ensures that list maintenance duties are conducted in accordance with Section 98.015, 98.065, and 98.075, *Florida Statutes*. However, the Secretary of State, as chief election officer, is responsible for implementing, operating, and maintaining the statewide voter registration system as required by HAVA (Section 98.035, *Florida Statutes*).

The FVRS became fully operational in January 2006 and complies with all of HAVA requirements under Section 303 (a) as follows:

- i. The FVRS is the single uniform, official, centralized, interactive statewide voter registration system for storing and managing the official list of registered voters throughout the State (Section 98.035, *Florida Statutes*).
- ii. The FVRS contains the name and registration information of every legally registered voter in the state (Section 98.035, *Florida Statutes*).
- iii. The FVRS provides each legally registered voter in Florida with a unique identifier (Section 98.035, *Florida Statutes*).
- iv. The FVRS is coordinated with other agency databases including the Department of Health, the clerk of the circuit court, the United States Attorney's office, the Department of Law Enforcement, the Board of Executive Clemency, the Department of Corrections, and the Department of Highway Safety and Motor Vehicles (Section 98.093, *Florida Statutes*).
- v. Any authorized election official in Florida, including any authorized local election official, may obtain immediate electronic access to the voter registration information in the FVRS (Sections 97.012 and 98.015, *Florida Statutes*).
- vi. All voter registration information obtained by authorized local election officials in Florida is electronically entered into FVRS on an expedited basis at the time the information is provided to the local official (Section 97.053 and 98.015, *Florida Statutes*).
- vii. The Secretary of State as chief election officer provides support as may be required so that local election officials are able to enter information (Section 97.012, *Florida Statutes*).
- viii. The FVRS serves as the "official" voter registration list for the conduct of all elections for Federal office in the Florida (Section 98.035, *Florida Statutes*).



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 30

In order to oversee further the voter registration requirements of HAVA and the Florida law, the Secretary of State established the Bureau of Voter Registration Services in 2005. The Bureau of Voter Registration Services has four management areas:

- Office of Bureau Chief: Manages the overall operations of the Bureau and FVRS.
- Voter Services Section: Processes voter registrations and enters data into the FVRS.
- The Compliance and Regulation Section: Assesses county and agency records to perform credible and reliable checks on potential ineligible voters.
- NVRA Section: Coordinates operations of the 1993 National Voter Registration Act and the Florida Voter Registration Act.

3. Computerized List Maintenance

- a. *Section 303(a)(2): Does Florida have the appropriate State or local election official to perform various list maintenance functions on a regular basis including a removal process in accordance with NVRA of 1993?*

Does Florida have a process in place to remove ineligible voters from the list of eligible voters that complies with Section 8 of 42 U.S.C. 1973?

Does Florida's FVRS list maintenance procedure ensure that each registered voter's name will appear on the list, that duplicate names are eliminated from the list, and that only persons who are not registered or who are not eligible to vote are removed from the computerized list?

Yes, and no further actions are required.

Computerized List Maintenance

The FVRS is maintained according to the HAVA requirements to ensure that the names and registration information of every legally registered voter in the State are on the computerized list. Only supervisors of elections are authorized to remove voters who are not eligible. Two primary maintenance processes occur to ensure that the voter registration records are accurate and current.

Each of Supervisor of Elections is required to conduct a bi-ennial general list maintenance program in a nondiscriminatory manner and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002 (Section 98.065, *Florida Statutes*). This list maintenance process includes actions such as incorporating changes of address notices and requests, designating inactive voters, and removing voters from the list. At the state level, the Bureau of Voter Registration Services also conducts daily list maintenance activities pursuant to Section 98.075, *Florida Statutes*.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 30

in a uniform, nondiscriminatory manner and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002. This process culminates with activities by the local supervisors of elections who make the final determination of whether to remove an ineligible registrant from the computerized list. The Bureau initially identifies duplication registrations for subsequent resolution and removal by the local supervisors of elections. The Bureau also identifies through credible and reliable checks of comparative data obtained from various state agencies those registrants who have been adjudicated mentally incapacitated and their right to vote have not been restored, and who have been convicted of a felony and whose rights have not been restored before forwarding the information to the supervisors of elections for removal of those voters in accordance with Section 98.075, *Florida Statutes*. All other registrants who may be ineligible based on other criteria such as age, lack of U.S. citizenship, fictitious name, or non-legal residence) are similarly subject to the notice and removal process in Section 98.075, *Florida Statutes*, regardless of the source of the information in accordance with the HAVA requirement to ensure against removing eligible voters in error.

4. Technological Security of Computerized List

- a. *Section 303(a)(3): Does Florida have the appropriate State or local official to provide adequate technological security measures to prevent the unauthorized access to the FVRS?*

Yes and no further actions are required.

Technological Security of Computerized List/Risk Management

Pursuant to the requirements of chapter 282, *Florida Statutes*, the Department of State, as is required of all agencies, conducts, and periodically updates, a comprehensive risk analysis to determine the security threats to data and information technology resources within the department and its divisions and bureaus. The Florida Voter Registration System (FVRS) is now included as a part of that risk analysis. The risk analysis information is confidential and exempt from the provisions of Section 119.07(1), *Florida Statutes*, except to the Auditor General so that he or she may perform post-auditing duties.

In 2006, the Department of State requested that the Auditor General conduct an operational audit of the Florida Voter Registration System. In response to certain findings highlighted in the subsequently issued Auditor General's report, entitled "*Department of State-Help America Voter Act (HAVA) and the Florida Voter Registration System (FVRS)-Operational Audit*," (Report No. 2006-194), the Department completed a baseline risk assessment of FVRS in June 2006. Additionally, the Department took other major steps in response to the report including the creation of a system security plan and the execution of a memorandum of understanding between the Department of State and each of the 67 county Supervisors of



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 32

5. Minimum Standards for Accuracy of State Voter Registration Records

Section 303(a)(4): Does Florida have a minimum standard of accuracy for voter registration records which removes registrants consistent with the NVRA of 1993 who have not responded to notices and who have not voted in 2 consecutive general elections for Federal office? Does Florida have safeguards to ensure that eligible voters are not removed in error from the FVRS?

Yes, and no further actions are necessary.

The FVRS is updated regularly as required by HAVA to remove registrants who are ineligible to vote consistent with the National Voter Registration Act of 1993. The Florida Legislature put in safeguards to ensure that eligible voters are not removed in error as required by HAVA (Sections 98.065 and 98.075 *Florida Statutes*). Additionally if any person is removed erroneously or illegally from the FVRS, the name of the elector shall be restored by a voter registration official upon satisfactory proof, even though the registration period is closed (Section 98.081, *Florida Statutes*).

Excerpted below are the statutory notice and due process procedures that a Supervisor of Elections must follow before he or she can remove ineligible voters who have been adjudicated mentally incapacitated and have not had their voting rights restored, or who have been convicted of a felony and whose rights have not been restored:

Section 98.075(7), Florida Statutes-- PROCEDURES FOR REMOVAL

(a) If the supervisor receives notice or information pursuant to subsections (4)-(6), the supervisor of the county in which the voter is registered shall:

1. Notify the registered voter of his or her potential ineligibility by mail within 7 days after receipt of notice or information. The notice shall include:
 - a. A statement of the basis for the registered voter's potential ineligibility and a copy of any documentation upon which the potential ineligibility is based.
 - b. A statement that failure to respond within 30 days after receipt of the notice may result in a determination of ineligibility and in removal of the registered voter's name from the statewide voter registration system.
 - c. A return form that requires the registered voter to admit or deny the accuracy of the information underlying the potential ineligibility for purposes of a final determination by the supervisor.
 - d. A statement that, if the voter is denying the accuracy of the information underlying the potential ineligibility, the voter has a right to request a hearing for the purpose of determining eligibility.
 - e. Instructions for the registered voter to contact the Supervisor of Elections of the county in which the voter is registered if assistance is needed in resolving the matter.
 - f. Instructions for seeking restoration of civil rights following a felony conviction, if applicable.
2. If the mailed notice is returned as undeliverable, the supervisor shall publish notice once in a newspaper of general circulation in the county in which the voter was last registered. The notice shall contain the following:
 - a. The voter's name and address.
 - b. A statement that the voter is potentially ineligible to be registered to vote.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 31

Elections regarding information security issues and protocols. The Department has designated a chief information security manager for FVRS who provides assistance or guidance as needed to local system security administrators in each of those counties and is developing a formal training program.

Additionally, the Department is reviewing its overall and local Information Technology (IT) recovery disaster and regional response plans known collectively as "COOP plans" for purposes of ensuring full integration of the FVRS system into such plans. The Department is periodically updating technological security policies at the department level and updating authorization procedures. Moreover, the Department continues to develop improved capabilities for documenting all FVRS users and access.

b. IT Governance Model

The Department of State is providing adequate technological security measures to prevent unauthorized access to the Florida Voter Registration System in accordance with section 303(a)(3) of the Help America Vote Act and in a manner consistent with the U.S. Elections Assistance Commission's "Voluntary Guidance on Implementation of Statewide Voter Registration Lists, July 2005". At a minimum, the Department has established standard technological security and access protocols for FVRS to protect the voter registration data from unauthorized and illegal access, modification and disclosure, particularly in consideration of data designated as confidential and/or exempt under Florida's Public Records Law. As an added security measure, the FVRS has been designed to track and record complete transactional history within the database for purposes of subsequent audit and accountability. For recovery and restoration purposes, a full backup of all FVRS data is performed on a daily basis and such tape copy is stored in a protected off-site location.

c. Data Integrity

The Department continues to improve on its measures to ensure the integrity of the FVRS data. For example, it has improved its systematic ongoing match process for identifying duplicate records each time a new voter registration applicant is entered into FVRS. Working in conjunction with the Florida Department of Law Enforcement, the Department will expand, as time and resources permit, its systematic "credible and reliable review" process to existing registered voter records in order to identify potentially ineligible persons based on initial comparisons against felony conviction data. The Department continues to use other agency databases to conduct data matching and verification functions associated with the voter registration process. Also as part of the Department's responsibility to oversee the process for ensuring accurate and current registration records in FVRS, the Department is reviewing and will review periodically bi-annual certifications filed by the respective Supervisors of Elections regarding their efforts to conduct registration list maintenance and registration record maintenance activities based on address changes and grounds for ineligibility, respectively.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 34

published in the newspaper, the number of hearings conducted, and the number of persons removed from the statewide voter registration systems and the reasons for such removals. If the department determines that a supervisor has not satisfied the requirements of Section 98.075, *Florida Statutes*, the department shall satisfy the appropriate requirements for that county. A supervisor of elections' failure to comply with these requirements constitutes a violation of Section 104.051, *Florida Statutes*.

A voter may appeal the determination of ineligibility as outlined in Section 98.0755, *Florida Statutes*. The appeal must be filed in the circuit court of the county where the person was registered. The notice of appeal is subject to the time and manner requirements in the Florida Rules of Appellate Procedure and acts as supersedeas. Trial in the circuit court is de novo and governed by the rules of that court. Unless the person can show that his or her name was erroneously or illegally removed from the statewide voter registration system, or that he or she is indigent, the person must bear the costs of the trial in the circuit court. Otherwise, the cost of the appeal must be paid by the Supervisor of Elections.

6. Verification of Voter Registration Information

Section 303(a)(5): 1. Does Florida's voter registration application process require either a driver's license number or last four digits of the social security number? 2. Does Florida's voter registration application process assign the applicant with a unique identification number which identifies the applicant for voter registration purposes? 3. Does Florida have a process to determine whether the information provided by the voter registration applicant is sufficient to meet the requirements of HAVA, in accordance with State law? 4. Do Florida's Secretary of State and the Executive Director of the Department of Highway and Safety Motor Vehicles have an agreement to match voter information in their respective databases? 5. Does the Executive Director of the Department of Highway Safety and Motor Vehicles have an agreement with the Commissioner of Social Security under 205(r)(8) subparagraph C?

Yes, and no further actions are necessary.

Florida has a uniform statewide voter application which requires the driver's license number or the last four digits of the social security number (Section 97.052, *Florida Statutes*). FVRS assigns each applicant an unique identifier for purposes of processing their applications. (Section 97.053, *Florida Statutes*).

Florida has a process to determine whether the information provided by the voter registration applicant is sufficient to meet the requirements of HAVA, in accordance with State law (Sections 97.053 and 97.057, *Florida Statutes*). The Florida Department of State entered into an agreement with the Florida Department of Highway Safety and Motor Vehicles to match and verify the accuracy of the information on the voter registration application. In turn, under HAVA, the Executive Director the Department of Highway Safety and Motor Vehicle entered into an agreement in November 2005 with the



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 33

c. A statement that failure to respond within 30 days after the notice is published may result in a determination of ineligibility by the supervisor and removal of the registered voter's name from the statewide voter registration system.

d. An instruction for the voter to contact the supervisor no later than 30 days after the date of the published notice to receive information regarding the basis for the potential ineligibility and the procedure to resolve the matter.

e. An instruction to the voter that, if further assistance is needed, the voter should contact the Supervisor of Elections of the county in which the voter is registered.

3. If a registered voter fails to respond to a notice pursuant to subparagraph 1. or subparagraph 2., the supervisor shall make a final determination of the voter's eligibility. If the supervisor determines that the voter is ineligible, the supervisor shall remove the name of the registered voter from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

4. If a registered voter responds to the notice pursuant to subparagraph 1. or subparagraph 2. and admits the accuracy of the information underlying the potential ineligibility, the supervisor shall make a final determination of ineligibility and shall remove the voter's name from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

5. If a registered voter responds to the notice issued pursuant to subparagraph 1. or subparagraph 2. and denies the accuracy of the information underlying the potential ineligibility but does not request a hearing, the supervisor shall review the evidence and make a final determination of eligibility. If such registered voter requests a hearing, the supervisor shall send notice to the registered voter to attend a hearing at a time and place specified in the notice. Upon hearing all evidence presented at the hearing, the supervisor shall make a determination of eligibility. If the supervisor determines that the registered voter is ineligible, the supervisor shall remove the voter's name from the statewide voter registration system and notify the registered voter of the supervisor's determination and action.

(b) The following shall apply to this subsection:

1. All determinations of eligibility shall be based on a preponderance of the evidence.

2. All proceedings are exempt from the provisions of chapter 120.

3. Any notice shall be sent to the registered voter by certified mail, return receipt requested, or other means that provides a verification of receipt on shall be published in a newspaper of general circulation where the voter was last registered, whichever is applicable.

4. The supervisor shall remove the name of any registered voter from the statewide voter registration system only after the supervisor makes a final determination that the voter is ineligible to vote.

5. Any voter whose name has been removed from the statewide voter registration system pursuant to a determination of ineligibility may appeal that determination under the provisions of s. 98.0755.

6. Any voter whose name was removed from the statewide voter registration system on the basis of a determination of ineligibility who subsequently becomes eligible to vote must reregister in order to have his or her name restored to the statewide voter registration system.

Additionally, in order to monitor the supervisors of elections' voter registration records maintenance activities, supervisors are required to file bi-annual reports on the activities conducted during the first 6 months and the last 6 months of the year. These certification reports must include the number of persons to whom notices were sent pursuant to subsection (7) of section 98.075, *Florida Statutes*; the number of persons who responded to the notices, the number of notices returned as undeliverable, the number of notices



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 35

Commissioner of Social Security Administration to verify that the last 4 digits of the social security numbers provided on the applications. The Department of State is in the process of updating its agreement with the Department of Highway Safety and Motor Vehicles to reflect the transition from development and implementation of the Florida Voter Registration System to its maintenance and operation (Section 97.057, *Florida Statutes*).

7. Deadline for Computerized Statewide Voter Registration List

Section 303(d)(1)(A): Can Florida meet HAVA's requirement to have operational a computerized statewide voter registration list, as defined by HAVA?

Yes and no further actions are required.

The State practically could not meet the initial January 1, 2004 deadline. Substantial professional and technical work was required to design and establish a computerized statewide voter registration list that meets HAVA's standards. Pursuant to Section 303(d)(1)(B) and Chapter 2003-415, *Laws of Florida*, the State sought a waiver from the Federal Election Commission (FEC) and the Elections Assistance Commission (the successor to the FEC) to extend the deadline from January 1, 2004, to January 1, 2006, based on the State's certification that it could not meet the deadline for good cause and the reasons for its failure to meet such deadline. The Election Assistance Commission granted the waiver and the State of Florida met the January 2006 deadline for establishing a computerized statewide voter registration list.

8. Requirements for Voters Who Register By Mail

a. Section 303(b)(1) through (4): Does Florida meet HAVA's identification requirements for a voter who registers by mail and has not previously voted in an election for Federal office in the State or registers by mail, has not previously voted in the jurisdiction and is in a State that does not have a computerized statewide voter list that meets HAVA's requirements?

Yes, and no further actions are required.

Because many voters register by mail instead of in-person, the procedures used for mail registration are also an important component of establishing and maintaining a complete and accurate statewide voter registration list. Section 303(b) of HAVA requires that a state's mail voter registration system be administered in a "uniform and nondiscriminatory manner" and establishes minimum requirements for such a system.

Persons who register by mail and have not voted in an election for federal office must provide identification prior to voting. If the State is able to match the voter's driver's license number or Social Security number against an existing State record bearing the same number, name and date of birth, further identification by the voter is not required.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 36

HAVA Sections 303(b)(2)(i) through (ii) require that a first-time voter who votes in person may be identified by a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. A voter who votes by mail may include with the ballot a copy of a current and valid photo identification or a copy of the other documents listed for the voter who appears in person. An exception is made in HAVA Section 303(b)(3) for mail registrants who provide a copy of required identification at the time of registering, for mail registrants whose driver's license number or last 4 digits of the Social Security number are matched with an existing State record, and for mail registrants who vote under the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, or under some other provision of Federal law (in which case the specific standards of those acts must be met).

The following sections of Florida law conform to HAVA's mail registration and other voter registration requirements:

- Section 97.052(3)(f), *Florida Statutes*, requires a statement with the uniform statewide voter registration form that informs the applicant that if the form is submitted by mail and the applicant is registering for the first time, the applicant will be required to provide identification prior to voting for the first time.
- Section 97.053(5)(a) & (b), *Florida Statutes*, permits the use of a valid Florida driver's license number or the identification number from a Florida identification card issued under Section 322.051, *Florida Statutes*, for purposes of voter registration.
- Section 97.0535, *Florida Statutes*, specifies at length the requirements for identification that a first-time voter can use and complies with other HAVA requirements outlined previously.
- Section 101.043, *Florida Statutes*, permit a voter to submit to a poll worker at the time of voting a current and valid picture identification with a signature.

b. Section 303(b)(4): Does Florida meet HAVA's requirement for language in the mail voter registration form under Section 6 of the National Voter Registration Act of 1993?

Yes, and no further actions are required.

HAVA requires that mail voter registration forms under Section 6 the National Voter Registration Act shall include the following:



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 38

Element 2. Local Government Payments and Activities

Section 25(a)(2): How the State will distribute and monitor the distribution of the requirements payments to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

- (A) *the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and*
- (B) *the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).*

1. Introduction

The Florida Legislature has broad constitutional authority for appropriating federal and State funds annually through the appropriations bill which is eventually signed by the Governor into law. During the annual appropriations process, the Florida Legislature assesses the needs of the State and makes policy and budget decisions which impact every level of government including local government.

The funding of elections in Florida is primarily a local government responsibility since the constitutional authority for running elections rests with the local Supervisor of Elections. Funding authority for elections resides with the Boards of County Commissioners. Each of Florida's 67 Boards of County Commissioners receives a budget request from the Supervisor of Elections and then the Board makes policy and budget decisions based upon county priorities.

Prior to HAVA, there was one major exception. Following the controversial 2000 General Election, the Governor and the citizens of Florida asked the Legislature to enact broad election reforms which included providing State financial assistance to local governments. Over a two-year period, the Legislature provided over \$32 million in State funds to supplement local election budgets and to quicken the pace of election reform in Florida. Most of the State funds were appropriated to the Boards of County Commissioners using two different formulas for accomplishing distinct policy goals—to replace voting systems designated to be decertified and to enact comprehensive voter education programs in every county.

The funding formula used to upgrade voting systems had two important policy goals—to provide a minimum voting system standard of precinct-based optical scanning systems throughout Florida and to provide funding assistance to small counties with very small tax bases. The resulting formula achieved that policy goal and was as follows:



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 37

“(i) The question ‘Are you a citizen of the United States of America?’ and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question ‘Will you be 18 years of age on or before election day?’ and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement ‘If you checked ‘no’ in response to either of these questions, do not complete this form.’

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.”

Florida's statewide uniform voter registration application complies with HAVA's mail voter registration form developed under section 6 of the National Voter Registration Act of 1993. The application adopted through Rule 1S-2.040, Florida Administrative Code pursuant to Section 97.052, Florida Statutes, is available by request from the Division of Elections, by download at: <http://election.dos.state.fl.us> or by contacting any local Supervisor of Elections office.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 39

- Small Counties (population 75,000 or below) received \$7,500/precinct
- Large Counties (population 75,001 and above) received \$3,750/precinct

The Legislature used a different formula to provide State funds for voter education and poll worker recruitment and training. This formula was based upon taking available State funds and distributing them on a per registered voter basis per county. The resulting formula was determined by taking approximately \$6,000,000 in available State funds and dividing it by the number of registered voters during the 2000 General Election and appropriating that money on a pro-rata basis to each county. The resulting appropriation provided \$5,949,375 to counties to fund comprehensive voter education programs and poll worker recruitment and training programs. The combined State and local efforts led to greater voter satisfaction during the 2002 General Election.

Pursuant to the appropriation, the Florida Legislature required each county Supervisor of Elections to submit a detailed description of the plans to be implemented and also a detailed report on the success of the voter education effort. These reports were sent to the Division of Elections and subsequently compiled by the Division into a report sent to the Governor and Florida Legislature.

While the State funds were widely valued, the counties still provided a majority of funding for election reform efforts. According to the 2002 Governor's Select Task Force on Election Procedures, Standards and Technology, a survey of 33 county governments revealed they spent nearly \$110 million toward new voting systems before the 2002 primary and general elections.

2. Distribution of Payments

The HAVA Planning Committee clearly recognizes its advisory role in election reform and acknowledges the authority of the Florida Legislature to make funding decisions for Florida. During the HAVA Planning Committee (2003) discussions, members proposed several recommendations that would provide funding for units of local government. The recommended payments to local government are listed below:

• Replacement and Reimbursement for Punch Card and Lever Machines

The HAVA Planning Committee (2003) recommended that the estimated \$11.74 million received pursuant to Section 102 of HAVA be distributed by the Florida Legislature to the State and to the counties on a pro-rated basis for their respective contributions to replace punch cards and lever machines during the 2001-2002 and 2002-2003 fiscal years.¹ The Florida Legislature acted in 2003 to distribute Section 102 federal funds in the amount of \$11,581,377 to the State of

¹ The 2003 General Appropriations Act passed by the Legislature required the Department of State to transfer all amounts eligible for reimbursement under Section 102 of HAVA to the State's Working Capital Fund.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 40

Florida and not the counties. The \$11,581,377 reimbursement is almost one-half the amount the State of Florida invested to replace outdated voting machines between 2001 and 2003.

• Accessible Voting Systems for Voters with Disabilities

The HAVA Planning Committee (2003) recommended that HAVA funds should be distributed to counties during the 2004-05 fiscal year to help them meet Section 301 Title III accessibility requirements by the January 1, 2006 deadline. The estimated amount to comply with this requirement was \$11.6 million and the funds would be distributed according to the number of machines accessible for persons with disabilities needed for each county to have one per polling place. The Division of Elections would have the responsibility for determining eligibility of counties receiving HAVA funds. Secondly, the HAVA Planning Committee (2003) recommended that HAVA funds be distributed as a reimbursement on a pro-rated basis to local governments that purchased accessible voting systems and components during the 2001 and 2002 fiscal years.

In the fiscal year 2004-05 the Legislature appropriated \$11.6 million to assist Supervisors of Elections (SOEs) with purchasing DREs in order to provide one accessible voting system at each polling place. Those appropriated funds were distributed to SOEs that had not acquired accessible voting systems by July 1, 2004. There were 51 counties that did not have accessible voting systems at that time. The Division of Elections distributed the funds to fifty-one (51) Supervisors of Elections for this purpose pursuant to the terms of a memorandum of agreement.

In the fiscal year 2005-06 the Legislature appropriated funds to reimburse counties that acquired accessible voting systems prior to July 1, 2004. Funds in the amount of \$13,406,163 were distributed to the sixteen counties that had purchased accessible voting systems prior to July 1, 2004. The appropriation was included in the fiscal year 2005-06 General Appropriations Act, specific appropriation 2931. In addition, there were eight counties that received a total of \$63,215 as reimbursement for existing DREs that were not included in the fiscal year 2004-05 appropriations. The funds were distributed according to the number of machines that are accessible for persons with disabilities that were needed in order for each county to have one per polling place.

No Supervisor of Elections was to receive any funds until the county Supervisor of Elections certified to the Department of State:

- 1) the number of precincts in the county;
- 2) the number of polling places in the county;
- 3) the number of voting machines the county has that meet the disability requirement;
- 4) the county's plan for purchasing the DREs; and
- 5) the date that the county anticipates being in compliance.

In January 2006 the Florida Department of State's Division of Elections surveyed each SOE to determine whether counties had accessible voting systems for each polling place or if signed



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 42

Funds for voter education programs were distributed to county Supervisors of Elections for the following purposes: mailing or publishing sample ballots; conducting activities pursuant to the Standards for Nonpartisan Voter Education as provided in Rule 1S-2.033, F.A.C.; print, radio, or television advertising to voters; and other innovative voter education programs, as approved by the Department of State. No Supervisor of Elections received any funds until the county Supervisor of Elections provided to the Department of State a detailed description of the voter-education programs, such as those described above, to be implemented.

In June 2006, the Auditor General conducted an operational audit on the Department of State's administration of the federal Help America Vote Act of 2002 during the period July 1, 2004 through February 28, 2006. See Auditor General Report 2006-194, Department of State Help America Vote Act (HAVA) and the Florida Voter Registration System (FVRS). The report indicated in Finding #7 (voter education) that "one county failed to include four of the five voter education elements contained in the Standards for Nonpartisan Voter Education." The Department of State responded to the Auditor General's report by stating its understanding that HAVA funds paid to counties under the voter education program are not required to be expended for all elements shown in the Department's rule applicable to minimum standards for voter education. For some of the smaller rural counties, the amount of HAVA funds received for voter education programs is insufficient to cover the full costs of all elements in the rule. In these instances, the counties must provide the additional funds needed to implement all voter education activities listed in the rule. Therefore, the Department has not required counties to include each element in the rule in their voter education plans. They have been required to include only the other education activities that will be paid for with HAVA funds.

In addition, the Auditor General Report noted that the activities reported in the expenditure report for one county included an activity that was not included in the county's Plan which was submitted to the Department, though these expenditures would have been allowable. The Department has since updated its voter education procedures to more closely monitor each county's activities as shown in the respective voter education reports following each general election to make sure that the required elements are completed. In addition, the Department will closely compare county-planned activities with actual voter education activities. The Department is also in the process of developing procedures to follow when discrepancies are noted between *planned* and *actual* voter education activities. These procedures will be included in any future memorandums of agreement between the Department and SOEs in which funding is provided to SOEs contingent upon approval of a plan.

In order for a county Supervisor of Elections to be eligible to receive state funding for voter education, each county certified that they would provide matching funds for voter education in the amount equal to fifteen percent of the amount to be received from the state. Additionally, to be eligible, a county must segregate state voter education distributions and required county matching dollars in a separate account established to hold only such funds. Funds in this account must be used only for the activities for which the funds were received. Any funds remaining in



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 41

contracts were in place to acquire accessible voting systems in the event delivery had yet not taken place. Two counties, Leon and Union, did not have signed contracts for purchasing accessible voting systems by January 1, 2006. Both counties had to return the funds pursuant to the conditions of the memorandum of agreement between the Department of State and the Supervisors of Elections as well as language included in the Appropriations Act.

The Legislature re-appropriated the voting systems assistance funds for redistribution to Leon and Union counties during the fiscal year 2006-07. Pursuant to language in the Appropriations Act, distribution of the funds was contingent upon the Department of State receiving a certificate from each county certifying that "accessible voting equipment meeting the requirements of section 301(a) of Title III of the Help America Vote Act had been delivered, accepted by the county, and was ready for use in an election." The Department of State received the required certificates from Leon and Union County Supervisors of Elections in July 2006 and issued state warrants to each SOE to redistribute the funds.

• **Statewide Voter Education Program**

For the fiscal year 2003-04, the Florida Legislature appropriated a total of \$2,976,755 to be made available to each county for voter education programs. The distribution was based on a funding level per individual voter multiplied by the number of registered voters in each county for the 2002 General Election. To determine the funding level per individual voter, the Division of Elections divided the total amount of funds appropriated in FY 2003-04 by the total number of registered voters in the State of Florida for the 2002 General Election. The HAVA Planning Committee (2004) also recommended that local governments receive \$3,000,000 for comprehensive voter education efforts for the fiscal year 2005-06.

For each fiscal year 2004-05 and 2005-06, local governments received \$3 million for comprehensive voter education efforts. For the fiscal year 2004-05, the Department distributed an amount to each eligible Supervisor of Elections equal to the funding level per voter multiplied by the number of registered voters in the county for the 2004 Presidential Preference Primary. The Department determined the funding level per voters in the state for the 2004 Presidential Preference Primary. The HAVA Planning Committee (2003) had recommended that local governments receive a total of \$9 million dollars (\$3 million each fiscal year) for comprehensive voter education efforts for the fiscal year 2005-06. HAVA funds for voter education were to be distributed using a similar formula as used in 2003-04. The Division of Elections should be responsible for determining eligibility of any county for the receipt of State or federal funds used in HAVA election reform activities.

For the fiscal year 2006-07, the Florida Legislature appropriated \$2 million to distribute to Supervisors of Elections to assist with voter education activities. Each county was required to provide matching funds of 15%.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 43

the fund at the end of the fiscal year shall remain in the account to be used for the same purposes for subsequent years or until such funds are expended.

The Auditor General's Report 2006-194 also noted in Finding #7 (Voter Education) "the expenditure report for one county failed to delineate, as required by the standard reporting form, the State and county funds expended. The Auditor General recommended that the Department ensure that all plans are in compliance with Department rules and Agreements and that voter education expenditures correspond with detailed descriptions in the Plans. In addition, the Auditor General recommended the Department ensure that the matching expenditures are reported separately on the expenditure report. In response, the Department is revising the language in its memorandum of agreements with the SOEs to require that counties report the expenditures made with HAVA funds separately from expenditures made with county funds. Any future agreements between the Department and SOEs to distribute funds to the counties will include the revised language.

The Division of Elections monitors the performance of the contract agreements entered into between the State and each county, in accordance with State procedures. Each county must meet the contractual requirements before payment is approved. Standard auditing procedures for monitoring the use of federal funds are used for the receipt and the distribution of HAVA funds. These standard procedures may include random program audits by the Department of State's Inspector General as well as an annual audit by the Florida Auditor General's office to ensure funds are being expended for the authorized purposes.

• Payments to Other State Entities

Through the 2005-06 fiscal years, the Division of Elections recommended that the Department of Highway Safety and Motor Vehicles and the Florida Department of Law Enforcement also receive HAVA funding to assist in the development of the new statewide voter registration system. The Division of Elections entered into a contractual agreement with these other state-level departments and monitors the contracts in accordance with standard auditing procedures for monitoring the use of federal funds. The Divisions will maintain contracts with these two agencies to ensure the accuracy of the voter registration records/information stored in the statewide voter registration system.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 44

Element 3. Voter Education, Election Official Education & Training, Poll Worker Training

Section 254(a)(3): How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

1. Introduction

A wide array of national and State task force reports have highlighted the need for a more informed electorate. To achieve this goal, voters, election officials, and poll workers must receive better information and training. Florida assigns the primary responsibility for these daunting tasks to the Department of State and the county Supervisors of Elections. Following election 2000, the Legislature has more clearly delineated the role of each in improving the education of voters, election officials, and poll workers.

The Florida Election Reform Act of 2001 (Chapter 2001-40, Laws of Florida) set deadlines, included a wide array of topics to be addressed by State and county election officials, granted rule making authority to the Department of State, and established a procedure for measuring the effectiveness of the programs and making recommendations to the Governor and the State Legislature. Various acts passed during the 2002-2006 legislative sessions broaden the scope of voter education responsibilities, more definitively spell out voter rights, and ensure that Florida's electoral system conforms to the Americans with Disabilities Act of 1990. Each of these changes has been communicated to election officials at all levels and to the public at-large.

Under Section 98.255, *Florida Statutes*, all 67 county Supervisors of Elections are required to file voter education plans with the Division of Elections in the Department of State in order to qualify for State funds. The Department of State, as directed by the Legislature, also established minimum standards for nonpartisan voter education to be met by each county (Rule 1S-2.033, Florida Administrative Code, "Standards for Nonpartisan Voter Education," effective May 30, 2002).

Significant changes to Florida's election laws and the advent of new voting equipment have also made poll worker education a high priority—as recognized in the Florida Election Reform Act of 2001. Florida's counties have restructured their poll worker training programs. State law now requires Supervisors of Elections to cast their poll worker recruitment nets wider, as the number of poll workers needed escalates in a fast-growing state. Section 102.014, *Florida Statutes*, directs the Division of Elections to "develop a statewide uniform training curriculum for poll workers" and dictates that "each supervisor shall use such curriculum in training poll workers".



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 46

(effective January 1, 2006). The Florida State Poll Workers Training Manual is currently in the final stages of production. A draft of the training manual was distributed at the Florida State Association of Supervisors of Election's summer conference and ideas from this manual are already being implemented in some counties.

2. Voter education: *Section 254(a)(3). How will the State of Florida provide for programs for voter education which will assist the State in meeting the requirements of Title III?*

a. Introduction: Voter education in Florida is a joint responsibility of the Department of State and the 67 county Supervisors of Elections. Both levels of government play a role in designing, implementing, and evaluating voter education activities. Both must constantly react to election-related legislation passed by the Florida Legislature.

The State of Florida has adopted extensive voter education requirements and funded county voter education programs (\$6,000,000 in 2001, \$2,976,755 for fiscal years 2003-04, and \$3,000,000 for fiscal year 2004-05). The HAVA Planning Committee (2003) recommended and the state approved an additional \$3 million for the fiscal year 2005-06. For the fiscal year 2006-07, \$2 million was appropriated by the Legislature for voter education.

Each of the 67 county supervisors of elections is required to file "a detailed description of the voter-education programs" in order to receive state funds (Section 98.255, *Florida Statutes*). There are four broad categories of voter education for which these funds may be used: mailing or publishing sample ballots; conducting activities described in the Standards for Nonpartisan Voter Education provided in Rule 1S-2.033, *F.A.C.*; for print, radio, or television advertising to voters; and for other innovative voter education programs, as approved by the Department of State. An analysis of the 2006 county plans shows that most are using their funds for a wide variety of activities within each broad category. Examples include:

Sample Ballots: printing; mailing; distribution of audio sample ballots on CD.

Nonpartisan Voter Education: registration displays in various types of locations; educational brochures; pamphlets; newsletters; pencils; utility bill stuffers; postcards; voter education packets; signs & banners; informational flyers; distribution of buttons, lapel pins, magnets, fans, key chains, jar openers, coloring books, tape measures, bags, bumper stickers, bookmarks, calendars, pens, posters, "I voted" stickers, and other novelty and promotional items featuring voting-oriented information; conducting school elections on county voting equipment; purchasing accessible equipment to use for public demonstrations; promotions for early and absentee ballot voting; voter guides; community events booths; an Electronic Message board constantly updated by the supervisor.

Media Advertising (print & electronic): public service announcements; special programs on availability and use of voting equipment; educational videos (e.g., "First Vote") to be aired on public education and/or government access stations; voter preparedness guides; registration count-downs; billboards; targeted radio spots (age, race/ethnicity); digital ads to be aired at movie theatres; public service ads for condo associations and other organizations with closed circuit television outlets; infomercials; bus & taxi ads; newspaper ads and inserts; crawlers on local television channel.

Innovative Programs: website design and maintenance; new software for website and newsletter construction; interactive web sites; multi-cultural and multi-lingual (Spanish, Creole, and Portuguese) outreach; registration contests in area high schools; blinking marquee in front of the courthouse; business marquee program; portable signs; murals on local buildings; phone lines for public to use to contact supervisor's office on election night; mock Internet student elections; development of a countywide audio program for non-readers; participation in local television stations' Voter Help lines; kiosk locations to show public how new voting equipment works.

County voter education plans filed with the Division of Elections in the Secretary of State's office are filled with creative approaches. These outreach mechanisms are designed by the elections supervisors to: (1) Better inform their county's residents about registration and voting; and, (2) Reduce the levels of voter error and confusion that existed during the 2000 election cycle. The approaches used by the 67 individual counties vary considerably, reflecting differences in their demographic and socioeconomic composition (e.g., population size, land area, rural-urban location, age, race/ethnicity, education), county funding levels, and media availability. For example, small counties (under 100,000) are more likely than larger ones to use their voter education funds for the basics—printing and mailing sample ballots, mailing voter guides, and notifying voters of changes in precinct locations. Larger counties (100,000+) are more likely than smaller ones to spend their funds on radio and television advertising, supervisor participation in media programs and events, targeting college students, voter registration workshops, demonstrating voting equipment, and innovative programs.

Section 98.255(1), *Florida Statutes*, directed the Department of State to "adopt rules prescribing minimum standards for nonpartisan voter education" by March 1, 2002. The standards address (but are not limited to):

- (1) Voter registration;
- (2) Balloting procedures for absentee and polling place;
- (3) Voter rights and responsibilities;
- (4) Distribution of sample ballots; and,
- (5) Public service announcements.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 48

community centers; post offices; centers for independent living; county governmental offices; and at all registration drives conducted by the Supervisor of Elections."

Voter Guide, Sample Ballot, & Website Consistency Required—Department of State Rule 1S-2.033(2), F.A.C., states that: "If a supervisor has a website, it must take into account all of the information that is required to be included in the Voter Guide. In addition, when a sample ballot is available, the website must provide either information on how to obtain a sample ballot or a direct hyperlink to a sample ballot."

Targeted Voter Education: High School Students—Florida's Department of State Rule 1S-2.033(3), F.A.C., instructs the Supervisors of Elections to work with county school boards to develop voter education and registration programs for high school students. Specifically, the rule requires that "At least once a year in each public high school in the county, the supervisor shall conduct a high school voter registration/education program. The program must be developed in cooperation with the local school board and be designed for maximum effectiveness in reaching and educating high school students."

Targeted Voter Education: College Students—Florida's Department of State Rule 1S-2.033(4), F.A.C., dictates that "At least once a year on each college campus in the county, the supervisor shall provide a college registration/education program. This program must be designed for maximum effectiveness in reaching and educating college students."

Targeted Voter Education: Senior Citizens and Minority Groups—Department of State Rule 1S-2.033(7), F.A.C., requires Supervisors of Elections to "conduct demonstrations of the county's voting equipment in community centers, senior citizen residences, and to various community groups, including minority groups." Rule 1S-2.033(8), F.A.C., specifically instructs the supervisors to use minority media outlets to provide more information to voters.

Targeted Voter Education: Individuals and Groups Sponsoring Voter Registration Drives—Department of State Rule 1S-2.033(6), F.A.C., specifically instructs Supervisors of Elections to "provide, upon reasonable request and notice, voter registration workshops for individuals and organizations sponsoring voter registration drives." Section 98.015(9), Florida Statutes, states that "each supervisor must make training in the proper implementation of voter registration procedures available to any individual, group, center for independent living, or public library in the supervisor's county."

Posting of Educational Materials on Voter Rights and Responsibilities—Department of State Rule 1S-2.033(5), F.A.C., requires Supervisors of Elections to "post the listing of the voters' rights and responsibilities pursuant to Section 101.031, Florida Statutes, at the supervisor's office." Section 101.031(2), Florida Statutes, spells out the specific format of the Voter's Bill of Rights and Responsibilities to be posted by the Supervisor of



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 47

In developing the rules, the Department was instructed to "review current voter education programs within each county of the state." The Department of State adopted Rule 1S-2.033, F.A.C., Standards for Nonpartisan Voter Education on May 30, 2002.

Section 98.255(2), *Florida Statutes*, requires each Supervisor of Elections to "implement the minimum voter education standards" and "to conduct additional nonpartisan education efforts as necessary to ensure that voters have a working knowledge of the voting process." Under Florida law, voter education must constantly be evaluated and new recommendations for improvements must be made. Section 98.255(3)(a), *Florida Statutes*, requires that "by December 15 of each general election year, each Supervisor of Elections shall report to the Department of State a detailed description of the voter education programs implemented and any other information that may be useful in evaluating the effectiveness of voter education efforts." Section 98.255(3)(a) requires the "Department of State, upon receipt of such information, [to] prepare a public report on the effectiveness of voter education programs and [to] submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31 of each year following a general election." Section 98.255(3)(c) directs "the Department of State [to] reexamine the rules adopted pursuant to subsection (1) and consider the findings in the report as a basis for adopting modified rules that incorporate successful voter education programs and techniques, as necessary."

b. Supervisors of Elections' Role: Minimum Nonpartisan Voter Education Standards
The Department of State's "Standards for Nonpartisan Voter Education," Rule 1S-2.033, F.A.C., requires the following voter education practices by county Supervisors of Elections:

Comprehensive Voter Guide: Contents-- Department of State Rule 1S-2.033, F.A.C., Standards for Nonpartisan Voter Education, requires Supervisors of Elections to create a Voter Guide which shall include: how to register to vote; where voter registration applications are available; how to register by mail; dates for upcoming elections; registration deadlines for the next primary and general election; how voters should update their voter registration information such as changes in name, address or party affiliation; information on how to obtain, vote and return an absentee ballot; voters' rights and responsibilities pursuant to Section 101.031, *Florida Statutes*; polling information including what times the polls are open, what to bring to the polls, list of acceptable IDs, what to expect at the polls; instructions on the county's particular voting system; supervisor contact information; and any other information the supervisor deems important.

Voter Guide: Extensive Distribution—Department of State Rule 1S-2.033(1)(b), F.A.C., requires Supervisors of Elections to "provide the Voter Guide at as many places as possible within the county including: agencies designated as voter registration sites pursuant to the National Voter Registration Act; the supervisor's office; public libraries;



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 50

Voter Education Through the Media—Department of State Rule 1S-2.033(8), F.A.C., requires Supervisors of Elections to interface with the media to better inform the electorate. Supervisors are to “participate in available radio, television and print programs and interviews, in both general and minority media outlets, to provide voting information.”

Voter Education Includes But is Not Limited to Nonpartisan Voter Education—Beginning in 2003, the State Legislature has expanded its definition of voter education activities for which counties may receive state funds. There are now four broad categories of voter education for which counties may use state funds: mailing or publishing sample ballots; conducting activities described in the Standards for Nonpartisan Voter Education provided in Rule 1S-2.033, F.A.C.; for print, radio, or television advertising to voters; and for other innovative voter education programs, as approved by the Department of State.

Disseminating Information to Staff, Voters, and Poll Workers

County Supervisors of Elections must constantly update information disseminated to the public, poll workers, and their own staff to conform to state legislative mandates and HAVA requirements.

- Section 101.65, *Florida Statutes*, requires separate printed instructions to be enclosed with each absentee ballot on how to mark and return a ballot. (This was necessary to meet Section 301(a)(1)(B) HAVA requirements.)
- Section 97.0535, *Florida Statutes*, requires county Supervisors of Elections to inform persons registering to vote by mail that if they are registering for the first time, they will be required to provide identification prior to voting the first time.
- Section 101.6923, *Florida Statutes*, spells out the format for printed instructions that are mailed to a voter who has not provided the identification or information required by Section 97.0535, *Florida Statutes*, to the supervisors of elections by the time the absentee ballot is mailed. Effective January 1, 2006, included in the instructions is language clarifying the form of name-and-photograph identification that is acceptable under Florida law (unless excepted): “United States passport; employee badge or identification; buyer’s club identification; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; or public assistance identification.”
- Section 101.048(5), *Florida Statutes*, requires county Supervisors of Elections to give written instructions regarding the free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 49

Elections at each polling place. Effective January 1, 2006, the list of voter’s rights spells out each registered voter’s right to “an explanation if his or her registration or identity is in question” and the right to cast a provisional ballot “if his or her registration or identity is in question.”

The Department of State, or in the case of municipal elections, the governing body of the municipality, is required “to print, in large type on cards, instructions for electors to use in voting,” including the list of rights and responsibilities and other information about how to vote deemed necessary by the Department of State—Section 101.031(1), *Florida Statutes*. At least two cards shall be provided to each precinct.

Posting of Instructions At Polling Place On The Voting System—Section 101.561(1), *Florida Statutes*, requires each Supervisor of Elections “to provide instruction at each polling place regarding the manner of voting with the system. In instructing voters, no precinct official may favor any political party, candidate, or issue. Such instruction shall show the arrangement of candidates and questions to be voted on.” The supervisor must also “provide instruction on the proper method of casting a ballot for the specific voting system utilized in that jurisdiction.” The law requires that “such instruction shall be provided at a place which voters must pass to reach the official voting booth.”

Having Information on Proposed Constitutional Amendments At Polling Place—Section 101.171, *Florida Statutes*, requires the Department of State to print and furnish to each Supervisor of Elections “a sufficient number of copies of the amendment either in poster or booklet form” and requires the supervisor to “have a copy thereof conspicuously posted or available at each polling room or early voting area upon the day of election.”

Posting Information About Penalty for Vote Fraud—Section 101.561(2) requires each Supervisor of Elections to post a notice at each polling place that reads “A person who commits or attempts to commit any fraud in connection with voting, votes a fraudulent ballot, or votes more than once in an election can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years.”

Educating Voters About Polling Place and Precinct Changes, Revised Voter Identification Cards—Department of State Rule 1S-2.033, F.A.C., mandates that Supervisors of Elections “shall provide notice of changes of polling places and precincts to all affected registered voters. This notice shall include publication in a newspaper of general circulation as well as posting the changes in at least ten conspicuous places in the county. If the supervisor has a website, the supervisor shall post the changes on the website. The supervisors shall also widely distribute a notice that if a voter does not receive a revised voter identification card within 20 days of the election the voter should contact a specific number at the supervisor’s office to obtain polling place information.”



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 51

was counted in the final canvass of votes and, if not, the reasons why. This is consistent with Section 302(5)(A)&(B) HAVA requirements.

- Section 101.64, *Florida Statutes*, requires county Supervisors of Elections to alert the absentee voter to "Please Read Instructions Carefully Before Marking Ballot and Completing Voter's Certificate." Under the law, a person casting an absentee ballot is no longer required to have his/her signature witnessed.
- Section 101.657, *Florida Statutes*, requires each elector voting early to complete an Early Voting Voter Certificate. The law spells out the format of the Early Voting Voter Certificate. A person casting an early vote is no longer required to have his or her signature witnessed.

A number of counties have used their state voter education funds to update materials available at the polling place as well as information (brochures, posters, signs, videos, public service announcements) distributed throughout the county.

c. State Role: Disseminating Information to Voters and Election Officials

- Voter Education through the Internet

The Division of Elections' website (<http://election.dos.state.fl.us/>) offers extensive information regarding registration, elections (dates, district maps, results, Division reports, forms, publications, press releases, voter turnout, Supervisor of Elections' contact information), voter fraud, voting systems, laws/opinions/rules, candidates and committees, the initiative petition process, and other helpful government links. Prominently displayed on the Web Site home page is information on: the Voter Assistance Hotline Toll Free Number—for the general public and for people using Text Telephone (TTY); the Florida Voter Fraud Hotline Toll Free Number; Direct Recording Equipment Voting Systems; Public Logic and Accuracy Test Dates; Voting System Security Procedures Enhancements; Early Voting and Absentee reports; a direct link to the Help America Vote Act and the HAVA Planning Committee's activities and recommendations; Florida Identification Requirements for the 2006 Election Cycle; 2006 Florida Registration and Voting Guide (in English and Spanish); Early Voting Locations. The site also has a link to The Advocacy Center for Persons With Disabilities, Inc. and to the results of an Election Night Voter Report Card (Survey) on the Conduct of Election 2004, along with a 2006 Proposed Constitutional Amendments Booklet (in English and Spanish), calendars of key election dates, and reporting dates for candidates, parties, and political committees.

- Voter Education About Fraud
Section 97.012(12), *Florida Statutes*, requires the Secretary of State to "...provide election fraud education to the public."



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 52

- Voter Education Media Campaign: Get Out The Vote Foundation
During the 2004 election cycle, the Division of Elections of the Florida Department of State contracted with the Get Out The Vote Foundation, a nonprofit arm of the Florida State Association of Supervisors of Elections, to (1) "coordinate an extensive campaign to educate and inform voters on the use of touch screen voting systems;" (2) to develop a plan and informational materials to conduct a statewide voter information campaign to encourage people to register and vote.

Specifically, in FY 2003-04, the Division of Elections entered into a contract with the Get Out The Vote Foundation, Inc., in the amount of \$247,500. The Foundation hired two well-known communications firms (Ron Sachs Communications and CoreMessage, Inc.) to produce voter education materials for statewide distribution. The two firms jointly produced a half-hour television news magazine-type program called "Before You Vote" designed to inform voters about new voting rules and procedures and new electronic voting machines. The program was distributed to all TV stations and cable companies in Florida for broadcast at two time periods—before both the August primary election and the November general election. Prevention of errors on election day was the primary goal of the program. The bipartisan team also produced eight 30-second TV public service announcements—four each in English and Spanish. These spots-- "Make Freedom Count"—were designed to encourage voters to vote early or by absentee ballot. An additional contract in the amount of \$24,750 was issued to the Get Out The Vote Foundation to create media kits full of facts and figures for all 67 county Supervisors of Elections to use as they interface with the media.

The 2006 campaign, titled "Vote 2006: Make Freedom Count," features monthly themed activities beginning in February: Register at Work Month, Register at School Month, Register at Your Local Merchants Month, Register at Your House of Worship Month, Register Online Month, and Encourage People to Vote (August, September, & October).

- Procedures for Constant Analysis of Voter Education Effectiveness
Section 98.255(3)(a), *Florida Statutes*, requires Supervisors of Elections to file a report by December 15 of each general election year with the Department of State. This report is "a detailed description of the voter education programs implemented and any other information that may be useful in evaluating the effectiveness of voter education efforts." Section 98.255(3)(b), *Florida Statutes*, requires the Department of State to review the information submitted by the Supervisors of Elections and "prepare a public report on the effectiveness of voter education programs" and to "submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31 of each year following a general election."



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 54

(Rule 1S-2.033, F.A.C.) are properly executed. In addition, the Department agreed to monitor in more detail each county's annual voter education expenditure reports to ensure voter education plans are implemented properly and that HAVA funds are reported separately from other county election funds.

• **Sample Ballot Recommendation**

The 2002 Governor's Select Task Force on Election Procedures, Standards, and Technology report of December 30, 2002 also recommended improving "voter education by requiring all Supervisors of Elections to mail generic sample ballots to each household with registered voters." Now under Section 101.20, *Florida Statutes*, county Supervisors of Elections may mail, rather than publishing a newspaper of general circulation, a sample ballot to each registered elector or to each household in which there is a registered voter if done at least seven days prior to any election. A high percentage of county supervisors have chosen to use their state voter education funds and local matching funds to publish and mail out sample ballots to registered voters. The same law requires two sample ballots be placed at each polling place, along with reduced-size sample ballots to give to any voter desiring one. Some Supervisors of Elections are using their voter education monies to pay for sample ballots to be made available at each precinct.

In its "Report on Voter Education Programs During the 2004 Election Cycle" (January 31, 2005), the Division of Elections concluded that "counties have increased the voter education services being provided and have broadened the types of activities being conducted to include several creative and innovative approaches to generating public interest in the elections process." It further concluded that "during the 2004 general election...a number of anticipated problems at the polls were averted through voter education efforts conducted by the counties, especially through local advertising campaigns that provided general election information to voters." The report also analyzed the effectiveness of fourteen broad categories of voter education: sample ballots, school outreach programs, web sites, public appearances/media events, banners, billboards, and public transportation advertisements, newspapers and mailers, miscellaneous promotional materials, voting systems demonstrations, outreach to minority, disabled, and senior communities, voter registration drives, publications, staff education, special voting programs, and other activities. The majority of the voter education programs were given an effectiveness rating of 4 or 5 indicating that the programs are considered useful and are well-received by the voters. The report did note that while "the programs are considered to be very effective by the supervisors...critical funding is still needed, particularly for smaller counties." The report is posted on the Division of Elections' website at: <http://election.dos.state.fl.us/reports/electreports.shtml>.

- **Tracking Over-And Under-Votes**
Section 101.595, *Florida Statutes*, also requires Supervisors of Elections to submit a report to the Department of State no later than December 15 of each general election year



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 53

Further, Section 98.255(3)(c), *Florida Statutes*, instructs the Department of State to use "the findings in the report as a basis for adopting modified [voter education] rules that incorporate successful voter education programs and techniques as necessary." This procedure was first used in the 2002 election cycle. The Division of Elections requested each Supervisor of Elections to list in detail the voter education programs conducted during the 2002 election cycle and the approximate cost of each program. The supervisors were asked to rank the effectiveness of each program on a scale of 1 to 5, with 5 being the highest possible rank. On January 31, 2003, the Florida Department of State, Division of Elections, submitted its "Report on Voter Education Programs During the 2002 Election Cycle Pursuant to Section 98.255(3), *Florida Statutes*." (The Report is posted on the Division of Elections Web Site.) The report concluded that "most supervisors ranked the county voter education programs as 4 or 5 in effectiveness in reaching the target community." (There were ten broad categories of voter education programs: sample ballots; elementary/middle school/high school/university and community college outreach; websites; miscellaneous promotional materials; public appearances/television and movie theatre advertisements; banners and billboards, radio and public transport advertisements; newspapers and mailers; voting system demonstrations; outreach to minority, disabled and senior communities; and voter registration drives.)

The Department of State made three recommendations in its post-election 2002 report:

- (1) The Legislature should provide funding, contingent upon appropriations from Congress through the Help America Vote Act, to the counties for voter education efforts. The Florida Legislature did this in its FY 2003-04 and FY 2004-05 appropriations bills.
- (2) The Legislature should require sample ballots to be mailed to households or voters prior to each Primary and General Election. (It is now an alternative to publishing a sample ballot in a general circulation newspaper.)
- (3) The Division of Elections should provide a list of cost-effective voter education programs used by counties so that all counties can benefit from these ideas. (Pursuant to Section 98.255(3), *Florida Statutes*, the Division has posted its Report on Voter Education Programs during the 2002 and 2004 election cycles on its website. The Reports list the effectiveness ratings for individual voter education activities as calculated by individual county Supervisors of Elections.)

A 2006 Auditor General Report (2006-194) reported that the Department of State needed to monitor the voter education plans of counties more closely. In response to the Auditor General's findings, the Department of State agreed to examine with more care each county's voter education activities so that the Standards for Nonpartisan Voter Education



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 56

fact that voters continued to become more accustomed to using new technologies." The report's recommendations were:

- (1) The Department of State should continue to monitor overvotes and undervotes from each General Election in order to detect any future fluctuations in these rates.
- (2) The Legislature should expand the data required as part of the official canvass report to include the data required for this report, for any reports required by the federal government, and give the Department of State rule-making authority to specify the content and format of the data. The report is posted on the Division of Elections' website at: <http://election.dos.state.fl.us/reports/electreports.shtml>.

A number of Supervisors of Elections have implemented their own feedback systems through comment cards distributed at registration sites, workshops, and polling places. Some also allow citizens to make suggestions and complaints via their websites. Several counties have used some of their state voter education funds to solicit voter feedback and suggestions.

Florida's system for constant evaluation of the effectiveness of voter education by both the county Supervisors of Elections and the Department of State is in place and operating.

3. Election Official Education and Training: *Section 254(a)(3): How will the State of Florida provide for programs for election official education and training which will assist the State in meeting the requirements of Title III?*

The State has assigned responsibility for education and training of election officials to the Secretary of State. The Secretary of State is the State's chief election officer whose responsibilities are spelled out in Section 97.012, *Florida Statutes*. Among those responsibilities are explicit requirements to: "provide technical assistance to the Supervisors of Elections on voter education and election personnel training services;" "provide technical assistance to the Supervisors of Elections on voting systems;" "provide training to all affected state agencies on the necessary procedures for proper implementation of [Chapter 97 of the *Florida Statutes*];" and "coordinate with the United States Department of Defense so that armed forces recruitment offices administer voter education in a manner consistent with the procedures set forth in [Florida election] code for voter registration agencies."

The HAVA Planning Committee (2003) recommended that the Division of Elections also conduct training courses for the continuing education of city election officials in conjunction with meetings of the Florida Association of City Clerks. The Division of Elections routinely



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 55

detailing "[t]he total number of overvotes and undervotes in the Presidential or gubernatorial race or if neither is present, the first race appearing on the ballot pursuant to Section 101.151(2), *Florida Statutes*. The report must include the likely reasons for such overvotes and undervotes and other information as may be useful in evaluating the performance of the voting system and identifying problems with ballot design and instructions which may have contributed to voter confusion." The Department of State must prepare a report analyzing that information and submit it to the Governor, the President of the Senate, and the Speaker of the House by January 31 of the year following a general election. The report is to include recommendations for correcting any problems with ballot design or instructions to voters.

This procedure was first used in the 2002 election cycle. "Analysis and Report of Overvotes and Undervotes for the 2002 General Election Pursuant to Section 101.595, *Florida Statutes*" found a substantial reduction in the level of overvotes and undervotes in 2002 (compared to 2000) and concluded that new technology and the counties' voter education efforts were major factors contributing to the reduction in voter error. The report is posted on the Division of Elections' website at: <http://election.dos.state.fl.us/reports/electreports.shtml>. The report's recommendations were:

- (1) The Division of Elections must continue to monitor the overvotes and undervotes from each general election. (Required under *Florida Statutes*.)
- (2) The Florida Legislature should provide funding, contingent upon appropriations from Congress through the Help America Vote Act, to the counties for voter education efforts. The Legislature did this in its FY 2003-04, FY 2004-05, FY 2005-06 and FY 2006-07 appropriations bills.
- (3) The Division of Elections should review the recommendations for ballot instructions for incorporation into the uniform ballot rule. During the 2003 session, the Legislature passed a law delineating the content of separate printed instructions to accompany each absentee ballot (Section 101.65, *Florida Statutes*). Rule 1S-2.030 *F.A.C.* standardizes the basic form of instructions to be sent to all overseas voters.
- (4) All voting system vendors should continue to improve the design of their voting systems in order to better meet the needs of Florida voters.

The procedure was used again following the 2004 election cycle. The "Analysis and Report of Overvotes and Undervotes for the 2004 General Election" study (January 31, 2005) examined "factors relating to no valid votes being cast." It found that the under- and over-vote percentage dropped to an historically low 0.4116% and attributed the drop to "an unprecedented statewide, nonpartisan voter education campaign combined with the



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 58

4. Poll Worker Training: Section 254(a)(3). *How will the State of Florida provide for programs for poll worker training which will assist the State in meeting the requirements of Title III?*

Florida has adopted extensive poll worker recruitment and training requirements and funded county poll worker training (as part of the \$6 million voter education appropriation in 2001). Specifically, the State has adopted minimum-hours-of-training requirements, spelled out training content requirements, and mandated a statewide and uniform program for training poll workers on issues of etiquette and sensitivity with respect to disabled voters. The Department of State, Division of Elections established a polling place procedures manual, Form DS-DE 11 (Rule 1S-2.034, F.A.C.). This manual is used as guidance for elections' officials, elections' personnel including poll workers at the polls and deputy sheriffs in the proper implementation of the election procedures and laws. State law permits inspectors, clerks, and deputy sheriffs attending poll worker training to receive compensation and travel expenses—Section 102.021(2), *Florida Statutes*.

The HAVA Planning Committee (2003) recommended state funding for poll worker training and recruitment but the Florida Legislature in 2004 did not appropriate funds for either activity. For the fiscal year 2005-06, the Legislature appropriated \$4 million of HAVA Title II funds for poll worker recruitment and training. Of this \$4 million, the Department of State distributed \$3 million to Supervisors of Elections to assist with poll worker recruitment and training. The Legislature provided \$1 million for the Department of State to develop a statewide poll worker training curriculum.

For the fiscal year 2006-07, the Legislature appropriated \$1.5 million for poll worker recruitment and training activities. Of this amount, \$1 million will be distributed to Supervisors of Elections to assist with recruiting and training individuals to serve as poll workers. The Legislature authorized an additional \$500,000 for the Department of State to use for necessary updates and revisions to poll worker training curriculum that was developed with funds appropriated in the fiscal year 2005-06.

a. Joint Responsibility of Department of State and County Supervisors of Elections

The county Supervisors of Elections and the Department of State share statutory responsibility for poll worker training. Specifically, section 102.014(1), *Florida Statutes*, requires Supervisors of Elections to conduct training for inspectors, clerks, and deputy sheriffs prior to each primary, general, and special election "for the purpose of instructing such persons in their duties and responsibilities as election officials." Training is mandatory to work at the polls.

Section 102.014(5), *Florida Statutes*, directs the Department of State to "create a uniform polling place procedures manual and adopt the manual by rule" and to revise it "as necessary to address new procedures in law or problems encountered by voters and poll workers at the precincts."



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 57

invites city clerks and Supervisors of Elections to attend its statewide training meetings held in conjunction with FSASE meetings.

The Division of Elections performs a number of activities on behalf of the Secretary and the Department (See Office of Policy Analysis and Government Responsibility, *Justification Review*, Report No. 02-55, October 2002):

- Issues advisory opinions that provide statewide coordination and direction for interpreting and enforcing election law provisions,
- Provides technical advice on voting systems and equipment and state and federal election laws, certifies voting equipment,
- Provides written election information to candidates
- Oversees and approves training courses for continuing education and certification for Supervisors of Elections through which supervisors obtain credits to maintain job proficiency.
- Prepares and distributes educational materials for, and conducts the training of, Supervisors of Elections and election personnel and staff.
- Coordinates, on an annual basis, two statewide workshops for the Supervisors of Elections by reviewing and providing updates on the election laws to ensure uniformity statewide in the interpretation of election laws. These are generally held in conjunction with the Florida State Association of Supervisors of Elections' Conferences held twice a year.
- Conducts occasionally or upon request regional workshops for supervisors and staff, universities, community colleges and State agencies
- Provides administrative and technical assistance to select task forces that may be created by the Governor, Secretary of State, or other State officials, (Florida Department of State, Division of Elections Annual Reports).

All Division of Elections' forms, rules, handbooks, opinions, etc. are available on the Internet via the Division's website—an award-winning site (<http://election.dos.state.fl.us/>). Section 97.026, *Florida Statutes*, states "It is the intent of the Legislature that all forms required to be used in chapters 97-106 [the Florida Election Code], shall be made available upon request, in alternative formats" including the Internet (with the exception of absentee ballots).

The Florida State Association of Supervisors of Elections, through activities of its Get Out The Vote Foundation, Inc., also plays a major role in educating and training election officials (and voters). On May 25, 2004, the Foundation launched its voter education plan. Through it, all 67 county Supervisors of Elections have access to professionally prepared public media advertising materials. The Foundation has its own website (www.govflorida.com) which allows election officials—elected and staff—(and voters) to access easily comprehended materials on a wide range of timely topics, including Absentee Voting, Early Voting, Registering to Vote, Election Reform in Florida, Touch screen Voting Systems and Voter Verifiable Paper Ballots, Voter Identification, Restoration of Felon's Voting Rights, and Information on Direct Recording Equipment Voting Systems, along with posters, ads, and public service announcements.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 60

Rule 1S-2.034, F.A.C., Polling Place Procedures Manual (Form DS-DE 11). The manual, to be available in either hard copy or electronic form at every precinct on Election Day, must be "indexed by subject, and written in plain, clear, unambiguous language." The Department recently revised the manual in January 2006 to comply with HAVA provisions and state election law changes. In accordance with Section 5 of the Voting Rights Act, it was recently resubmitted as revised and pre-cleared by the Department of Justice.

Under Section 102.014(7), *Florida Statutes*, the Department is also assigned responsibility for developing "a mandatory, statewide, and uniform program for training poll workers on issues of etiquette and sensitivity with respect to voters having a disability." But county Supervisors of Elections are responsible for conducting such training. They are required to "contract with a recognized disability-related organization, such as a center for independent living, family network on disabilities, deaf service bureau, or other such organization, to develop and assist with training the trainers in disability sensitivity programs."

b. Poll Worker Training Content

The content of poll worker training is detailed in state law. Clerks (poll workers) must demonstrate "a working knowledge of the laws and procedures relating to voter registration, voting system operation, balloting and polling place procedures, and problem-solving and conflict-resolution skills"—Section 102.014(1), *Florida Statutes*. In addition, the "Polling Place Procedures Manual" (DS-DE 11, Rule 1S-2.034, F.A.C.), must include: regulations governing solicitation by individuals and groups at the polling place; procedures to be followed with respect to voters whose names are not on the precinct register; proper operation of the voting system; ballot handling procedures; procedures governing spoiled ballots; procedures to be followed after the polls close; rights of voters at the polls; procedures for handling emergency situations; procedures for dealing with irate voters; the handling and processing of provisional ballots; and security procedures—Section 102.014(5)(a-k), *Florida Statutes*. The manual "shall provide specific examples of common problems encountered at the polls on Election Day, and detail specific procedures for resolving those problems." This manual is to be made available in hard copy or in electronic format at the polling place.

Poll worker training on issues of etiquette and sensitivity for disabled voters "must include actual demonstrations of obstacles confronted by disabled persons during the voting process, including obtaining access to the polling place, traveling through the polling area, and using the voting system"—Section 102.014(7), *Florida Statutes*.

Section 102.014, *Florida Statutes*, directs the Division of Elections to "develop a statewide uniform training curriculum for poll workers" and dictates that "each supervisor shall use such curriculum in training poll workers" (effective January 1, 2006). The Florida State Poll Workers Training Manual "contains the basic information that a poll worker will need to legally and effectively discharge his or her statutory duties" including "instruction on the needs of voters who have disabilities and those who may assist them, helping non-English-proficient voters,

managing disruptive voters or 'precinct crashers,' handling medical emergencies involving poll workers and voters, handling power and equipment failures, and dealing with spoiled ballots, and many other topics." It is organized in an easy-to-follow format, written in plain language, and it informs poll workers "why things must be done in a specific way and why certain decisions must be made."

c. Poll Worker Minimum Hours of Training

Section 102.014(4), *Florida Statutes*, specifies that clerks must have had a minimum of three hours of training prior to each election to be eligible to work at the polls. For inspectors, there is a minimum of two hours of training. Section 102.014(7), *Florida Statutes*, requires one hour involving training related to etiquette and sensitivity with regard to voters with disabilities.

d. Poll Worker Recruitment

Supervisors of elections are required to "work with the business and local community to develop public-private programs to ensure the recruitment of skilled inspectors and clerks"—Section 102.014(6), *Florida Statutes*.

The 2002 Governor's Select Task Force on Election Procedures, Standards, and Technology report of December 30, 2002, recommended "establishing minimum standards for poll worker performance" and "improving poll worker recruitment and training by launching a statewide 'Be a Poll Worker' campaign. The HAVA Planning Committee (2003) also recommended that the Division of Elections establish a procedure to evaluate the effectiveness of poll worker recruitment and training in all 67 counties. There are still no established procedures for evaluating the effectiveness of poll worker training or recruitment as there is for voter education.

However, in an effort to increase poll worker recruitment, the Department has initiated a "Be a Poll Worker" campaign which includes airing public service announcements and distributing "Be a Poll Worker" handouts at Department presentations. Some counties are using their voter education funds to recruit high school and college students as poll workers as well as the public at-large through publication and dissemination of new brochures and videos.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 62

- Section 101.5604, *Florida Statutes*, authorizes the Board of County Commissioners to adopt voting systems.
- Sections 101.293-101.295, *Florida Statutes*, outline the public bidding process that counties should follow in purchasing voting systems.
- Section 101.56062, *Florida Statutes*, provides accessibility standards that exceeds those accessibility standards of HAVA Section 301 "Accessibility for Individuals With Disabilities."

The HAVA Planning Committee (2003) had recommended that the Florida Legislature take advantage of federal funding and bring Florida into compliance and make Section 101.56062, *Florida Statutes*, effective by January 1, 2006 or one year after general appropriations are made, whichever is earlier. Currently, Florida is in compliance with HAVA requirements for accessibility equipment. As of 2004, all three vendors (Diebold Election Systems, Inc., Elections Systems and Software, Inc. and Sequoia Voting Systems, Inc.) had certified accessible voting equipment with audio ballot capability. By 2005, two of the three vendors being used in Florida had certified accessible voting equipment with the electronic provisional ballot capability. By January 2006, the third vendor obtained certification for their system with the electronic provisional ballot capability.

In 2005, the Florida Legislature amended Section 101.56062(2), *Florida Statutes*, to require accessible voting systems to include at least one accessible voter interface device installed in each polling place (rather than in each precinct). This change conformed with HAVA requirements.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 61

Element 4. Voting System Guidelines and Process

Section 254(o)(4): How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

There are several governmental bodies and agencies that participate in the adoption of voting systems in Florida. The Florida Legislature has great authority to set voting system requirements and does so in Chapter 101, *Florida Statutes*. The Legislature also delegates rule making and certification authority to the Bureau of Voting Systems Certification in the Division of Elections under the Secretary of State.

After voting systems are tested and certified for use in Florida, Section 101.5604, *Florida Statutes*, provides that the Board of County Commissioners "at any regular or special meeting called for the purpose, may, upon consultation with the Supervisor of Elections, adopt, purchase or otherwise procure, and provide for the use of any electronic or electromechanical voting system approved by the Department of State in all or a portion of the election precincts of that county."

Florida's laws and regulations for adopting voting systems that are consistent with the requirements of Section 301 are clearly outlined in *Florida Statutes* and the Florida Voting Systems Standards under Rule 1S-5.001, *Fla. Admin. Code*:

- Section 101.015, *Florida Statutes*, authorizes the Department of State to adopt rules which establish minimum standards for hardware and software for electronic and electromechanical voting systems and certification of voting systems. To keep Florida's voting systems standards up-to-date, Section 101.015(2), *Florida Statutes*, also requires the Department of State to conduct bi-ennial review of these rules governing standards and certification to determine the adequacy and effectiveness of such rules in assuring that elections are fair and impartial."
- Section 101.017, *Florida Statutes*, creates the Bureau of Voting Systems Certification which provides technical support to the Supervisors of Elections and is responsible for voting system standards and certification.
- Section 101.5605, *Florida Statutes*, authorizes the Department of State to examine and approve voting systems through a public process to ensure that the voting systems meet the standards outlined in Section 101.5606, *Florida Statutes*, and similar standards outlined in the Help America Vote Act of 2002 (HAVA) requirements outlined in Section 301 of Title III.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 64

Voter Registration System (FYRS) – Operational”, the Auditor General made the following findings pertaining to monitoring of federal funds and the Department’s responses are included:

- *Finding No. 5:* Salary certifications required for employees who worked solely on the HAVA Program were not maintained. Also, personnel activity reports were not always maintained to support personnel costs charged to the HAVA Program.

Department staff stated, “After the Department of State became aware of the requirement for individuals filling HAVA-funded positions to complete certifications regarding work performed, a form was developed that could be customized for each employee. The certifications will be prepared on a semi-annual basis to coincide with the first and last six months of the state fiscal year. The first work certification forms that the department completed cover the period from July 2005 through December 2005.” Currently, all Department staff filling HAVA-funded positions are spending 100% of their time on HAVA.

- *Finding No. 6:* Contrary to Federal cost principles, payment for unused leave to a terminating employee was charged as a direct cost to the Program instead of being allocated as a general administrative expense to all activities of the governmental unit. The Auditor General’s tests of salary expenditures disclosed that the Department did not allocate as a general administrative expense an unused leave payment, contrary to Federal cost principles.

In response to audit inquiry, the Department transferred the leave payment in question from HAVA funds to General Revenue. Additionally, Department staff indicated that this payment was made in compliance with Department of Management Services Rule 60L-34.0041(6)(b), Florida Administrative Code. Department staff further indicated that Federal cost principles supported this unused leave payment. The Department has contacted the Elections Assistance Committee for guidance on disposition of unused leave payments and is awaiting their response.

- *Finding No. 8:* HAVA Program expenditures were not always properly supported. The Division of Elections is responsible for tracking and monitoring the use of HAVA funds in accordance with established State procedures and the Director of the Division of Elections has final signature authority for HAVA expenditures.

In response to the audit inquiry, the Department staff indicated that the designated contract manager will review and certify that the request for payment is properly supported and contract requirements, milestones and deliverables have been met prior to submitting the request to Budget and Financial Services. The accounts payable supervisor in Budget and Financial Services will verify the contract manager has certified that the request for payment is properly supported and the required milestones or deliverables have been met prior to issuing payment.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 63

Element 5. Florida’s Help America Vote Act of 2002 Election Fund

Section 254(a)(5): How the State will establish a fund described in subsection (b) for purposes of administering the State’s activities under this part, including information on fund management.

The Florida Department of State has established a trust fund in which all HAVA monies are maintained. Within this trust fund, monies received for HAVA Sections 101, 102 and Title II are set up into four accounts: 101-Election Administration, 102-Replace Punch Card and Lever Voting Systems, 251-Requirements Payment, and 261-Access for Individuals with Disabilities. To clarify, Section 254(b) states that a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

- (A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part.
- (B) The requirements payment made to the State under this part.
- (C) Such other amounts as may be appropriated under law.
- (D) Interest earned on deposits of the fund.

Any HAVA funds received by the State are used exclusively for activities authorized by HAVA. The Division of Elections is responsible for tracking and monitoring the use of funds in accordance with established State procedures. The Director of the Division of Elections has final signing authority for HAVA expenditures. Any interest earned on this trust fund is returned to the principal amount of the trust.

The State uses standard auditing procedures for monitoring the use of federal HAVA funds as received and distributed. These procedures include random program audits by the Department of State Inspector General as well as an annual audit by the Florida Auditor General.

The Governor and Secretary of State are responsible under HAVA for ensuring compliance with these requirements. The HAVA Planning Committee (2003, 2004 and 2006) each recommended that the Governor and the Secretary of State maintain contact with the Senate President and the Speaker of the House of Representatives to ensure they remain aware of the strict requirements set in law for the use of HAVA monies placed in this trust fund.

The Auditor General conducted an operational audit on the Department of State’s administration of the federal Help America Vote Act of 2002 during the period July 1, 2004 through February 28, 2006. In the Report 2006-194 entitled “Help America Vote Act (HAVA) and the Florida



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 66

Element 6 – Florida's Budget for Implementing the Help America Vote Act of 2002 (HAVA)

Section 254(a)(6): The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on –

- (A) the costs of the activities required to be carried out to meet the requirements of Title III;
(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) the portion of the requirements payment which will be used to carry out other activities.

1. Introduction

The HAVA Planning Committee clearly recognizes its advisory role in election reform and acknowledges the authority of the Florida Legislature to make funding decisions for Florida. This budget reflects the HAVA Planning Committee's best efforts to divide the funds that may be available during the three years identified in HAVA. If Florida receives more funds than are included in this budget, the HAVA Planning Committee will revise the budget to reflect this change.

2. Reimbursement for replacement of punch card and lever machines.

Following the 2000 General Election, the State of Florida assisted counties by investing approximately \$24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 federal funds in the amount of \$11,581,377 were returned to the State of Florida as reimbursement.

3. Statewide Voter Registration System.

In 2003, the Florida Legislature directed the Department of State to begin development of a statewide voter registration system that would meet the requirements of HAVA. Accordingly, the 2003 Legislature provided \$1.6 million to begin implementation of the system. Federal funds included \$1 million for the Needs Assessment Phase along with nine positions to support design, development and implementation of the HAVA requirements. Of the nine positions, five reside in the Department of State and two each in the Department of Highway Safety and Motor Vehicles and the Florida Department of Law Enforcement.

Phase 2, "Prototyping & Validation of Design," began in March 2004 and included the following:

- Installation of prototyping equipment and environment
- Prototype the core system configuration and architecture
- Data conversion/migration testing (data & images)
- Prototype remote access to the core system

	FY 2006-07 BUDGET	FY 2007-08 PROPOSED BUDGET	FY 2008-09 PROPOSED BUDGET	FY 2009-10 PROPOSED BUDGET	FY 2010-11 PROPOSED BUDGET
FVRS - Systems					
includes positions plus costs for software licenses and on-going training					
FVRS - Bureau of Voter Registration Services	3,571,028	3,678,039	3,788,260	3,901,788	4,018,721
includes positions and regular operating expenses	1,391,434	1,421,567	1,452,604	1,484,571	1,517,498

4. Section 301 Accessible Voting Systems

The HAVA Planning Committee (2003) recommended the purchase of Direct Recording Equipment (DRE) accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place. The cost was \$11.6 million during the 2004-05 fiscal year. In addition, the HAVA Planning Committee (2003) recommended reimbursing counties that have already purchased voting systems that meet the HAVA accessibility for voters with disabilities requirements. For the fiscal year 2004-05 the Legislature appropriated \$11.6 million to assist Supervisors of Elections (SOEs) with purchasing DREs in order to provide one accessible voting system at each polling place. Funds appropriated in FY 2004-05 were distributed to SOEs that had not acquired accessible voting systems by July 1, 2004. There were 51 counties that did not have accessible voting systems at that time. The Division of Elections distributed the funds to fifty-one (51) Supervisors of Elections for this purpose pursuant to the terms of a memorandum of agreement.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 68

if the State certifies to the EAC that the amount expended does not exceed the minimum payment amount. Florida's minimum payment amount is \$11,596,803.

In March 2006 the Department of State notified the EAC of its intent to use part of the requirements payment to assist county Supervisors of Elections with recruiting and training poll workers.

In FY 2006-07 the Legislature appropriated \$1.5 million for poll worker recruitment and training activities. Of this amount, \$1 million will be distributed to Supervisors of Elections to assist with recruiting and training individuals to serve as poll workers. The Legislature authorized an additional \$500,000 for the Department of State to use for necessary updates and revisions to poll worker training curriculum that was developed with funds appropriated in FY 2005-06.

7. Statewide Poll Worker Recruitment Campaign

The HAVA Planning Committee (2003) recommended that HAVA federal funds be used to implement, through the Division of Elections, a statewide campaign to help recruit qualified poll workers. The increase in the complexity of voting systems and procedures has resulted in a need for more computer literate individuals to staff the polling places and help ensure error-free elections. The 2004 Legislature did not appropriate federal funds for conducting a statewide poll worker recruitment campaign. As indicated under the Poll Worker Training section, the Legislature did appropriate funds in the fiscal years 2005-06 and 2006-07 for poll worker training and recruitment programs.

8. HAVA Oversight and Reporting

The HAVA Planning Committee (2003) recommended that the Department of State create three full time positions to manage HAVA implementation:

- HAVA administrator
- Grants specialist
- Administrative assistant

The Florida Legislature authorized three positions within the Division of Elections for HAVA Oversight and Reporting. For the fiscal year 2003-04, \$206,079 was appropriated for salaries and benefits, expenses and operating capital outlay. The three position titles are:

- Senior Management Analyst Supervisor
- Operations and Management Consultant II
- Administrative Assistant II

The estimated cost for HAVA oversight and reporting was \$196,485 for the 2004-05 fiscal year and \$200,719 for the 2005-06 fiscal year. Budgeted and proposed costs for the three positions assigned to HAVA oversight are included under Other Election Administration Activities in the tables that appear at the end of this section.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 67

For the fiscal year 2005-06 the Legislature appropriated funds to reimburse counties that acquired accessible voting systems prior to July 1, 2004. Funds in the amount of \$13,406,163 were distributed to the sixteen counties that purchased accessible voting systems prior to July 1, 2004. The appropriation was included in the fiscal year 2005-06 General Appropriations Act, specific appropriation 2931. In addition, there were eight counties that received a total of \$63,215 as reimbursement for existing DREs that were not included in the FY 2004-05 appropriations.

5. Voter Education

The HAVA Planning Committee (2003) recommended using HAVA funds for the development and implementation of a comprehensive statewide voter education program. For the fiscal year 2003-04, \$2,976,755 was appropriated and available to Florida counties for voter education programs. For each fiscal year 2004-05 and 2005-06, local governments received \$3 million for comprehensive voter education efforts. In the fiscal year 2006-07, the Legislature appropriated \$2 million to distribute to Supervisors of Elections to assist with voter education activities. Each county was required to provide matching funds of 15%.

Activities relating to voter education include mailing or publishing sample ballots; conducting activities pursuant to the Standards for Nonpartisan Voter Education as provided in Rule 1S-2.033, F.A.C.; print, radio, or television advertising to voters; and other innovative voter education programs, as approved by the Department of State. No Supervisor of Elections was to receive any funds until the county Supervisor of Elections provided to the Department of State a detailed description of the voter-education programs, such as those described above, to be implemented.

6. Poll Worker Training

The HAVA Planning Committee (2003) recommended using HAVA federal funds in the amount of \$250,000 for each fiscal year 2003-04, 2004-05 and 2005-06 for poll worker training. These funds were intended to supplement each county's existing poll worker training budget. The 2004 Legislature did not appropriate federal funds for conducting a poll worker recruitment campaign.

The HAVA Planning Committee (2004) once again recommended using HAVA federal funds in the amount of \$500,000, beginning with FY 2005-06, for poll worker training and recruitment, with a 15% match required of each county. The Legislature appropriated \$4 million for poll worker recruitment and training in FY 2005-06. Of this \$4 million, the Department of State distributed \$3 million to Supervisors of Elections to assist with poll worker recruitment and training. The Legislature provided \$1 million for the Department of State to develop a statewide poll worker training curriculum. Each county was required to provide matching funds of 15%.

As provided for in HAVA, Section 251(b)(2)(B), States may use a portion of the requirements payment to carry out other activities to improve the administration of elections for Federal office



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 70

13. Other Election Administration Activities

The HAVA Planning Committee (2004) recommended that the remaining HAVA funds be reserved for future expenses related to the following items:

1. the continued development and implementation of the Florida Voter Registration System
2. future improvements in voting technology
3. continued funds to local counties for voter education programs
4. accessibility for polling places
5. poll worker recruitment and training

Information on the State's best estimates of the costs of activities required to meet the requirements of Title III of HAVA are displayed in charts on pages 72-74. Pursuant to Section 251(b)(2)(A), States may use the requirements payment to carry out other activities to improve administration of elections for Federal office after the state has provided a certification to the EAC that it has implemented the requirements of Title III.

In March 2006, Florida notified the Elections Assistance Commission of its intent to use Title II funds to use \$4,000,000.00 of the requirements payment to complete major poll worker recruitment and training efforts statewide that primarily begin in June 2006 and end by August 2006, before the primary election scheduled for September 5, 2006. Since the State had not yet met all the requirements of Title III, the State certified that the amount did not exceed the amount equal to the total minimum requirements payment amount applicable to Florida under section 252(c) of Title II of HAVA which has been determined to be \$11,596,803.00. In August 2006 Florida certified to the Elections Assistance Commission (EAC) that it had fully implemented all the requirements of Title III which has allowed Florida to use HAVA requirements funds for other activities to improve the administration of elections for Federal office.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 69

9. State Management (HAVA Planning Committee)

The HAVA Planning Committee (2003) recommended that the Secretary of State require it to meet twice each year in 2003-04 and in 2004-05 to make recommendations and to resubmit the HAVA State Plan to ensure that Florida is meeting the requirements of the Help America Vote Act. The HAVA Planning Committee convened twice in the 2003-04 fiscal year at an estimated cost of \$30,000. The HAVA Planning Committee (2004) further recommended that it meet twice in the 2004-05 fiscal year at an estimated cost of \$30,000 and twice in the 2005-06 fiscal year at an estimated cost of \$30,000. The HAVA Planning Committee (2006) convened twice in Fiscal Year 2006-07 at an estimated cost of \$25,000.

10. Performance Goals and Measures Adoptions

The HAVA Planning Committee (2003) recommended the Secretary of State utilize the HAVA Planning Committee to determine performance goals and measures.

The HAVA Planning Committee (2004) determined HAVA performance goals and measures during the meetings that were held to update the HAVA State Plan in 2004. Two meetings were held on May 24, 2004 and June 4, 2004. The only costs associated with developing the Performance Goals and Measures were costs related to conducting the HAVA State Planning Committee (2004) meetings.

During the HAVA meetings held in 2006 for the second update of the HAVA plan, the Committee Members updated the performance goals and measures.

11. Election Administration

The HAVA Planning Committee (2006) recommends using HAVA funds as needed for election administration activities such as printing new voter registration application forms, translating election materials, printing documents and publications, preparing training videos or other election administration activities. Estimated expenditures for these activities may vary each year and will be dependent upon annual legislative appropriations.

12. Complaint Procedures

Section 402(a) of HAVA requires each state to establish state-based administrative complaint procedures for any person who believes that there is or will be a violation of any of HAVA's Title III requirements. In 2003, the Florida Legislature enacted Section 97.028, *Florida Statutes*, which provides the administrative complaint procedures for reporting potential violations of HAVA requirements. The process was developed and implemented without utilizing any HAVA funds. However, the HAVA Planning Committee (2006) recommends continued funding in the amount of \$50,000 each year in the event expenditures are necessary to process complaints in the future.



KURT S. BROWNING
 SECRETARY OF STATE
 STATE OF FLORIDA

STATE OF FLORIDA
 HAVA PLAN 2006 UPDATE / PAGE 72

**HAVA BUDGET FUNDING BY FISCAL YEAR
 2006 STATE PLAN UPDATE**

	FY 2004-05 APPROPRIATION	EXPENDITURES THRU 6-30-05	BALANCE
Title III Requirements			
Sec. 303 Statewide Voter Registration System			
Section 101 and Section 251 HAVA funds			
Development/Implementation - FVRS	12,799,182	11,599,329	1,199,853
Sec. 301 Voting System Standards			
Section 251 HAVA funds			
Funding to counties/purchase disability compliant voting systems	11,600,000	11,600,000	0
Other Election Administration Activities			
Section 101 and Section 251 HAVA funds	3,498,492	3,426,604	71,888
Includes voter education, oversight and other election administration activities			
TOTAL	27,897,674	26,625,933	1,271,741



KURT S. BROWNING
 SECRETARY OF STATE
 STATE OF FLORIDA

STATE OF FLORIDA
 HAVA PLAN 2006 UPDATE / PAGE 71

**Election Reform Revenues
 2003-2005 Fiscal Years**

	HAVA 101	HAVA 102	HAVA 251	Total Federal Funds	State Matching Funds
2003	\$ 14,447,580	\$ 11,581,377	\$ 47,416,833	\$ 73,445,790	\$ 525,000
2004	0	0	\$ 85,085,258	\$ 85,085,258	\$ 6,103,018
2005	0	0	0		
Total	\$14,447,580.00	\$11,581,377.00	132,502,091	158,531,048	\$ 6,628,018



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 74

HAVA BUDGET FUNDING BY FISCAL YEAR
2006 STATE PLAN UPDATE

	FY 2006-07 BUDGET	FY 2007-08 PROPOSED BUDGET	FY 2008-09 PROPOSED BUDGET	FY 2009-10 PROPOSED BUDGET	FY 2010-11 PROPOSED BUDGET
Title III Requirements					
Sec. 303 Statewide Voter Registration System					
Section 251 and Section 101 HAVA funds					
FVRS - Systems	3,571,028	3,678,039	3,789,260	3,901,788	4,018,721
Includes positions plus costs for software license fees and ongoing maintenance costs					
FVRS - Bureau of Voter Registration Services	1,391,434	1,421,567	1,452,604	1,484,571	1,517,498
Includes positions and regular operating expenses					
Sec. 301 Voting System Standards					
Section 251 HAVA funds					
Reimburse counties for disability compliant voting systems	591,515	0	0	0	0
Other Election Administration Activities	5,461,621	5,817,610	5,823,778	5,830,131	5,836,675
Section 101 and Section 251 HAVA funds					
Includes voter education, poll worker recruitment and training, over-sight (including positions) and other election administration activities.					
TOTAL	11,015,598	10,917,216	11,064,642	11,216,490	11,372,894



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 73

HAVA BUDGET FUNDING BY FISCAL YEAR
2006 STATE PLAN UPDATE

	FY 2005-06 APPROPRIATION	ESTIMATED EXPENDITURES THRU 6-30-06	BALANCE
Title III Requirements			
Sec. 303 Statewide Voter Registration System			
Section 101 and Section 251 HAVA funds			
FVRS - Development/Implementation - FVRS	11,396,747	10,770,103	626,644
Sec. 301 Voting System Standards			
Section 251 HAVA funds			
Reimburse counties for disability compliant voting systems	17,000,000	13,469,378	3,530,622
Other Election Administration Activities	7,195,000	6,549,599	645,401
Section 101 and Section 251 HAVA funds			
Includes voter education, poll worker recruitment and training, oversight and other election administration			
TOTAL	35,591,747	30,789,080	4,802,667



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 75

Element 7. Maintenance of Effort

Section 254(a)(7): How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

1. Introduction

The funding provided under the Help America Vote Act of 2002 (HAVA) is intended to pay for new or enhanced election efforts and is not intended to supplant existing funding at the State or county level. The projected HAVA budget is based on the assumption that the State of Florida and counties will maintain the foundation of election operating expenditures for the fiscal year ending prior to November 2000.

The Florida Division of Elections provides statewide coordination and direction for the interpretation and enforcement of election laws. The Division's budget supports year-round staff that provides election-related assistance to Florida's 67 county Supervisors of Elections and their staff, municipalities, special districts, county and city attorneys, candidates, political committees, committees of continuous existence, elected officials, media, the public and other election officials throughout the United States.

2. Maintenance of Effort Expenditure

In determining Florida's maintenance of effort expenditures, the Division of Elections calculated 1999-2000 fiscal year expenditures which included salaries and benefits, operating capital outlay and voter fraud programs for the Division of Elections Director's office and the portion of Bureau of Election Records' expenditures pertaining to election administration. Florida's expenditures for these activities for 1999-2000 fiscal year was initially determined to be \$3,082,224. Pursuant to a review of the maintenance of effort during the audit conducted during the fiscal year 2005-06, Florida's required level of expenditures has since been revised to \$3,570,408.

For the fiscal year 2004-05 the Department failed to meet the required maintenance of effort by \$7,630. Year-end expenditures for the fiscal year 2005-06 have been finalized by the Department, and exceeded the maintenance of effort by \$207,186, more than compensating for the \$7,630 shortfall for the fiscal year 2004-05. In future years, the Department expects the state effort not only to meet but exceed the required maintenance of effort. In order to comply with Section 254(a)(7) of HAVA, the Florida Department of State will maintain expenditures on similar activities at a level equal to the 1999-2000 fiscal year budget or \$3,570,408.

The HAVA Planning Committee (2003) recommended that the Secretary of State communicate to the Senate President and the Speaker of the House of Representatives the importance of



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 76

maintaining this maintenance of effort figure, as a minimum level of expenditures, to ensure the required level of spending is appropriated by the Florida Legislature. In response, the Department of State's budget staff and legislative affairs staff has maintained and continues to maintain close contact with House and Senate staff to convey the importance of continuing the Maintenance of Effort figure as a minimum level of funding.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 78

Element 8. Performance Goals and Measures

Section 254(a)(8). How will Florida adopt performance goals and measures that will be used by the State to determine its success and the success of local government in carrying out the plan, including—

- *Timetables for meeting the elements of the plan*
- *Descriptions of the criteria the State will use to measure performance*
- *The process used to develop such criteria*
- *A description of which official is to be held responsible for ensuring that each performance goal is met?*

1. Introduction

Florida has a very decentralized election governance and administrative system. The legal Chief Election Official in Florida is the Secretary of State who is appointed by the Governor. At the county level, there are 67 independent Supervisors of Elections who receive their authority from the Florida Constitution and conduct elections through state law and rule. However, the Secretary of State does not supervise the day-to-day operations of the 67 local Supervisors of Elections. The Secretary of State provides guidance through technical assistance, rules, advisory opinions, voting system certification, and production of standardized election forms.

The supervisors are elected to 4-year terms by the registered voters of their respective counties (except for Miami-Dade's appointed supervisor) and have broad authority to conduct the day-to-day election operations by appointing local election officials, administering voter registration, preparing ballots, administering absentee voting, conducting poll worker training, and developing voter education programs.

2. Performance Tables

The Help America Vote Act of 2002 (HAVA) requires the State and not the local Supervisors of Elections to adopt performance goals and measures for determining statewide and local election reform success. The following tables contain the performance measures adopted by the HAVA Planning Committee (2004 and 2006) for these key elements of the plan:

1. Voting Systems
2. Voting systems guidelines
3. Absentee instructions
4. Voting systems for voters with disabilities
5. Provisional voting
6. Voter registration system
7. Voter education
8. Administrative complaint process

Planning Element:	Element #1, Section 301 -- Voting Systems Element #4, Section 254(a)(4) -- Voting System Guidelines
HAVA Deadline:	January 1, 2006
Goal:	Document the performance of Florida's voting systems to continually improve the voting experience for Florida voters.
Performance Measures:	• Record and report to the Florida Legislature the number of overvotes and undervotes appearing in the first race for each General Election • List the likely reasons for such overvotes and undervotes by counties, by voting systems, and by appropriate election races • Suggest improvements to the voting process addressing such issues as voting system performance, ballot design, ballot instructions, election official training, poll worker training, voter education, and policy changes • Review rules and governing standards and certification of voting systems to determine the adequacy and effectiveness of such rules in assuring that elections are fair and impartial
Timetable (if applicable):	On-going
Process used to develop criteria:	Florida Legislature (Section 101.595, Section 101.015, Florida Statutes) 2001 Governor's Select Task Force Report on Election Procedures, Standards and Technology HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Chief, Bureau of Voting Systems Certification Supervisors of Elections



KURT S. BROWNING
 SECRETARY OF STATE
 STATE OF FLORIDA

STATE OF FLORIDA
 HAVA PLAN 2006 UPDATE / PAGE 80

Planning Element:	Element #1, Section 301 – Certified Voting Systems for Voters with Disabilities
HAVA Deadline:	January 1, 2006
Goal:	Provide one accessible voting system for every polling place including non-visual accessibility for the blind and visually impaired that provides the same opportunity for access and participation as other voters.
Performance Measures:	Goal has been achieved and accessible voting machines including non-visual accessibility for the blind and visually impaired are in each polling place.
Timetable (if applicable):	Completed
Process used to develop criteria:	Florida Legislature, Sections 101.5602 and 101.56063 <i>Florida Statutes</i> Division of Elections certified voting systems HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Supervisors of Elections



KURT S. BROWNING
 SECRETARY OF STATE
 STATE OF FLORIDA

STATE OF FLORIDA
 HAVA PLAN 2006 UPDATE / PAGE 79

Planning Element:	Element #1, Section 301 – Absentee Ballot Instructions
HAVA Deadline:	January 1, 2006
Goal:	Ensure voters have sufficient absentee ballot instructions on how to make corrections by requesting a replacement ballot and the consequences of casting multiple ballots.
Performance Measures:	With receipt of absentee ballots following an election, each county will gather the following information: • Number of absentee/mail-in ballots requested • Number of replacement absentee/mail-in ballots requested • The number of returned absentee ballots not counted because of a) no signature b) non-matching signature
Timetable (if applicable):	On-going
Process used to develop criteria:	• Department of State, (Rule 1S-2.032, F.A.C.) • HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Supervisors of Elections



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 82

Planning Element:	Element #1, Section 303 -- Voter Registration System
HAVA Deadline:	January 1, 2008
Goal:	Establish a single, uniform, official centralized, interactive, computerized, statewide voter registration list which shall be the single system for storing and managing the list of registered voters throughout the state for the conduct of all federal elections.
Performance Measures:	- Goal has been achieved. The Florida Voter Registration System (FVRS) became operational in January 2006 and complies with HAVA. - Continue to monitor list maintenance functions for compliance with HAVA. - Continue to monitor security policies and operations for compliance with HAVA.
Timetable (if applicable):	On going.
Process used to develop criteria:	Public meetings hosted by the Bureau of Voting Systems Certification in consultation with Supervisors of Elections and other involved state and federal agencies
Accountable official(s):	Secretary of State Assistant Secretary of State Deputy Secretary of State Director, Division of Elections Chief, Bureau of Voter Registration Services Supervisors of Elections



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 81

Planning Element:	Element #1, Section 302 -- Provisional Voting
HAVA Deadline:	January 1, 2004
Goal:	Ensure that all voters whose eligibility to vote is questioned be permitted to cast a provisional ballot and notified of outcome.
Performance Measures:	With respect to the voter registration of each county, the following information will be collected to measure compliance performance: County Level - The number of provisional ballots cast in each precinct - The number of registered voters in each precinct - The number of provisional ballots that were verified and counted in each precinct - The number of provisional ballots not counted in each precinct and the reason for not counting - The reason why the person voted a provisional ballot State Level - The number of provisional ballots cast in each county - The number of registered voters in each county - The number of provisional ballots that were verified and counted in each county - The number of provisional ballots not counted in each county and the reason for not counting - The reason why the person voted a provisional ballot
Timetable (if applicable):	On-going
Process used to develop criteria:	Florida Legislature (Section 101.048, Florida Statutes) HAVA Planning Committee
Accountable official(s):	Director, Division of Elections Supervisors of Elections



KURT S. BROWNING
 SECRETARY OF STATE
 STATE OF FLORIDA

STATE OF FLORIDA
 HAVA PLAN 2006 UPDATE / PAGE 84

Planning Element:	Element #3, Section 254(a)(3) — Election Official and Poll Worker Training
HAVA Deadline:	Immediate and Ongoing
Goal:	Provide a simple, friendly voting experience for Florida voters by training election officials and poll workers through professional and frequent instruction.
Performance Measures:	• Document the number of training classes offered at the state and local levels • Document the number of Supervisors of Elections who receive certification • Document the number of election officials who receive training sessions • Document the number of poll workers who attend the training sessions • Document and report voter satisfaction with the voting process through various methods • Report to the Florida Legislature after each election cycle the effectiveness of election official and poll worker training programs
Timetable (if applicable):	On-going
Process used to develop criteria:	HAVA Planning Committee
Accountable official(s):	Supervisors of Elections Director, Division of Elections



KURT S. BROWNING
 SECRETARY OF STATE
 STATE OF FLORIDA

STATE OF FLORIDA
 HAVA PLAN 2006 UPDATE / PAGE 83

Planning Element:	Element #3, Section 254(a)(3) — Voter Education
HAVA Deadline:	NA
Goal:	Promote a more educated electorate by providing comprehensive and varied voter education programs throughout each of Florida's 67 counties.
Performance Measures:	• County Supervisors of Elections will update and publish a Voter Guide including the information defined in Rule 1S-2.033, F.A.C. • Each Supervisor of Elections will continue to file voter education plans • The Department of State will continue to prepare a report on the effectiveness of these programs • Each county will document, where applicable: ◦ the number and types of locations in which voter guides are distributed ◦ the number and types of mediums for posting election related information (banners, billboards, etc.) ◦ the number of sample ballots mailed and/or publications where they were published ◦ voter education and registration programs for high school students ◦ college registration/education programs on each college campus in the county ◦ voting equipment demonstrations ◦ where voters rights and responsibilities are posted ◦ registration workshops held ◦ the number and locations of radio, television and print interviews ◦ methods used to reach non-English speaking and citizens with disabilities ◦ number of overvotes and undervotes that occur during an election ◦ the number of provisional ballots cast during an election
Timetable (if applicable):	• Ongoing • Supervisors of elections are required to file a report by December 15th of each general election year with the Dept. of State describing voter education programs implemented. • Department of State is required to review information submitted by Supervisors of Elections and prepare a public report to be submitted to Governor, Senate President and Speaker of the House of Representatives, on effectiveness of voter education programs by January 31st of each year following a general election.
Process used to develop criteria:	The Florida Legislature (Sections 98.255 and 101.65, Florida Statutes) Department of State (Rule 1S-2.033, F.A.C.)
Accountable official(s):	Supervisors of Elections HAVA Planning Committee Director, Division of Elections Supervisors of Elections



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 86

ELEMENT 9. STATE-BASED ADMINISTRATIVE COMPLAINT PROCEDURES TO REMEDY GRIEVANCES

Section 254(a)(9): Whether Florida has complied with the requirements of HAVA Section 402(a) to establish uniform, nondiscriminatory, State-based administrative complaint procedures to remedy grievances under HAVA Section 402(a) and to provide a description of those procedures

Yes, and no further actions are required.

To receive any requirements payment pursuant to the Help America Vote Act of 2002 (HAVA), the State of Florida must establish and maintain State-based administrative complaint procedures that meet HAVA's requirements to:

- (1) be uniform and nondiscriminatory;
- (2) provide that any person who believes that there is or will be a violation of any of HAVA's Title III requirements may file a complaint;
- (3) require the complaint to be in writing, sworn and notarized;
- (4) permit complaints to be consolidated;
- (5) hold a hearing on the record at the request of the complainant;
- (6) provide an appropriate remedy if the State determines that there is a violation of any Title III provision;
- (7) if the State determines there is no violation, dismiss the complaint and publish the results of procedures;
- (8) make a final determination on a complaint within 90 days after filing unless the complainant consents to a longer period; and,
- (9) use alternative dispute resolution procedures to resolve the complaint if the State fails to resolve it within 90 days.

Appropriate administrative complaint procedures were included in Chapter 2003-415, *Laws of Florida*. Language in the legislation tracked HAVA's language closely. These procedures are similar to administrative procedures in Section 97.023, *Florida Statutes*, for resolving complaints generated by alleged violations of the National Voter Registration Act of 1993 or a voter registration or removal procedure under the Florida Election Code. In addition to tracking HAVA's minimum requirements, section 97.0535, *Florida Statutes*, included the following additional requirements not specified by HAVA:

- (1) the Department of State would have sole jurisdiction for these purposes and the procedures would be the sole avenue of redress for alleged Title III violations;



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 85

Planning Element:	Element #9, Section 254(a)(9) -- State-Based Administrative Complaint Procedures to Remedy Grievances
HAVA Deadline:	NA
Goal:	Establish and maintain a state-based administrative complaint procedure for any individual who believes that there has been a violation of any of HAVA's Title III requirements.
Performance Measures:	The following information will be collected to subjectively measure performance: • Number of complaints received • Number of complaints resolved • Number of complaints resolved in 30 days or less • Number of complaints resolved in 60 days • Number of complaints unresolved • Description of reason complaint is left unresolved
Timetable (if applicable):	Ongoing
Process used to develop criteria:	Florida Legislature (Section 97.028, <i>Florida Statutes</i>)
Accountable official(s):	HAVA Planning Committee Director, Division of Elections Supervisors of Elections



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 87

- (2) a complaint would have to state the alleged violation and the person or entity responsible for the violation;
- (3) the Department of State would be required to inform a complainant in writing if a complaint was legally insufficient;
- (4) proceedings would be exempt from Chapter 120, *Florida Statutes*, (Administrative Procedures Act);
- (5) a hearing would be held by a hearing officer whether or not a complainant requested a hearing and specific procedures for a hearing were included in the legislation;
- (6) the hearing officer would direct an appropriate remedy that then would be enforced by the Department of State;
- (7) mediation would be the alternative dispute resolution method used if a final determination on a complaint was not made within 90 days of filing.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 88

ELEMENT 10. EFFECT OF TITLE I PAYMENTS

Section 254(a)(10). If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

1. Introduction

Title I of the Help America Vote Act of 2002 (HAVA) is an "early out" money program for use in two areas—improving election administration and the replacement of punch card and lever voting systems. Florida received \$26,028,957 under this "early out" program. The HAVA Planning Committee (2003) recommended using Section 101 federal HAVA funds for 2003-04 activities and a combination of Section 101 and Section 251 HAVA federal funds for activities beginning in the 2004-05 fiscal year and beyond.

Section 101 funds are to be used to improve election administration. Approved use of funds under this section includes:

- (1) Complying with the requirements under Title III.
- (2) Improving the administration of elections for Federal office.
- (3) Educating voters concerning voting procedures, voting rights, and voting technology.
- (4) Training election officials, poll workers, and election volunteers.
- (5) Developing the HAVA State Plan for requirements payments.
- (6) Improving, acquiring, leasing, modifying, or replacing voting systems.
- (7) Improving polling place accessibility for voters with disabilities or with limited English.
- (8) Establishing toll-free telephone hotlines for voters to access voting information, report voting fraud, or report voting rights violations.

Section 102 federal funds are to be used to replace punch card and lever voting systems. Following the 2000 General Election, the State of Florida assisted counties by investing approximately \$24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 funds in the amount of \$11,581,377 were returned to the state as reimbursement.

The HAVA Planning Committee clearly recognizes its advisory role in election reform and acknowledges the authority of the Florida Legislature to make funding decisions for Florida. The following recommendations are based on the HAVA Planning Committee (2003, 2004 and 2006) meetings held to develop the HAVA State Plan.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 90

State-based complaint procedure has been established for anyone who believes that a violation of Title III of the Help America Vote Act has occurred, is occurring or is about to occur. Funds may need to be expended depending on the number and type of complaints filed.

- c. **Educating voters concerning voting procedures, voting rights, and voting technology.**
For each fiscal year 2004-05 and 2005-06, local governments received \$3 million for comprehensive voter education efforts. In FY 2006-07, the Legislature appropriated \$2 million to distribute to Supervisors of Elections to assist with voter education activities. However, the Division used Title II funds to distribute these funds. No Supervisor of Elections received any funds until they provided to the Department of State a detailed description of the voter-education programs to be implemented.
- d. **Training election officials, poll workers, and election volunteers.**
In the original HAVA plan, the HAVA Planning Committee (2003) recommended using HAVA funds in the amount of \$250,000 for poll worker training in each fiscal year 2003-04, 2004-05 and 2005-06. The Florida Legislature, however, did not appropriate HAVA funds for this use in FY 2003-04 or FY 2004-05.
The HAVA Planning Committee (2004) revived the recommendation to use HAVA funds in the amount of \$500,000, beginning with FY 2005-06, for poll worker training and recruitment, with a 15% match required of each county. The Legislature appropriated \$4 million for poll worker recruitment and training in FY 2005-06. Of this \$4 million, the Department of State distributed \$3 million from Title II funds to Supervisors of Elections to assist with poll worker recruitment and training. The Legislature provided \$1 million for the Department of State to develop a statewide poll worker training curriculum. To date, the Department has expended \$213,956.
In FY 2006-07, the Legislature appropriated \$1.5 million for poll worker recruitment and training activities. Once again, these funds were drawn from Title II in lieu of Title I funds. Of this amount, \$1 million will be distributed to Supervisors of Elections to assist with recruiting and training individuals to serve as poll workers. The Legislature authorized an additional \$500,000 for the Department of State to use for necessary updates and revisions to poll worker training curriculum that was developed with funds appropriated in FY 2005-06.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 89

2. Section 101. How Title I payments to Florida will be used for activities to improve administration of elections?

The State of Florida is using Title I and Title II funds for election reform activities necessary to ensure Florida complies with all HAVA requirements. The following list describes the major areas in which funds are used.

- a. **Complying with Title III requirements for statewide voter registration database**
In 2005, the Division of Elections implemented a statewide voter registration system to comply with HAVA Title III. The Division of Elections used \$1 million appropriated from Section 101 federal funds for Phase One development of the new Statewide Voter Registration system. Expenditures for Phase One included:
 - Consulting fees for conducting a detailed analysis of connectivity infrastructure available in the 67 Supervisor of Elections' offices and within all affected offices of the departments of State, Law Enforcement and Highway Safety and Motor Vehicles; working with the counties, the three agencies and the advisory board to create minimum and optimum sets of system requirements; assessing infrastructure needs of all stakeholders to serve the system requirements; conducting "gap" analysis; outlining the physical design of the system; estimating costs and implementation plans for each version for the system to be presented to the 2004 Legislature; and developing and publishing the January 2004 report and recommendations for the 2004 Legislature.
 - The purchase of hardware and software for project management and system development.
 - Expenses incurred by Division of Elections' staff.
 - Travel expenses for visits to every Supervisor of Elections' office and local driver license office.

In addition, Section 101 HAVA funds were used to create nine full time positions necessary for the design, development and implementation of the Statewide Voter Registration system. HAVA Title II, Section 251 funds were then used to complete the design and implementation of the Florida Voter Registration System and to fund 35 full time positions.

b. Improving the administration of elections for Federal office.

The HAVA Planning Committee (2006) recommends using HAVA funds as needed for election administration activities such as printing new voter registration application forms, translating election materials, printing documents and publications, preparing training videos or other election administration activities. Estimated expenditures for these activities may vary each year and will be dependent upon annual legislative appropriations.



KURT S. BROWNING
 SECRETARY OF STATE
 STATE OF FLORIDA

STATE OF FLORIDA
 HAVA PLAN 2006 UPDATE / PAGE 92

e. Developing the HAVA State Plan for requirements payments to be submitted under part 1 of subtitle D of Title II.

Title I funds were used to revise the HAVA State Plan in FY 2003-04. General Revenue funds were used to revise the Plan again in the FY 2006-07. As the State of Florida modifies its plans in future years, HAVA funds may be used.

f. Improving, acquiring, leasing, modifying, or replacing voting systems.

Florida has already replaced its punch card and lever voting systems. Following the 2000 General Election, the State of Florida assisted counties by investing approximately \$24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 funds in the amount of \$11,581,377 were returned to the state as reimbursement.

The HAVA Planning Committee (2003) recommended that the State of Florida utilize some HAVA funds to help counties meet the accessibility requirements under Title III by the January 1, 2006 deadline.

In addition, the HAVA Planning Committee (2004) recommended reimbursing counties who had already purchased voting systems that met the HAVA accessibility for voters with disabilities requirements. In FY 2004-05 the Legislature appropriated \$11.6 million to assist Supervisors of Elections (SOEs) with purchasing DREs in order to provide one accessible voting system at each polling place. Funds appropriated in FY 2004-05 were distributed to SOEs that had not acquired accessible voting systems by July 11, 2004. There were 51 counties that did not have accessible voting systems at that time. The Division of Elections distributed the funds to fifty-one (51) Supervisors of Elections for this purpose pursuant to the terms of a memorandum of agreement.

For the fiscal year 2005-06 the Florida Legislature appropriated funds to reimburse counties that acquired accessible voting systems prior to July 1, 2004. Funds in the amount of \$13,406,163 were distributed to the sixteen counties that purchased accessible voting systems prior to July 1, 2004. The appropriation is included in the FY 2005-06 General Appropriations Act, specific appropriation 2931. As anticipated, HAVA Section 251 funds were used. In addition, there were eight counties that received a total of \$63,215 as reimbursement for existing DREs that were not included in the FY 2004-05 appropriations.

g. Improving polling place accessibility for voters with disabilities or with limited English.



KURT S. BROWNING
 SECRETARY OF STATE
 STATE OF FLORIDA

STATE OF FLORIDA
 HAVA PLAN 2006 UPDATE / PAGE 92

Under Section 261, HAVA states the Secretary of Health and Human Services shall make a payment to eligible States to be used for making polling places accessible to individuals with disabilities and providing information on this accessibility. The HAVA Planning Committee (2004) recommended that these funds be distributed to each county to ensure that individuals with disabilities are provided the same opportunity for access and participation as for other voters.

During FY 2003-04, the State of Florida applied for and received a grant from Health & Human Services (HHS) in the amount of \$687,278. The Division distributed a survey to all Supervisors of Elections requesting information regarding the number of polling places that were utilized in the 2004 Presidential Preference Primary. This information was used to determine the formula for distributing the grant funds to the counties.

To date, the Department has received four grants from HHS for a total amount of \$2,203,909. Grant contracts have been awarded and Supervisors of Elections have begun to request funds.

h. Establishing toll-free telephone hotlines for voters to access voting information, report voting fraud, or report voting rights violations.

The Division of Elections has already established a voter fraud hotline for individuals who believe they may have witnessed election fraud. In addition, the Division has established a hotline for voters to request voting information. There are no plans to use HAVA funds to establish an additional free voting information hotline. If this type of voting information system is desired, it will be the responsibility of each county.

3. Section 102. How payments to Florida will be used for the replacement of punch card or lever voting machines?

Following the 2000 General Election, the State of Florida assisted counties by investing approximately \$24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 federal funds in the amount of \$11,581,377 were returned to the state as reimbursement.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 93

ELEMENT 11. HELP AMERICA VOTE ACT OF 2002 (HAVA) STATE PLAN MANAGEMENT

Section 254(a)(11): How the State will conduct ongoing management of the plan, except the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

1. Introduction

This element of the HAVA State Plan requires Florida to explain how the State of Florida will manage the implementation of the HAVA State Plan and whether it will utilize the same public notice process if any "material change" is made to the administration of the HAVA State Plan.

2. Management of State Plan—Section 254(a)(11): How will Florida conduct ongoing management of the HAVA State Plan?

As explained in previous sections of this Plan, the administration of elections in Florida occurs at the State and local levels. The Secretary of State is the Chief Election Officer under Florida law and is responsible for the coordination of the State's responsibilities under HAVA Section 253. The Director of the Division of Elections reports to the Secretary of State and will be responsible for the day-to-day monitoring and managing of Florida's HAVA State Plan.

Also at the State level, the Secretary of State directs the HAVA Planning Committee to update the HAVA State Plan as required in Section 255. Under Florida's HAVA State Plan, the HAVA Planning Committee is responsible for conducting its business in an open, public forum and for suggesting revisions and updates to the HAVA State Plan.

At the local level, Florida's 67 Supervisors of Elections are encouraged to play an active role in the successful implementation of the HAVA State Plan. The Division of Elections continues to work on a regular basis with local Supervisors of Elections to develop performance goals and measures, new voter registration improvements, new voting systems certification upgrades,



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 94

statewide voter education programs, election official training, and other activities outlined in Florida's HAVA State Plan.

3. Material Changes to State Plan

The State of Florida understands and agrees to comply with the HAVA requirements related to ongoing management of the HAVA State Plan. No material changes in the administration of the plan will be made unless:

- the material change is developed and published in the Federal Register in accordance with Section 255 in the same manner as the HAVA State Plan;
- the material change is subject to public notice and comment in accordance with Section 256 in the same manner as the HAVA State Plan; and
- the material change takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 96

ELEMENT 12. CHANGES TO STATE PLAN FOR PREVIOUS FISCAL YEAR

Section 254(a)(12): *In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.*

1. Introduction

In order to proceed with the most recent update of the HAVA State Plan (June 2004), then Secretary of State Sue M. Cobb appointed a new HAVA Planning Committee for 2006. The names of the committee members are listed under Element 13 of this plan. The Collins Center for Public Policy, Inc. was selected in a public competitive process to staff the update process. The HAVA Planning Committee (2006) held two public meetings—one in Pensacola, Florida on September 21, 2006, and one in Miami, Florida on October 12, 2006.

The HAVA Planning Committee (2006) focused on three types of changes:

- Substantive changes made by the State of Florida that bring the State into further compliance with HAVA
- Minor updates that will not affect the State's compliance with HAVA
- Issues that have arisen that might affect the State's future compliance with HAVA

The HAVA Planning Committee (2006) received copies of the original plan and the Help America Vote Act of 2002. All updates and changes to the original plan from the previous fiscal year were noted as follows:

- Sections of the previous plan were deleted but were first shown in a strike-through font and approved by the committee.
- Sections of the plan that were new were shown in an underlined font.
- After the HAVA Planning Committee reviewed and approved the updates, the underline and strike-through fonts were removed.

Florida has updated its original HAVA State Plan to bring it into further compliance through legislative action, rule change and updated information.

2. HAVA State Plan's Substantive Changes from Previous Fiscal Year

The following chart is a summary of how the HAVA State Plan has substantively changed since 2004 and how the State succeeded in carrying out the HAVA State Plan for the previous fiscal year.

Element 1- Voting Systems

Florida meets all HAVA voting system requirements.

Changes	Successes
New certified voting systems were added to the plan and decertified voting systems were deleted from the plan.	The new certified voting systems performed as designed during the 2006 statewide Primary and General Elections.
Voting systems for voters with disabilities have been certified for use in each polling place.	

Element 1- Provisional Voting and Voting Information

Changes	Successes
Florida's requirement for a voter to cast a provisional ballot only in the precinct in which the voter is registered was settled under Florida law, <i>AFL-CIO v. Hood</i> , 885 So.2d 373 (Fla. 2004). Under state law, persons casting provisional ballots have until 5:00 p.m. on the 3 rd day following an election to present written evidence supporting their eligibility to vote.	

Element 1- Voter Registration System

Changes	Successes
Florida developed and implemented the new Florida Voter Registration System (FVRS) that meets the requirements of HAVA.	The new Florida Voter Registration System performed as designed during the 2006 statewide Primary and General Elections.
The FVRS is a single, uniform, official, centralized, interactive, computerized statewide voter registration system.	The Secretary of State created the Bureau of Voter Registration Services to direct and facilitate the operations of the FVRS.
The FVRS became fully operational in January 2006 and complies with all of HAVA's operational requirements such as maintenance, accuracy, and security.	



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 98

Element 3- Voter Education

Changes	Successes
The HAVA Planning Committee (2004) recommended and the Legislature approved an additional \$3 million for voter education in FY 2005-06.	
The 2004 Voter Education Program Report to the Florida Legislature and Governor concluded that county voter education efforts were considered useful or well-received by voters.	
An analysis of 2006 voter education programs throughout Florida indicated a variety of programs being used including sample ballots, nonpartisan voter education, media advertising, and innovative programs.	
In response to findings from the 2006 Auditor General Report (2006-194), the Department of State has taken measures to closely monitor county voter education reports to ensure compliance with HAVA.	
The Florida Legislature directed the Division of Elections to develop a statewide uniform training curriculum for poll workers in 2006.	

Element 4- Voting System Guidelines and Processes

Changes	Successes
The State of Florida certified three accessible voting systems vendors that provide audio ballot capability. Each accessible voting system includes at least one accessible voter interface device installed in each polling place.	The State of Florida met the January 1, 2006 deadline for this HAVA planning element.
	The accessible voting systems performed as designed during the 2006 statewide Primary and General Elections.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 97

Element 2- Local Government Payments and Activities

Changes	Successes
In FY 2004-05, the State of Florida distributed \$11.6 million to local Supervisors of Elections to purchase one accessible voting system for each polling place.	The accessible voting machines performed as designed during the 2006 statewide Primary and General Elections.
In FY 2005-06, the State of Florida distributed \$13,406,193 to reimburse 16 counties that acquired accessible voting systems prior to July 1, 2004.	
In FY 2005-06, the State of Florida distributed an additional \$63,215 to reimburse 8 other counties that acquired accessible voting systems prior to July 2004 and were not included in funding provided in FY 2004-05.	
In FYs 2004-05 and 2005-06, the State of Florida distributed to local governments \$3,000,000 each fiscal year to fund comprehensive voter education efforts.	
In FY 2005-06, the State of Florida distributed \$3,000,000 to local Supervisors of Elections to conduct poll worker recruitment and training.	



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 99

Element 5- HAVA Election Fund

Changes	Successes
There were no structural changes to the HAVA trust fund.	

Element 6- HAVA Budget

Changes	Successes
Florida's FY 2006-07 budget is \$11,015,598. The two largest budget items for this fiscal year are approximately \$5.5 million for Election Administration and \$4.9 million for the new Florida Voter Registration system. The HAVA Planning Committee (2006) reviewed and recommended the following proposed HAVA budget for the next four fiscal years with all funding supporting the FVRS and election administration activities: FY 2007-08 \$10,917,216 FY 2008-09 \$11,064,642 FY 2009-10 \$11,216,490 FY 2010-11 \$11,372,894	

Element 7- Maintenance of Effort

Changes	Successes
A 2006 Auditor General Report (2006-194) determined that Florida's Maintenance of Effort is \$3,570,408. The audit also revealed that in FY 2004-05, Florida did not meet the required maintenance of effort by \$ Year-end expenditures for the fiscal year 2005-06 have been finalized by the Department, and exceeded the maintenance of effort by \$207,186, more than compensating for the \$7,630 shortfall for the fiscal year 2004-05. In future years, the Department is expected to exceed the required maintenance of effort compensating for the \$7,630 shortfall.	



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 100

Element 8- Performance Measures

Changes	Successes
The HAVA Planning Committee (2006) approved the following changes to the performance measures: Certified voting systems for voters with disabilities goal has been achieved and accessible voting machines including non-visual accessibility for the blind and visually impaired are in each polling place. The Florida Voter Registration System (FVRS) is operational. The Department of State will continue to monitor list maintenance activities performed by the Supervisors of Elections and FVRS security operations for compliance with HAVA. The Department of State will collect from each county the reason why a person voted a provisional ballot in order to improve the registration process.	

Element 9-Administrative Complaint Process

Changes	Successes
There were no changes for this element of the HAVA State Plan.	



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 102

Element 11- HAVA State Plan Management Section

Changes	Successes
There were no substantive changes to the HAVA State Plan Management Section.	

Element 12- HAVA Changes in State Plan for Previous Fiscal Year

Changes	Successes
The HAVA State Plan was updated to reflect changes from FY 2004-05.	

Element 13- HAVA State Plan Development and Planning Committee

Changes	Successes
The HAVA Planning Committee met once in Pensacola and once in Miami during Fall 2006 to update the HAVA State Plan.	
The HAVA Planning Committee welcomed eight new members:	
1. The Honorable Lester Sola, Supervisor of Elections, Miami-Dade County	
2. The Honorable Terry Vaughn, Supervisor of Elections, Bradford County	
3. The Honorable Bill Posey, State Senator, District 24, Rockledge, FL	
4. The Honorable Ron Reagan, State Representative, District 67, Sarasota, FL	
5. Mr. Richard Perez, Attorney, Holland and Knight, Miami, FL	
6. Dr. Alec Yasinsac, Professor, Florida State University, Tallahassee, FL	
7. Mr. Reggie Mitchell, Counsel for the People for the American Way Foundation, Tallahassee, FL	
8. Ms. Sallie Parks, former Pinellas County Commissioner, Palm Harbor FL	



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 101

Element 10- Effect of Title One Payments

Changes	Successes
Florida received \$26,028,957 in Title I funds.	
These Title I funds have been used since 2003 to improve Florida election administration including replacing voting systems, educating voters, and improving access for voters with disabilities.	
The HAVA Planning Committee (2006) recommended using the Title I funds as needed for election administration activities such as printing new voter registration application forms, translating election materials, printing documents and publications, preparing training videos or other election administration activities.	
In FY 2004-05 and 2005-06, local governments received \$3 million each year for comprehensive voter education efforts.	
In FY 2004-05, the Legislature appropriated \$11.6 million to assist local governments with purchasing one accessible voting system for each polling place. However, these funds were distributed from Title II.	



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 104

Stakeholders/Representatives of Groups of Individuals with Disabilities:

Jim Kracht, Assistant County Attorney for Miami-Dade County and member of the American Association of Visually Impaired Attorneys, American Council of the Blind and the Florida Council of the Blind
Richard LaBelle, Executive Director of the Family Network on Disabilities of Florida, Inc.

Other Stakeholders and Citizens:

Reggie Mitchell, Florida Legal Counsel, People for the American Way Foundation
Sallie Parks, former member Pinellas County Commission
Bill Posey, State Senator, District 24
Ron Reagan, Representative, District 67
Richard Perez, Esq., Holland & Knight LLP
Dr. Alec Yasinsac, Florida State University

Florida's HAVA compliance process has involved three separate committees over the years, comprised of the following members:

2003 HAVA Committee	2004 HAVA Committee	2006 HAVA Committee
Jim Smith, Chairman Smith, Ballard and Logan	Jim Smith, Chairman Smith Ballard and Logan	Jim Smith, Chairman Smith and Ballard
Kurt Browning Supv. of Elections, Pasco County	Kurt Browning Supv. of Elections, Pasco County	Kurt Browning Supv. of Elections, Pasco County
Joe Celestin Mayor, City of North Miami	Anna Cowin State Senate	Jim Kracht Miami, Florida
Anna Cowin State Senator - District 20	Jennifer Carroll House of Representatives	Richard La Belle Family Network on Disabilities of Florida, Inc.
Dave Evans National Federation of the Blind	Joe Celestin Mayor, City of North Miami	Reggie Mitchell People For the American Way Foundation
Susan Gill Supv. of Elections, Citrus County	David Evans National Federation of the Blind	Bill Posey State Senator, District 24
Jane Gross Florida League of Women Voters	Susan Gill Supv. of Elections, Citrus County	Richard Perez Holland and Knight
Lindsay Harrington State Representative - District 72	Jane Gross Florida League of Women Voters	
Arthur Hernandez Arthur Hernandez, Esq.	Arthur Hernandez Attorney at Law	Sallie Parks Former Pinellas County Commissioner
Shirley Green Knight Supv. of Elections, Gadsden County	Constance Kaplan Supv. of Elections, Miami-Dade	Ron Reagan



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 103

Element 13. State Plan Development and HAVA Planning Committee

Section 254(o)(13): A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

1. Introduction

To comply with the requirements of the Help America Vote Act of 2002 (HAVA), the HAVA State Plan must be developed by the chief State election official through a committee of appropriate individuals. After a preliminary plan is developed, it must be published for public inspection and comment. State officials must take public comments into account in preparing the HAVA State Plan submitted to the Elections Assistance Commission.

2. Compliance: Designation and Meetings of HAVA State Planning Committee

Yes, and no further actions are required.

Florida's Secretary of State is the Chief State Election Official and has the responsibility under HAVA to develop the HAVA State Plan with the assistance of the statewide HAVA Planning Committee. Section 255(a) of HAVA requires that "The chief State election official shall develop the HAVA State Plan under this subtitle through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the State, other local election officials, stakeholders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief State election official."

Members of the 2006 HAVA Planning Committee for the State of Florida (appointed by then Secretary of State, Sue M. Cobb) included:

Chairman:

Jim Smith of Leon County, former Secretary of State and former Attorney General

Chief Election Officials of the Two Most Populous Jurisdictions within the State:

Brenda Snipes, Supervisor of Elections for Broward County
Lester Sola, Supervisor of Elections for Miami-Dade County

Other Local Election Officials:

Kurt Browning, Supervisor of Elections for Pasco County
Terry Vaughan, Supervisor of Elections for Bradford County



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 106

All meetings were held in accessible facilities and were compliant with the Americans with Disabilities Act. Closed captioning service was available at all meetings. Agendas were printed in Braille as well as Spanish and Creole.

The Collins Center prepared written materials for the meetings, made presentations to focus the 2006 HAVA Planning Committee on decisions that needed to be made, and took notes of proceedings at the Pensacola meeting. At the bequest of the committee, a transcript of the Miami public meeting was prepared. All agendas and other materials for the meetings were made available at the meetings. The website of the State Division of Elections also included much of this material in advance of the meetings.

The HAVA Planning Committee received a draft of the plan before voting to approve the preliminary version. The Committee then forwarded it to the Division of Elections for public notice and commentary period. Staff for the Division of Elections made authorized edits to ensure consistency and accuracy of text and format of the final draft.

3. Compliance: Public Notice and Comments for State Plan

Yes, and no further actions are required.

Section 256 of HAVA requires that the HAVA State Plan meet the following public notice and comment requirements:

- (1) not later than 30 days prior to the submission of the plan, the State shall make a preliminary version of the plan available for public inspection and comment;
- (2) the State shall publish notice that the preliminary version of the plan is so available; and
- (3) the State shall take the public comments made regarding the preliminary version of the plan into account in preparing the plan which will be filed with the Election Assistance Commission.

After notice was given in the *Florida Administrative Weekly*, the preliminary version of the 2006 HAVA State Plan was posted on the Department of State's and the Governor's websites. A link was made available on the Department's website for receiving public comments. No comments were received. The work of the HAVA Planning Committee and its consultants was completed when a preliminary version of the HAVA State Plan was prepared, approved by the HAVA Planning Committee, and submitted to the Secretary of State.

After the final updated 2006 HAVA State Plan is submitted to the Election Assistance Commission, that Commission is responsible for publishing the HAVA State Plan in the Federal Register in accordance with Section 255(b).



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 105

County Representative, District 67

Jim Kraehl
Miami-Dade County

Richard LaBelle
Fla. Coalition on Disability Rights

David Leahy
Supv. of Elections, Miami-Dade County

Percy Luney
Florida A & M University

Reggie McGill
City of Orlando

Miriam Oliphant
Supv. of Elections, Broward County

Isis Segarra
Tampa, Florida

Lori Stelzer
Florida Association of City Clerks

Raiza Tanayo
US Hispanic Chamber of Commerce

Shirley Knight
Supv. of Elections, Gadsden County

Jim Kraehl
Florida Council of the Blind

Richard LaBelle
Attorney at Law

Percy Luney
FAMU Law School

Reggie McGill
City of Orlando

Brenda Snipes
Supv. of Elections, Broward County

Lori Stelzer
Florida Association of City Clerks

Isis Segarra
Tampa, Florida

Raiza Tanayo
U.S. Hispanic Chamber of Orlando

Lester Sola
Supv. of Elections, Miami-Dade County

Brenda Snipes
Supv. of Elections, Broward County

Terry Vaughan
Supv. of Elections, Bradford County

Alec Yasinac
Florida State University

Each HAVA Planning Committee has operated in an open process with public deliberations, systematic procedures in accordance with *Robert's Rules of Order*, and majority vote of members who were present when votes were taken. The Collins Center for Public Policy, Inc. a non-profit, non-partisan organization (selected in a public bidding process) and the Florida Department of State's Division of Elections have served as staff for each committee.

The HAVA Planning Committee (2006) convened two publicly noticed meetings to update the June 2004 version of the State Plan—Pensacola, Florida, on September 21, 2006, and Miami, Florida, on October 12, 2006. A majority quorum of HAVA Planning Committee members was present for both meetings. Members of the public and press were welcomed at the meeting and public comments received.



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 108

Help America Vote Act of 2002 State Plan Chart

Help America Vote Requirement	Status: 2006 HAVA State Plan	Status: As of 10/31/06
Voting Systems—Section 301 Compliance January 1, 2006	Meets	Meets
Verify Ballot	X	Meets
Change or Correct Ballot	X	Meets
Prevent Overvotes	X	Meets
Absentee instructions	X	Meets
Absentee privacy and confidentiality	X	Meets
Paper record for audits	X	Meets
Systems for voters with disabilities	X	Meets
Future voting systems purchases comply with HAVA	X	Meets
Alternative language accessibility	X	Meets
Comply with FEC error rates	X	Meets
Define what constitutes a vote	X	Meets
Provisional Voting and Voter Information—Section 302 (Compliance January 1, 2004)	Meets	Meets
Laws require notification to cast provisional ballot	X	Meets
Provisional ballots permitted with written affirmation of voter eligibility	X	Meets
Provisional ballots given to election officials for determination	X	Meets
Provisional ballots counted if voter is determined to be eligible	X	Meets
Voters provided information to ascertain if provisional ballot counted	X	Meets
"Free access system" provided to ascertain if provisional ballot counted	X	Meets
Sample ballots are posted for election	X	Meets
Date of election and polling place hours are posted	X	Meets
Voting instructions and provisional voting instructions are posted on election day	X	Meets
Voting instructions for mail-in registrants and first-time voters on election day	X	Meets
Voting rights information and provisional ballot information posted	X	Meets
Contact information posted for voters whose rights have been violated	X	Meets
Information posted on prohibition of fraud and misrepresentation	X	Meets
Provisional ballots segregated for those who vote after special extended poll hours	X	Meets



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 108

Help America Vote Requirement	Status: 2006 HAVA State Plan	Status: As of 10/31/06
Voter Registration—Section 303 (Compliance January 1, 2004 or extension January 1, 2006)	Meets	Meets
Single, uniform, official centralized, interactive computer statewide, voter registration list	X	Meets
Can Florida meet January 1, 2004 deadline? Need to apply for January 1, 2006 waiver	X	Meets
HAVA's ID requirements for voters who register by mail and not previously voted	X	Meets
HAVA's requirement for voter registration language in mail registration forms	X	Meets
Local Government Payments and Activities [Section 254(a)(2)]	Meets	Updated
Describe criteria for funding	X	Updated
Describe methods to monitor performance	X	Updated
Voter Education [Section 254(a)(3)]	Meets	Updated
Describe voter education programs to support Title III	X	Updated
Describe election official education and training to support Title III	X	Updated
Describe poll worker training to support Title III	X	Updated
Voting System Guidelines and Processes [Section 254(a)(4)]	Meets	Meets
Describe Florida's voting system guidelines and processes consistent with Section 301	X	Meets
HAVA Election Fund [Section 254(a)(5)]	Meets	Updated
Describe how Florida will establish a HAVA fund	X	Updated
Describe how Florida will manage the HAVA fund	X	Updated
Florida's HAVA Budget [Section 254(a)(6)]	Meets	Updated
Describe costs of activities to meet Title III	X	Updated
Describe portion of requirements payment to carry out requirements activities	X	Updated
Describe portion of requirements payment to carry out other activities	X	Updated
Florida's Maintenance of Effort [Section 254(a)(7)]	Meets	Updated
Describe how Florida will maintain election expenditures at the 1999-2000 FY	X	Updated



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 110

Appendix A

INSTRUCTIONS TO VOTERS

1. Polls open at 7 a.m. and close at 7 p.m. Anyone in line at 7 p.m. will be allowed to vote.
2. Sample ballots will be posted in the polling room for your information.
3. When you enter the polling room and before being permitted to vote, you are required to present a photo ID with signature. If you do not have the proper ID, you will be allowed to vote a provisional ballot.
4. If you need instructions on how to use the voting equipment, ask a poll worker to assist you. After you have been given instructions, the officer assisting you will leave so that you can cast your vote in secret.
5. You are required to occupy the voting booth alone, unless you requested assistance at the time of registration or when you signed in at the polls.
- 6.a. For OPTICAL SCAN voting, when you are finished marking your ballot, take your ballot and put it into the precinct tabulator.
- b. For TOUCH SCREEN voting, when you are finished voting your ballot, be sure to press VOTE or CAST BALLOT button to cast your vote.
7. After you cast your vote, you are required to leave the polling room and you will not be allowed to re-enter.
8. If your eligibility is questioned or you do not have a photo ID, you will be allowed to vote a provisional ballot. Please review carefully and follow the instructions provided with your provisional ballot. Your ballot will be presented to the County Canvassing Board for a determination as to whether your ballot will be counted.
9. The poll workers possess full authority to maintain order in the polling area.

DS-DE 68
1/06



STATE OF FLORIDA



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 109

Help America Vote Requirement	Status: 2006 HAVA State Plan	Status: As of 10/31/06
Florida's Performance Goals and Measures [Section 254(a)(8)] Describe how Florida will adopt performance goals measures to determine HAVA success	Meets X	Updated
Administrative complaint process [Section 254(a)(9)] Established a state-based administrative complaint process to remedy grievances	Meets X	Meets
Effect of Title I Payments [Section 254(a)(10)] Describe how Title I payments will affect activities of HAVA plan	Meets X	Updated
HAVA State Plan Management [Section 254(a)(11)] Describe how Florida will manage plan and make material changes to plan	Meets X	Updated
HAVA State Plan for Previous Fiscal Year [Section 254(a)(12)] Describe how this year's plan changed from the previous fiscal year	Meets X	Updated
HAVA State Plan Development and Planning Committee [Section 254(a)(13)] Describe the committee and procedures used to develop the HAVA plan	Meets X	Updated



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 111

Appendix B

INSTRUCCIONES PARA LOS VOTANTES

1. Las urnas abren a las 7:00 a.m. y cierran a las 7:00 p.m. A todo el que se encuentre en línea a las 7:00 p.m. se le permitirá votar.
2. Se desplegarán boletas de muestra en el salón de votación para su información.
3. Cuando usted entre el salón de votación y antes de que se le permita votar, a usted se le requiere presentar una identificación con fotografía y firma. Si usted no tiene la identificación apropiada, a usted se le permitirá votar una boleta provisional.
4. Si usted necesita instrucciones de cómo usar el equipo de votación, pídale a un trabajador de las urnas que le ayude. Después que a usted se le han dado instrucciones, el oficial que le ayuda se irá, para que usted pueda echar su voto en secreto.
5. A usted se le requiere ocupar la caseta de votación solo, a menos que usted haya pedido ayuda al momento del registro o cuando usted registró su llegada en las urnas.
- 6.a. Para la votación por ESCANEO ÓPTICO, cuando usted haya terminado de marcar su boleta, tome su boleta y póngala en el tabulador del precinto.
- b. Para la votación por PANTALLA AL TACTO, cuando usted haya terminado de marcar su boleta, asegúrese de oprimir VOTE (Votar) o CAST BALLOT (Echar Boleta) para echar su voto.
7. Después que usted eche su voto, a usted se le requiere que abandone el salón de votación y a usted no se le permitirá volver a entrar.
8. Si su elegibilidad es cuestionada o usted no tiene una identificación con fotografía, a usted se le permitirá votar una boleta provisional. Por favor, revise cuidadosamente y siga las instrucciones provistas con su boleta provisional. Su boleta será presentada a la Junta Escudrinatoria del Condado para una determinación respecto a si su boleta será contada.
9. Los trabajadores de las urnas poseen plena autoridad para mantener el orden en el área de votación.

DS-DE 49
1/06



ESTADO DE LA FLORIDA



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 112

Appendix C

VOTER'S BILL OF RIGHTS

Each registered voter in this state has the right to:

1. Vote and have his or her vote accurately counted.
2. Cast a vote if he or she is in line at the official closing of the polls in that county.
3. Ask for and receive assistance in voting.
4. Receive up to two replacement ballots if he or she makes a mistake prior to the ballot being cast.
5. An explanation if his or her registration or identity is in question.
6. If his or her registration or identity is in question, cast a provisional ballot.
7. Written instructions to use when voting, and, upon request, oral instructions in voting from elections officers.
8. Vote free from coercion or intimidation by elections officers or any other person.
9. Vote on a voting system that is in working condition and that will allow votes to be accurately cast.

You may have other voting rights under state and federal laws. If you believe your voting rights have been violated, please contact Florida Department of State, Division of Elections, 1-877-868-3737

DS-DE 20 1/06



Mark Ritchie

MINNESOTA SECRETARY OF STATE

January 4, 2008

Ms. Donetta Davidson

Chair

United States Election Assistance Commission

1225 New York Avenue, Suite 1100

Washington DC 20005

Dear Ms. Davidson,

Pursuant to Section 255 of the Help America Vote Act of 2002 (P.L. 107-252) (HAVA), I am pleased to file this letter and the amendments within this letter with the Election Assistance Commission for publication in the *Federal Register*. The amendments within this letter constitute the revision to the State Plan of the State of Minnesota for the 2008 Federal Fiscal Year, and have been developed pursuant to HAVA section 254(a)(1), and consistent with the procedures set forth in HAVA sections 254, 255, and 256.

In accordance with section 256, the State published a notice in the *State Register* on September 24, 2007 to alert the public of the proposed amendments to the plan and the opportunity to comment. The State took the one public comment it received into account in preparing the amended plan, which is now submitted to the Commission for publication.

As required by Public Law 107-252, Help America Vote Act of 2002, Section 254(a)(12), when amending a state plan, Secretary of State Ritchie also proposes changing the plan by adding to Section 12, which provides a description of how the change in the State Plan differs from the prior State Plan and how Minnesota succeeded in carrying out the state plan in previous years. Section 13 is amended by adding section 13.4, listing the 2007 Minnesota State Plan Amendment Advisory Committee Membership Roster.

Amendments are underlined, and read as follows:

1.6 Uniform Statewide Voter Registration System

The State of Minnesota will plan, develop, and implement a statewide voter registration system to meet all Title III requirements.

The system will, as required by HAVA Section 303:

- provide a unique identifier for every voter in the system;
- coordinate with other state agencies databases to permit verification of registration data;
- identify ineligible registrants;
- provide increased system access for local election administrators;
- permit the administration of requirements for voters who register by mail; and
- accommodate the use of Minnesota driver license numbers and social security information as identifiers in voter records.

★ 180 State Office Building ★ 100 Martin Luther King Blvd. ★ St. Paul, MN 55155-1299 ★ (651) 201-1324 ★ Fax (651) 215-0662 ★ 1-877-600-8683



KURT S. BROWNING
SECRETARY OF STATE
STATE OF FLORIDA

STATE OF FLORIDA
HAVA PLAN 2006 UPDATE / PAGE 113

Appendix D

La Carta de Derechos del Votante

Cada votante registrado en este estado tiene el derecho a:

1. Votar y hacer que su voto se cuente con precisión.
2. Echar un voto si él o ella está en línea al cierre oficial de las urnas en ese condado.
3. Pedir y recibir ayuda al votar.
4. Recibir hasta dos boletas de reemplazo si él o ella comete un error antes de echar la boleta.
5. Una explicación si es que su registro o identidad se cuestiona.
6. Si su registro o identidad se cuestiona, a echar una boleta provisional.
7. Instrucciones escritas para usar al votar y, si así se pide, instrucciones verbales al votar de parte de los oficiales electorales.
8. Votar libre de coerción o intimidación de parte de los oficiales electorales o cualquier otra persona.
9. Votar en un sistema de votación que se encuentre en condiciones operantes y que permita que los votos sean echados con precisión.

Usted puede tener otros derechos electorales bajo las leyes estatales y federales. Si usted cree que sus derechos electorales han sido violados, por favor, comuníquese con el Florida Department of State, Division of Elections (Departamento de Estado de la Florida, División de Elecciones) al 1-877-868-3737.

DP-DE 20 / 04

- Updated informational materials to reflect HAVA, including brochures about voting rights, military and overseas voting, and voting for students.
- UOCAVA statewide absentee ballot system developed and implemented to support HAVA.
- The Minnesota Military Voter's brochure was cited by the Election Assistance Commission in its "Best Practices for Facilitating Voting by U.S. Citizens Covered by the Uniformed and Overseas Citizens Voting Act."
- Election Judge Training video updated with HAVA requirements.
- HAVA posters supplied to all polling locations.
- Awarded \$171,645 in Election Assistance to Individuals with Disabilities grants to local government units to make polling places accessible.
- HAVA compliance legislation passed (Laws 2004, Chapter 293), modifying the statewide voter registration system, requiring the sharing of data between state agencies, and establishing the Minnesota Voter's Bill of Rights and processes for addressing incomplete registrations submitted by mail and facilitating voting by military and overseas voters under UOCAVA.
- Administrative Rules amended (Minn. Rules, Chapter 8200), establishing processes for verifying voters, notices for incomplete and deficient registrations, and updated instructions for UOCAVA and other absentee ballots.

12.3. 2005

- State certification of Assisted Voting Equipment (AutoMark).
- Entered into state contract with vendor for local governmental units to purchase Assisted Voting Equipment and Precinct Count optical scan tabulators.
- HAVA compliance legislation passed (Laws 2005, Chapter 162), providing voting equipment requirements and authorizing grants to counties for voting equipment purchases and related provisions.

12.4. 2006

- During FY 06, provided \$29,000,000 in grants to the 87 Minnesota counties to purchase Assistive Voting Equipment for individuals with disabilities for each polling place (AutoMark) and for certain related operating expenses.
- \$3,545,822 was provided in grants to 50 counties to purchase optical scan voting equipment.
- With these grants, the counties purchased:
- 3,383 AutoMark ballot-marking machines;
- 1,698 ES&S M100 optical scan precinct ballot tabulators; and
- ES&S M650 optical scan central count ballot tabulators.
- Statewide Voter Registration System (SVRS) version upgrade including FPCA as registration source.
- WebX training on use of Statewide Voter Registration System for county election administrators
- Awarded \$259,918 in Election Assistance to Individuals with Disabilities grants to local government units to make polling places accessible.
- Provided information on new HAVA requirements at the 2006 Local Election Official Training Conference.
- Created 2006 Election Judge, Precinct Caucus, Accessible Voting Equipment and Voter Expectation videos to reflect use of AutoMARKs.
- Updated the Municipal Clerk, School District Clerk, Election Judge Training, Equipment Testing Guides to reflect use of new equipment.
- Developed a brochure "Minnesota Election Improvements for 2006," including information on the AutoMARK and other law changes.
- Attended 131 events in 75 cities across the state to demonstrate the AutoMARK and provide information on voting rights.

★ 180 State Office Building ★ 100 Martin Luther King Blvd. ★ St. Paul, MN 55155-1299 ★ (651) 201-1324 ★ Fax (651) 215-0682 ★ 1-877-600-8683

System development will also modify existing systems that interface with the statewide voter registration system elements and functionalities to preserve system integrity, ensure quality, and to be sufficiently robust to support increases in the number of users.

Consistent with state statute, the Office of the Secretary of State may program the Statewide Voter Registration System to enable the Office, working with county auditors, to maintain current addresses for voters using permanent forwarding information filed with the National Change of Address (NCOA) service of the United States Postal Service.

The Office of the Secretary of State will coordinate database information with other Minnesota State agencies, particularly the Minnesota Department of Public Safety to improve processing of voter registration applications, and the Minnesota Department of Health, to remove deceased registrants from voting rosters.

The Office of the Secretary of State will:

- provide information and training support to county officials for voter registration data entry;
- develop technology to process registration and voter history information in an expedited basis as well as training to use the technology;
- provide for security measures in the system to preclude unauthorized system access; and
- ensure that all applicable Minnesota State laws will meet voter list maintenance requirements in HAVA section 303.

Amended section 12 reads as follows:

Section 12

State Plan Changes and Successes in Previous Fiscal Years

Section 12 of the Minnesota State Plan provides, "in the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year" as required by Public Law 107-252, Help America Vote Act of 2002, Section 254(a)(12).

The change in the 2003 State Plan, section 1.6, proposed in 2007, will allow the Minnesota Secretary of State to interface data collected by the United States Postal Service National Change of Address service with the statewide voter registration system. In the prior State Plan, interface was allowed only with other Minnesota State databases. Specific successes in carrying out the previous State Plan are the following.

12.1. 2003

- Statewide implementation of administrative procedures to track registrations by mail for first-time federal voters effective January 1, 2003. (HAVA § 303(b))
- Initial State Plan – adopted July 15, 2003.
- Creation of Polling Place Accessibility Survey tool, developed in conjunction with the Minnesota State Council on Disability and others in the disability community, to be used by local jurisdictions to assess the accessibility of their local polling places.
- HAVA compliance legislation passed (Laws Special Session 1 2003, Chapter 7), appropriating funding and establishing complaint procedure.

12.2. 2004

- Statewide Voter Registration System (SVRS) implemented, including Driver's License number verification and user training.
- Voter registration application forms updated to be HAVA compliant, available in 5 alternative languages.

★ 180 State Office Building ★ 100 Martin Luther King Blvd. ★ St. Paul, MN 55155-1299 ★ (651) 201-1324 ★ Fax (651) 215-0682 ★ 1-877-600-8683



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF LAW
25 MARKET STREET
PO BOX 112

TRENTON, NJ 08625-0112

September 20, 2007

Jon S. Corzine
Governor

ANNE MILGRAM
Attorney General
ROBERT J. GILSON
Director

Thomas Wilkey, Executive Director
Election Assistance Commission
1225 New York Avenue
N.W., Suite 1100
Washington, DC 20005

Re: New Jersey "Help America Vote Act of 2002" (HAVA)
State Plan Addendum

Dear Director Wilkey:

Enclosed please find the New Jersey State Plan Addendum, which revises the original State Plan filed on August 15, 2003, in regard to the amount of monies available for HAVA implementation and the allocation of such additional funding. In particular, the Addendum proposes the dedication, in part, of funds for the implementation of a voter-verified paper audit trail (VVPAT) for voting systems, which is an activity intended to improve the overall administration of federal elections.

By letter dated June 25, 2007, the State had previously certified to the Election Assistance Commission that it had complied with the mandated Title III requirements of HAVA, and that the State intended dedicated some of the HAVA funding to assure a VVPAT component for its voting systems.

The Addendum includes the VVPAT proposal and further details increased funding for the State's statewide voter registration system, the State management budget, and voter education and outreach.

Pursuant to Section 256 of HAVA, the proposals to revise the 2003 State Plan were developed with the assistance and input of the New Jersey HAVA State Plan Committee. Thereafter, a preliminary Addendum was subject to a 30-day public inspection and comment period, which commenced on July 13, 2007. The enclosed State Plan Addendum incorporates the public comment.

HUGHES JUSTICE COMPLEX • TELEPHONE: (609) 599-6877 • FAX: (609) 292-0690
New Jersey is An Equal Opportunity Employer • Printed on Recycled Paper and Recyclable



- Distributed information from the Elections Improvement brochure to millions of voters across the state through every weekly and most daily newspapers.

2.5 2007

- Implemented SVRS 2.4 version upgrade including SSN verification.
- Established Working Groups with local election officials for SVRS/VR and Equipment/ERS.
- Created and provided additional WebX training on use of SVRS to election officials

Section 13 is amended by adding section 13.4, as follows:

13.4. 2007 Minnesota State Plan Amendment Advisory Committee Membership Roster

MEMBER	OFFICE / REPRESENTING
Mark Ritchie	Minnesota Secretary of State
Gary Poser	Director of Elections, Office of the Secretary of State
Jim Knobloch	Governor's Office
Sen. Joe Gimse	Minnesota Senate (R - Willmar)
Sen. Linda Higgins	Minnesota Senate (DFL - Minneapolis)
Rep. Laura Brod	Minnesota House of Representatives (R - New Prague)
Rep. Bill Hilly	Minnesota House of Representatives (DFL - Finlayson)
Michelle Desjardin	Hennepin County Elections Manager
Joe Mansky	Ramsey County Elections Manager
Dennis Distad	Freeborn County/MN Association of County Officers
Patty O'Connor	Blue Earth County/MN Association of County Officers
Gene Dufault	Association of Minnesota Townships
Ann Higgins	League of Minnesota Cities
Scott Simmons	Association of Minnesota Counties
Marcia Ayner	Minnesota Council of Nonprofits
Roger Banks	Council on Black Minnesotans
Margot Indekeu Cross	State Council on Disability
Oscar Echandi	Council on Chicano / Latino Affairs
Kao Ly Her	Council on Asian Pacific Minnesotans
Susan Hoyt	League of Women Voters of Minnesota
Judy Sanders	National Federation of the Blind
Jolynn Shopfesse	Minnesota American Indian Affairs Council
Mai Thor	Minnesota Disability Law Center
Cynthia Weitzel	Council on Deaf & Hard of Hearing

On behalf of the State of Minnesota, I submit the above amendments for publication in the Federal Register, and thank the Election Assistance Commission for its help in the amendment process.

Sincerely,

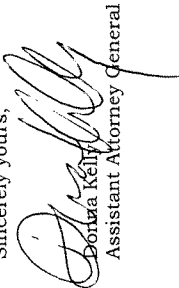
Mark Ritchie
Secretary of State of Minnesota

September 20, 2007
Page 2

It is now requested, pursuant to Section 255 (b), that the Election Assistance Commission cause the revised Plan to be published in the Federal Register.

Thank you for your attention to this matter. If you have any questions, please contact my office at your convenience.

Sincerely yours,



Donna Kelly
Assistant Attorney General

c: Peggy Sims, Election Research Specialist
Edgardo Cortés, Election Research Specialist

STATE OF NEW JERSEY
"HELP AMERICA VOTE ACT OF 2002"
ADDENDUM TO STATE PLAN:
SECTIONS ONE AND SIX

I. Introduction

On August 15, 2003, the State of New Jersey ("State") filed its initial State Plan ("Plan"), pursuant to the "Help America Vote Act of 2002" ("HAVA") with the Federal Election Commission (the authorized depository for the HAVA State Plans prior to the establishment of the United States Election Assistance Commission ("EAC")). The Plan detailed the manner in which New Jersey intended to meet the requirements of HAVA and the projected corresponding costs for implementation.

Section One of the Plan detailed the State's proposal to satisfy the following requirements of Title III of HAVA: providing for compliant voting systems; developing a statewide voter registration system ("SVRS"); implementing provisional balloting; distributing voter information in the polling place; and establishing a state administrative grievance procedure. Title III further allows a state to undertake other activities to improve the overall administration of federal elections. Section One of the Plan listed voter education and election officials' training as activities that would further this goal.

Section Six of the Plan set forth the proposed budget for these activities. The budget was based upon the receipt of 68 million dollars in federal funding. Since filing the Plan, federal and matching state monies available for HAVA purposes have increased by an additional 28.5 million dollars.

The increase in funding allows the State to dedicate additional monies to HAVA activities already identified in the Plan, as well as provides an opportunity to consider new endeavors to improve the overall administration of federal elections. Allocation of this increased funding would materially change the State Plan. Accordingly, this Addendum reflects updates and changes to Section One and Section Six.

The Addendum has been prepared in accordance with the procedural requirements of section 253 of HAVA. The HAVA State Plan Committee convened on April 4, 2007, to provide input on the use of the additional funds. In particular, the Committee discussed allocating a portion of the funds to implement a voter-verified paper audit trail (commonly referred to as "VVPAT") for the voting systems. The Addendum reflects the Committee's input. Although HAVA does not mandate the use of a VVPAT, the EAC has acknowledged that HAVA funds may be used for such "other activities" upon the State satisfying the mandated requirements of Title III. (See EAC Letter to State of Florida, dated May 2, 2007).

Prior to the issuance of the Addendum, the State certified to the EAC, by letter dated June 25, 2007, that it is in compliance with the mandated Title III requirements, and advised the EAC that it intends to dedicate some of the HAVA monies for a VVPAT component to its electronic voting systems.

Pursuant to Section 253, the Preliminary Addendum was subject to a 30-day public comment period. The Preliminary Addendum was published on the New Jersey Division of Elections website on July 13, 2007. Only one comment was received, with the suggestion that counties have the option of using HAVA funding towards the purchase of new voting systems, instead of retrofitting current systems. This suggestion has been incorporated into the final version of the Addendum.

As fully set forth below, in furtherance of the State's interest to improve the overall administration of federal elections, and pursuant to this Addendum to its State Plan, New Jersey will allocate up to approximately 15 million dollars in the Election Fund for the purpose of providing the voting systems in every county in the State with VVPAT capability, and to increase funding for the SVRS, voter education, as well as State management.

II. Section One of the Plan

A. HAVA-Compliant Voting Systems

1. Status at the Time of the Submission of the Plan

At the time of the submission of the State Plan, only two of the State's 21 counties had HAVA-compliant voting systems for use in their polling places. The voting systems in the other counties were as follows:

- Seven counties had lever machines, although two of those counties, Hudson and Mercer, had already contracted for electronic voting systems, which were to be in place by 2004.
- Three counties had electronic voting systems that could not be retrofitted with audio kits to allow independent voting by voters with visual impairments.
- Nine counties had electronic voting systems that could be retrofitted with audio kits.
- Cape May and Somerset Counties were using punch card systems to count absentee ballots.

2

The State anticipated that HAVA funds would be used to absorb at least half of the cost of voting machine replacements or upgrades.

Section One of the Plan also noted the ongoing, national discussion among computer scientists and advocacy groups regarding the security and reliability of electronic voting machinery. This concern was the apparent genesis for the proposal that a voter-verified paper record system be used in conjunction with electronic voting systems. Although not technically required by HAVA, the Plan indicated that the Attorney General intended to study this proposal to determine if it would be beneficial for voters.

2. Current Status of Voting Systems

For the first federal election held in New Jersey in 2006, the June 6th Primary Election, all of the State's voting machines were HAVA-compliant as follows:

- The lever machines that were used in five counties were replaced with the Sequoia Advantage AVC full-face machine. These are the same machines that Hudson and Mercer Counties began using in 2004.
- Of the three counties with non-accessible electronic voting systems, Atlantic and Passaic Counties purchased the Sequoia Advantage AVC machine. Warren County purchased the Avantix VoteTrakker full-face machine.
- The machines in the remaining nine counties were brought into full HAVA compliance by retrofitting at least one machine per election district with an audio kit
- The punch card systems in Cape May and Somerset Counties were replaced with electronic counters.

B. Compliance with Other Mandated HAVA Activities

In addition to the voting machines, the State satisfied the other mandated activities under Title II of HAVA as follows:

1. Administrative Grievance Procedure

By way of State statute, N.J.S.A. 19:61-6, the State implemented an administrative grievance procedure for any individual who believed that there has been, or will be, a violation of Title III of HAVA. This procedure comports with the corresponding HAVA provisions.

3

2. Forms and Notices

HAVA mandates that a state provide certain forms and notices to further voter participation in federal elections. To meet this mandate, the State revised its voter registration forms to incorporate the required provisions relating to citizenship and age, as specified in section 302 of HAVA (42 U.S.C. § 15483). The form further requires the registrant to provide his or her driver's license number or MVC non-driver ID number, and only if the registrant does not have either number, the last four digits of the social security number. For those registrants with no such form of identification, a check-off box to that effect is provided.

In addition, pursuant to Section 302 of HAVA (42 U.S.C. § 15482), the Office of the Attorney General prepares and distributes the Voter's Bill of Rights, comprised of two easy-to-read posters, to each county board of election for display in the polling places on election days.

3. Provisional Ballots and the Free-Access System

As noted in the initial State Plan, New Jersey has offered provisional ballots to certain voters at the polls on election day since 1996. These ballots originally were used for voters whose voter registration information in the poll book was deficient (e.g., signature missing), or for voters who had moved and did not notify the county commissioner of registration before the election. In response to HAVA, State law was amended in 2004 to allow for the use of provisional ballots for first-time registrants by mail who had not satisfied the identification requirements of section 303 of HAVA (42 U.S.C. § 15483). These amendments are set forth in N.J.S.A. 19:53C-3(i).

The related HAVA requirement that provisional ballot voters be provided with a free-access system to ascertain the disposition of their ballots was also instituted by the State and provided for in all elections, not just federal, pursuant to N.J.S.A. 19:61-4. The current system is a toll-free telephone system. The voter is connected to the appropriate county board of election, which sends the information by U.S. mail to the voter's registered address. It was determined that this procedure ensured the confidentiality of the process, which is required under HAVA.

Although not required by HAVA, the toll-free system also is available for absentee ballot voters. Written notice of the availability of this system is included in the absentee ballot materials that are sent to the voters by the county clerks.

4. Statewide Voter Registration System

The State of New Jersey has converted its county-based voter registration system into a statewide voter registration system ("SVRS"), as required by section 303 of HAVA (42 U.S.C. § 15483). New Jersey's SVRS is an interactive, computerized system which links the 21 county commissioner of registration offices with the following State agencies:

- Motor Vehicle Commission
- Department of Corrections
- Administrative Office of the Courts
- Parole Board
- Bureau of Vital Statistics.

The SVRS contains the official list of all the qualified registered voters in the State. The county commissioners of registration are responsible for the daily maintenance of the voter registration records of registered voters within their respective jurisdictions.

With the implementation of the SVRS, the registrant's driver's license number, MVC non-driver ID number, or the last four digits of the social security number of a registrant can be verified electronically. The system can also identify those registrants who are potentially duplicative, deceased, or criminally disqualified. In addition, the State now has the ability to maintain the complete voting history of registrants who move between counties. Prior to the SVRS, such records did not move with the registrant as there was no mechanism for the transfer of records for inter-county moves. The SVRS also has an enhanced reporting capability which allows the State to generate reports which either are required by the EAC or can be used for voting studies.

The SVRS further includes a comprehensive Election Management System ("EMS"), with various modules to allow for uniform and upgraded election administration in the county election offices. The EMS includes components for absentee ballot processing, poll worker assignments, redistricting capabilities, poll book generation, and nomination petition management.

C. The Implementation of a Voter-Verified Paper Audit Trail for Voting Systems: An Activity Intended to Improve the Overall Administration of Federal Elections

As stated in Section One of the original State Plan, New Jersey indicated its intent to study the issue of a voter-verified paper record component for each of its voting systems. This issue was brought into the national forefront by New Jersey Congressman Rush Holt (D-NJ), who introduced legislation in 2004 which would require a corresponding paper record for all votes cast on an electronic voting system. This legislation was intended to address concerns related to the possibility of computer software flaws or errors which could alter election results.

Although this proposal remains under Congressional consideration, on July 9, 2005, the State enacted a statutory requirement that, no later than January 1, 2008, a voter-verified paper record be created for each vote cast in an election. These paper records will be the official records for any recount or audit.

By enacting this legislation, the State has determined that creating a paper record for individual voter verification for all elections, including federal elections, will further voter confidence in the electoral process and underscore one of the primary objectives of HAVA – to increase voter participation in federal elections. Participation is partly dependent on voters having

HAVA BUDGET SUMMARY

HAVA Funding to Date: \$91,692,585.00

HAVA Funding for Initial State Plan \$68,175,000.00

I. Title III Requirements	Initial State Plan Estimated Cost	Current Projected Budget	Expenditures
A. Voting Systems (machine replacements and audio kit retrofitting)			
Purchases	\$38,657,000	\$40,500,000	\$37,834,429.30 \$89,860.00
B. Statewide Voter Registration System	\$20,000,000	\$25,000,000	\$16,487,768.77 \$5,284,332.00
C. Provisional Balloting	\$1,000,000	\$1,000,000	\$41,340.75 \$0.00
D. Required Forms and Notices	\$500,000	\$500,000	\$139,552.11 \$300,000.00
E. Administrative Grievance Procedures	\$250,000	\$250,000	
Expenditures Encumbered			

the assurance and belief that their votes will be properly counted and that sufficient safeguards exist to ensure the accuracy and integrity of the election results. New Jersey has concluded VVPAT technology is a meaningful enhancement that will further this objective.

Accordingly, the use of HAVA funds for the purchase of VVPAT technology, either by retrofitting the current voting system or purchase systems with such technology, is appropriate and commensurate with the spirit and intent of the federal law. The allocation of funding for this activity is reflected in the revised Section Six of the State Plan as set forth in this Addendum.

III. Section Six of the Plan

Section Six of New Jersey's initial State Plan set forth an estimated budget for the dedication of HAVA funding to implement the Title III requirements, voter education and election officials training, disability access, and the administrative grievance procedure. In addition, the State allocated funding for state administrative costs to oversee the programs mandated by HAVA.

As noted in the Introduction, the budget was based upon a fund of approximately \$68 million. The State Election Fund has received a total of \$91 million. The following chart reflects the amount of monies dedicated to the requirements and activities originally listed in the Plan, the changes to several of those categories, and the inclusion of the proposed VVPAT expenditure. The State intends to dedicate up to approximately \$15 million toward the purchase of VVPAT technology.

Of the activities originally listed in the Plan, the State intends to increase the SVRS line item from \$20 million to \$25 million, the voter education and outreach expenditure by an additional \$500,000, and the State management budget from \$3 million to \$5.5 million.

ROSS MILLER
Secretary of State

NICOLE J. LAMBOLEY
Chief Deputy Secretary
of State

CHRIS LEE
Deputy Secretary for
Southern Nevada

STATE OF NEVADA



OFFICE OF THE
SECRETARY OF STATE
April 30, 2007

SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

MATTHEW M. GRIFFIN
Deputy Secretary
for Elections

KATE THOMAS
Deputy Secretary
for Operations

Thomas R. Wilkey, Executive Director
United States Election Assistance Commission
1225 New York Avenue N.W. Suite 1100
Washington, D.C. 20005

RE: Nevada's FY 2006-2007 State Plan

Dear Mr. Wilkey:

Nevada hereby submits the State Plan for FY 2006-2007, which has been developed pursuant to § 254 of the Help America Vote Act of 2002, P.L. 107-252 (HAVA).

We thank you in advance for publication in the Federal Register pursuant to § 255 of HAVA.

Please send confirmation that you have received Nevada's Plan, and feel free to contact me at (775) 684-5705 if you have any questions or concerns.

Respectfully,

ROSS MILLER
Secretary of State

By: 
Matthew M. Griffin, Esq.
Deputy Secretary for Elections

RM:MG:ij

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-4786
Telephone: (775) 684-5708
Fax: (775) 684-5725

COMMERCIAL RECORDINGS
MEYER'S ANNEX OFFICE
202 N. Carson Street
Carson City, Nevada 89701-4201
Telephone: (775) 684-5708
Fax: (775) 684-5725

LAS VEGAS OFFICE
555 E. Washington Avenue
Las Vegas, Nevada 89101-1090
SECURITIES, Suite 5200
Telephone: (702) 486-2440
Fax: (702) 486-2452
CORPORATIONS, Suite 5200
Telephone: (702) 486-2880
Fax: (702) 486-2888

SECURITIES SATELLITE OFFICE
1755 E. Plumb Lane, Suite 231
Reno, Nevada 89502-3691
Telephone: (775) 689-1855
Fax: (775) 688-1858

(NSPO Rev. 1/07)

(18-432)

II. Other Activities	Initial State Plan Estimated Cost	Current Projected Budget	Expenditures
A. Disability Access	\$750,000	\$750,000	
Expenditures Encumbered			
B. Election Official Training	\$1,000,000	\$500,000	
Expenditures Encumbered			\$53,240.00 \$0.00
C. Voter Education and Outreach	\$3,000,000	\$3,500,000	
Expenditures Encumbered			\$2,785,389.30 \$0.00
D. State Management (Administrative Costs and Salaries)	\$3,000,000	\$5,500,000	
Expenditures Encumbered			\$1,087,527.82 \$0.00
E. VVPAT-New Program*		\$15,000,000	

* This in addition to the Section 261 monies, some of which have been expended for polling place accessibility and training.

STATE OF NEVADA FISCAL YEAR 2006-2007 STATE PLAN

I. INTRODUCTION

On October 29, 2002, President Bush signed the Help America Vote Act (HAVA or Act) into law. HAVA is a response to the irregularities in voting systems and processes unveiled during the 2000 Presidential Election. HAVA requires each state to develop a comprehensive plan for implementing the mandatory changes to the administration of elections that are called for in the legislation. HAVA has affected virtually every element of the voting process, including requiring a statewide voter registration system, replacing punch card voting machines, improving voter education and poll worker training, requiring provisional ballots, and requiring at least one voting machine available per polling place for voters with disabilities. HAVA has dramatically changed the way elections throughout the nation are conducted.

As required by HAVA, the state of Nevada (State) adopted and submitted to the federal government its first State Plan (Plan) for fiscal year (FY) 2003-04 in June 2003. Due to the delayed formation and organization of the Elections Assistance Commission (EAC), the publication of that Plan in the *Federal Register* was not completed until May 2004. The following year, the State amended the Plan for FY 04-05, and after expiration of the public comment period, adopted it in July 2004. In accordance with Section 254 of the Act, the State submitted an updated Plan for FY 2004-05. Like the FY 2003-06 Plan, this State Plan (FY 06-07) was created under the direction of Secretary of State through a State Plan Advisory Committee (Advisory Committee). Nevada's FY 06-07 Plan continues to build on the framework established in previous Plans for the State to continue progress that has already been made in election reform and to achieve compliance with HAVA. FY 06-07 was a substantial year for the State in terms of meeting multiple HAVA implementation goals.

Because HAVA will continue to have a profound impact on virtually every element of the voting process in our State, we anticipate that this plan will continue to be updated and refined periodically over the coming years to ensure the continued health of our democratic process.

II. THE BACKDROP FOR NEVADA'S STATE PLAN

The Secretary of State is the Chief Officer of Elections for the state of Nevada, and, as such, is responsible for the execution and enforcement of state and federal laws relating to elections. Although HAVA has dramatically increased the election administration responsibilities for the State, the efficient function and cooperation of local governments continue to be critical to ensuring that elections are successfully conducted. Considerable



State of Nevada

Fiscal Year 2006-2007 State Plan

As required by Public Law 107-252

Help America Vote Act of 2002, Section 253 (b)

Office of the Nevada Secretary of State
101 N. Carson Street, Suite 3
Carson City, NV 89701
April 25, 2007

time, effort, and resources on the state and local level is necessary for the State to continue to meet HAVA requirements.

Nevada is one of the fastest growing states in the country. Based on figures obtained from Census 2000, Nevada's population increased by 796,424 persons between 1990 and 2000. In addition, Nevada's largest county, Clark County, continues to add approximately 4,000 new citizens per month. From the last Plan, the number of registered voters in the State increased by approximately 200,000, and currently, the State has approximately 1.2 million registered voters spread throughout its 17 counties. Moreover, more than 1,500 state, county and municipal political campaigns come under the jurisdiction of local or state election officials during each election cycle.

All 17 counties in the State use Direct Recording Electronic (DRE) voting machines and optical scan machines for absentee voting. All 17 Nevada counties are required by state statute to exclusively use DRE machines fitted with voter verifiable paper trail printers. In response to the requirements outlined in HAVA, the State took steps to substantially upgrade the existing voting systems, redesign processes and provide updated and continual training for election administrators and the citizens of the State. Secretary of State Dean Heller took the first step toward achieving these goals in December 2003 by announcing the decision to purchase Direct Recording Electronic (DRE) voting machines for all Nevada counties. He also announced his mandate to include a voter verifiable paper trail on all newly purchased DRE machines for the 2004 election. The Secretary of State also issued a proclamation decertifying all punch-card voting machines in Nevada as of September 1, 2004. Nevada led the nation in the 2004 Presidential Election as the first state to implement DRE voting machines with voter verifiable paper trail printers. The new Secretary of State, Ross Miller, is committed to maintaining Nevada's leadership role in the area of elections. During the 2006-2007 FY, the State implemented a HAVA-compliant statewide voter registration system. Additional DRE voting machines and equipment were also purchased for each of the 17 counties. Every polling site in the State was surveyed for Americans with Disabilities Act¹ (ADA) accessibility and various types of equipment were purchased to improve access to needed areas. Such equipment included ramps, signage, magnifiers, signature cards, and audio units with a "sip and puff" feature. Videotapes for training poll workers on sensitivity to voters with disabilities were purchased for each county. In result of these efforts, polling places were fully accessible for the 2006 election cycle, ensuring all voters in the State access to their polling locations and the ability to vote with independence, privacy, and dignity. In addition, all county election officials attended training sessions which covered the following areas: poll worker training, statewide voter registration list maintenance, voting machine maintenance, voting system testing and programming, provisional voting requirements, security issues, minority language issues, requirements dealing with overseas/military voters, conducting the mandatory post election VVPAT certifications, and election day signage. The aforementioned training sessions were conducted prior to

¹ Public Law 336 of the 101st Congress, enacted July 26, 1990.

the 2006 election cycle. Nevada has been successful, and will diligently continue to, meet the requirements of HAVA and support meaningful election reform. However, continued support, resources, and funding from both the federal government and the Nevada State Legislature will be key.

In developing Nevada's FY 05-06 Plan, the Advisory Committee used as guidance the goal of developing and implementing a plan that delivers a timely, accurate and accessible voting process for all Nevadans. In developing this FY 06-07 update to the State Plan, the strategies for achieving these HAVA compliant goals in the previous FY 05-06 State Plan continue to be applicable: (1) obtain initial federal funding; (2) implement legislation fostering voter participation and compliance with HAVA; (3) conduct an assessment of the condition of the statewide voter registration process given these standards; (4) suggest changes to voting technology and processes to ensure accurate and reliable elections and voter confidence; and (5) develop and implement follow-through accountability activities and feedback mechanisms for complaints.

Nevada's FY 06-07 Plan, as presented herein, is limited to the extent State appropriations are made available, and is based on the assumption that adequate federal funding will be appropriated. While the State intends to fully comply with HAVA, if adequate federal funding is not made available, the manner in which the funds are disbursed or dedicated and the priorities given to particular projects may be altered from the information contained in this FY 06-07 Plan.

III. NEVADA'S STATE PLAN

A. Use of Requirements Payments

Section 254(a)(1) requires a description of how the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251((b)(2), to carry out other activities to improve the administration of elections. Title III requires the establishment of certain voting system standards, provisional voting, public posting of voting information, a computerized statewide voter registration list, and voter registration application modifications.

1. Voting Systems Standards

Section 301(a) establishes several voting system standards which must be met by January 1, 2006. Under this section, no waiver of the requirements is permitted.

HAVA requires each voting system in the state to: (a) permit voters to verify whom they have voted for and make changes to their vote in a private, secret and independent manner; (b) notify voters if they have overvoted, what happens in instances of an overvote, and provide the opportunity to correct the ballot; (c) ensure that any notification to the voter maintains the privacy, secrecy and independence of the voter's ballot; (d) produce a permanent paper record with manual audit capacity; (e) be accessible for people with disabilities through the use of at least one (1) DRE voting system placed at each polling place; (f) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965; (g) comply with error rates established by the Federal Elections Commission (FEC) as of the time HAVA was adopted; and (h) have a definition of what constitutes a vote and what will be counted. These requirements have been incorporated into Nevada statutes or regulations.

Most of the federal funding that has been appropriated to date was used to upgrade the voting systems throughout the State and to purchase new systems in order to meet the requirements of Title III. As stated above, the State has implemented a uniform DRE voting system for polling places throughout the state, with all DRE machines being fitted with the voter verifiable paper trail printers. In addition, uniform optical scan voting systems are used for absentee voting throughout the State. The voting system replacement project was accomplished in September of 2004, in time for the 2004 Primary Election, and the new machines were used successfully in the 2004 General Election and in subsequent municipal elections.

To ensure proper training for election administrators and the voting citizens of Nevada, the State used, and depending on the availability of funds, may use additional requirements payments to help educate those individuals about the proper use of the new voting systems. Requirements payments were also used for maintaining,

modifying and improving all voting systems in the State to ensure compliance with HAVA Section 301(a) standards.

2. Provisional Voting and Voting Information Requirements

Section 302 requires the establishment of provisional voting and the posting of voting information at polling places by January 1, 2004. Under this section, no waiver permitted.

HAVA requires provisional voting procedures in all states to ensure that no voter who appears at the polls and desires to vote is turned away for any reason. The State adopted legislation proposed by the Secretary of State that enacts procedures to allow for provisional voting in federal races throughout the State. The procedures² that were adopted meet the requirements of Section 302.

The State used requirements payments to create the free access system required by HAVA to provide voters who cast provisional ballots the ability to discover whether or not their ballot was counted, and will continue to make enhancements to the free access system in preparation for the 2008 federal elections. The State also continues to use requirements payments to develop procedures for provisional voting and to plan and conduct training and outreach concerning a voter's ability to receive and cast a provisional ballot. Finally, if adequate federal funding is available, the State may use requirements payments to assist local governments with funding offsets necessary to prepare and process provisional ballots.

In addition to provisional balloting requirements, Section 302 of HAVA mandates that a sample ballot and other voting information be posted at polling places on Election Day. Each registered voter currently receives a sample ballot in the mail prior to Election Day. In addition, the Secretary of State successfully sought a change to State law to require that all materials required by Section 302 be displayed at each polling place.³ Nevada's "Voters' Bill of Rights"⁴ was also established as part of this process. The law requires that the Voters' Bill of Rights be posted conspicuously at each polling place. The Voters' Bill of Rights is a declaration of the rights of each voter with respect to the voting process. Its premise is to ensure that each and every voter who wishes to exercise the right to vote is provided with the right to do so in an informed and nondiscriminatory manner. The county clerks designed and printed the materials to be posted in the 2006 elections, and depending on the availability of funds, the State anticipates using requirements payments to defray the cost of developing, printing and posting this information in the upcoming election cycle.

² See Nevada Revised Statutes (NRS) Sections 293.3081 through 293.3086, inclusive.

³ See NRS 293.3025.

⁴ See NRS 293.2543 through 293.2549, inclusive.

State is paying for all hardware and software necessary, as well as required training for county and city officials in the use of the system.

b. Requirements for Voters Who Register by Mail

With respect to requirements for voters who register by mail, the State revised its voter registration form in January 2003 and again in 2004 to meet the requirements of Section 303(b).

In 2003, the Secretary of State successfully sought a modification of State law⁵ to ensure that the processes associated with voter registration and verification of identification at the time of registration, or at the polls for first time voters who register by mail, are HAVA compliant. The 2005 Session of the Nevada State Legislature has recently adjourned and the Secretary of State will continue to review the Plan in light of recently passed legislation and update the Plan accordingly.

4. Other Activities to Improve the Administration of Elections (Section 251(b)(2))

The State intends to continue using requirements payments to fund other activities to improve the administration of elections, including, but not limited to: (a) establishing a polling place accessibility program to ensure that all polling places in Nevada are and continue to be in compliance with the ADA; (b) providing necessary assistance to persons with limited proficiency in the English language; (c) engaging in a variety of voter education and outreach activities, including public service announcements, voting machine demonstrations, mass mailings and other related media avenues; (d) providing election official and poll worker training initiatives; and (e) establishing poll worker recruitment programs.

The State will also continue using requirements payments to fund staff positions to allow for ongoing operations and maintenance of programs and projects to sustain HAVA compliance. The State will continue to evaluate staffing needs to determine if additional positions are needed to fulfill HAVA requirements.

B. Distribution of Requirements Payments and Eligibility for Distribution

Section 254(a)(2) of the act requires a description of how the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in Section 254(a)(1), including a description of—

(A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

⁵ See NRS293.272 and 293.2725

3. Computerized Statewide Voter Registration List and Requirements for Voters Who Register by Mail

Section 303 requires the establishment of a computerized statewide voter registration list, first time voters who register by mail to provide identification when they cast their ballots, and changes to be made to the voter registration application by January 1, 2004. A waiver is permitted to extend compliance with Section 303(a) to January 1, 2006.

a. Statewide Voter Registration System (SVRS)

Section 303 of HAVA requires that all states establish a statewide computerized registration list of all eligible voters. This "single, uniform, official, centralized, interactive, computerized statewide voter registration list" must be administered at the State level and is considered the official list of legally registered voters in the State. Nevada has developed and implemented its statewide voter registration list in a timely manner prior to the 2006 election cycle.

The State had initially purchased a voter registration system to be implemented statewide and administered by the Secretary of State. The Secretary of State's selected vendor was not able to adhere to an expedited design and implementation process, which would have allowed their statewide voter registration system to remain on target for completion by January 1, 2006. In accordance with Section 303(d)(1)(B) of HAVA, the State certified that Nevada could not implement the Statewide Voter Registration List requirements by January 1, 2004, and that it met the requirements for a waiver of the deadline to January 1, 2006. The State cited as reasons for the waiver the fact that it is currently implementing the uniform voting system statewide and, given the fiscal and human resources necessary to successfully conduct the upcoming federal election with these new systems, it would not be prudent to implement the statewide voter registration system in the same election cycle. However, once the State became aware that the selected vendor was not on schedule to produce a HAVA compliant system by the upcoming election, the Secretary of State's Office initiated an internally built statewide voter registration system, which is compliant with Section 303(a) of HAVA. The Secretary of State's system was implemented prior to the 2006 deadline and has the ability to interface with Nevada's Department of Motor Vehicles and other appropriate agencies, as required by HAVA. Additionally, this statewide voter registration database allowed all 17 counties to clear thousands of records, including duplicate records, in advance of the 2006 election cycle. This capability was an additional functionality that the State built internally, which would not have been provided by the original outside vendor.

The State will continue to expend a portion of its requirements payments and Title I payments to fund additional upgrades and maintenance of the statewide voter registration system. Specifically, in addition to the basic costs of the system, the

(B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under Section 254(a)(8).

The Office of the Secretary of State will centrally manage activities funded by requirements payments. The Secretary of State will be accountable for all expenditures, funding levels and program controls and outcomes. The Secretary of State, in conjunction with local election officials, will determine the appropriate level of support for local activities.

To the extent that the decision is made to distribute requirements payments to units of local government and other entities for carrying out the activities described in Section 254(a)(1), the criteria to be used for determining eligibility include, but are not limited to: (a) the priority of the project to which the distribution is intended to be applied, as it relates to complying with HAVA; (b) the extent to which the recipient is in compliance with Title III of HAVA and all other state and federal election laws; (c) the recipient must maintain its current level of funding for its elections budget outside of any HAVA funds received; (d) the recipient must cooperate with the State in maintaining the statewide voter registration list and must timely implement list purging activities and reporting as required by the Secretary of State; (e) the need for the payment to ensure continued compliance with state and federal elections laws; (f) the availability to the recipient of other funding sources, including other HAVA related grants; (g) the recipient must acknowledge that it will be required to reimburse the State for all federal funds received if it does not meet the deadlines for compliance in HAVA; and (h) the recipient must develop a comprehensive accounting plan in accordance with federal criteria for separately identifying and tracking any federal funds received. The criteria for receipt of requirements payments will be agreed to in writing in advance by the Secretary of State and the unit or entity receiving the payment.

If requirements payments are so distributed, the Secretary of State will monitor the performance of each activity funded by requirements payments on a case-by-case basis. The methods to be used by the State to monitor the performance of the payment recipients may include, without limitation: (a) requiring the recipient to prepare and submit comprehensive timely reports to the Secretary of State detailing the expenditures and their relation to complying with Title III of HAVA; (b) implementing financial controls that establish financial reporting methods; and (c) developing performance indicators on a case-by-case basis for all activities funded.

C. Voter Education, Election Official and Poll Worker Training

Section 254(a)(3) of the Act requires a description of how the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

1. Voter Education

With voter participation and turnout declining nationally over the last twenty years, and with an increasing number of historically disenfranchised groups growing more skeptical about the power of their vote, the Secretary of State's office is making a concerted effort to expand Nevada's voter outreach and education efforts.

Clearly, citizens need to better understand the power of each and every vote. Education is the key to improving Nevada's voter participation rate. Besides doing a better job of teaching our citizens about the critical component voting plays in the success of a democracy, with the advent of new technologies—specifically, DRE voting machines—the educational process should include a well-developed plan to assist and train citizens on how to use new equipment. Further exploration as to reaching various socio-economic groups as well as providing information for those who have had their rights restored or qualify to have their voting rights restored will also be included.

By law, each registered voter in Nevada receives a sample ballot in the mail prior to each election. The Secretary of State's office has produced and published several informative brochures designed to better educate Nevada's citizens about the voter registration process, the significance of every single vote, and the requirements of HAVA. The agency's website (<http://secretaryofstate.biz>) contains a wealth of information useful to individuals and groups seeking to advance voter participation and citizen knowledge of the elections process.

The Secretary of State's office issues many media advisories and news releases throughout the year specifically designed to inform prospective voters about the elections process, along with conducting public forums relating to statewide ballot questions, and recording public service announcements regarding voting equipment and other related issues.

The 2003 Legislature moved the Advisory Committee on Participatory Democracy (ACPD) under the auspices of the Secretary of State's office, and established the goals of 75 percent voter registration and 70 percent voter turnout by those registered voters in Nevada by 2008. The 10-member ACPD was appointed by the Secretary and began the ambitious task of improving voter participation in Nevada with its inaugural meeting on March 31, 2004. The ACPD has plans to create an informational website and to work with existing groups, organizations, and individuals to foster and nurture greater voter participation.

One such undertaking was the *Easy Voter Project*, a non-partisan, bi-lingual voter education website and booklet that will help many Nevada citizens better comprehend the voting process. The *Easy Voter Project* has proven to be a successful program, which has been in place in California since 1994. According to a 1996 survey, adult school and community college student voter turnout in California increased to more

than 70 percent among students who were exposed to the *Easy Voter Project*. The project publishes an informative *Easy Voter Guide* and maintains a website that provides information on political parties, candidates and ballots measures, along with easy-to-follow instructions on how to register and vote. The Secretary of State partnered with private organizations and successfully published and distributed over 125,000 *Easy Voter Guides* statewide, in both English and Spanish. We anticipate conducting the *Easy Voter Project*, or an equivalent program, again for the 2008 elections, as well as renewing partnerships with other entities, as discussed below.

In June 2006 the Advisory Committee for Participatory Democracy (ACPD) solicited grant applications to conduct voter education and outreach to the citizens of Nevada. The grant was funded through Section 101 HAVA with minimum funding requests of \$15,000 and a maximum of \$65,000. The grant was limited to nonprofit, nonpartisan organizations organized for the purpose of voter education and outreach to increase participation in the election process. The Secretary of State, as recommended by the ACPD, awarded grants to four entities totaling \$65,824. Each entity was required to enter into a Notice of Subgrant Award with the Secretary of State, Elections Division to ensure HAVA compliance and for reporting purposes.

Another voter outreach project the Secretary of State's office worked closely with the *New Voters Project*. Sponsored by the Pew Charitable Trusts and with strong bipartisan support from a number of civic organizations, the *New Voters Project* is a non-partisan effort that is using a strategy that encompasses the recruitment of 18 to 24 year olds on college campuses, during large public events, partnerships with local businesses, and door-to-door canvassing. Nevada is fortunate to have been selected as one of six target states—Colorado, Iowa, New Mexico, Oregon and Wisconsin being the other five—in which the *New Voters Project* focused its attention in the 2004 presidential election season.

There are several other voter education and outreach projects the agency has partnered with, including *National Student/Parent Mock Election* and *Smackdown Your Vote*.

2. Election Official and Poll Worker Training

Adequate training for election officials and poll workers is critical to any election being conducted successfully. It becomes even more crucial when election reform occurs. The State, in conjunction with all 17 counties, has instituted a training program to provide a more centralized source of training, versus the more localized training programs that have existed in the past. In lieu of the disproportionate range of resources available at the local level across the State, building a centralized source of training has been critical in ensuring all 17 counties have access to all the training necessary to maintain their role in meeting HAVA compliance. Centralized training in 2006 covered: 1) maintenance of the statewide voter registration list; 2) DRE maintenance, testing, programming and security; 3) provisional voting and

provisional phone line reporting; 4) election date signage requirements; 5) requirements under UOCAVA for overseas citizens and the military, including use of FWAB ballots; 6) ADA accessibility training for poll workers and election staff; 7) general improvements for poll worker recruitment, training and management; 8) overall communication; 9) additional federal reporting requirements; 10) conducting mandatory post election VVPAT audit and 11) additional certifications for various federal and state requirements. The State will continue to build upon the training materials and procedures created in 2006. The State will continue to increase county involvement in conducting this centralized training, including participation well beyond mere attendance. Additionally, the State will seek the involvement of other members of the community, such as persons with disabilities, to contribute to the training processes.

D. Voting System Guidelines and Processes

Section 254(a)(4) requires a description of how the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

As stated above, Section 301 requires each voting system in the state to: (a) permit voters to verify whom they have voted for and make changes to their vote in a private, secret and independent manner; (b) notify voters if they have overvoted, explain what happens in instances of an overvote, and provide the opportunity to correct the ballot; (c) ensure that any notification to the voter maintains the privacy, secrecy and independence of the voter's ballot; (d) produce a permanent paper record with manual audit capacity; (e) be accessible for people with disabilities through the use of at least one (1) DRE voting system placed at each polling place; (f) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965; (g) comply with error rates in effect by the FEC at the time HAVA was adopted; and (h) have a definition of what constitutes a vote and what will be counted.

Existing Nevada law now mirrors the voting system guidelines and processes set forth in HAVA. In addition, the Secretary of State is responsible for certifying voting systems for use in the State. The Secretary of State, in accordance with state law, cannot certify any voting system in the State unless it meets or exceeds the standards for voting systems established by the FEC. The Secretary of State will create new guidelines and processes as necessary to ensure all voting systems in the State continue to remain in compliance with Section 301.

E. Establishment of Election Fund

Section 254(a)(5) requires a description of how the State will establish a fund described in Section 254(b) for purposes of administering the State's activities under this part, including information on fund management.

(b) Requirements for Election Fund—

(1) *Election Fund Described.*—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

- (A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part.
- (B) The requirements payment made to the State under this part.
- (C) Such other amounts as may be appropriated under law.
- (D) Interest earned on deposits of the fund.

The State created a special election fund in the state treasury that provides the Secretary of State with the authority to deposit into this fund all federal HAVA dollars and state matching fund appropriations. This fund is fully compliant with Section 254(b) of HAVA. The Secretary of State works closely with the State's Budget Division and the State Controller's office to implement and enforce all fiscal controls and policies required by both state and federal law.

F. Nevada's Proposed HAVA Budget

Section 254(a)(6) requires a description of the State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

- (A) The costs of the activities required to be carried out to meet the requirements of Title III
- (B) The portion of the requirements payment which will be used to carry out activities to meet such requirements; and
- (C) The portion of the requirements payment which will be used to carry out other activities.

To assist states with meeting the new mandates imposed by HAVA, Congress authorized a total of \$650 million in Title I payments and \$3 billion in Title II requirements payments to be distributed over the next three years. More than half of the funding was to be distributed in FY 2003. While less than one-third of that sum was actually appropriated for FY 2003, Congress made up the difference in funding and provided full funding in FY 04. Outside of HAVA Title II Section 261 funds, no additional HAVA funding has been received since FY 04. The President did recommend \$40 million for FY 05, rather than the \$600 million that is authorized by HAVA. However, the State did not receive any of these funds in FY05.

Based on the foregoing, the State has created its HAVA budget assuming the following levels of funding:

Federal Fiscal Year Title I Early Payments	Federal Appropriations	Nevada's Share	5% Match
	\$650 million	\$5 million	n/a
2003	\$833 million	\$5.7 million	\$304,313
2004	\$1.5 billion	\$10.3 million	\$546,062
2005	\$0	\$0	\$0
2006	\$0	\$0	\$0
2007	\$0	\$0	\$0
Total	\$3.02 billion	\$21.2 million	\$850,375

The State has also received an additional \$400,000 under HAVA Title II, Section 261 for polling place accessibility. The State has been awarded yearly increments of \$100,000 over the last four years. The State began drawing these funds for the first time in 2006. Currently, \$267,098 is remaining.

Because the actual level of funding that was to be authorized through FY year 2006-2007 was not initially known when the State Plan was updated for FY 2005-2006, the State's proposed HAVA budget is being updated for FY 2006-2007.

Title III Requirements:

Voting System Purchases/Upgrades:

--Continue to develop strategies to obtain funding, to the extent available, to update DRE machines and their respective VVPAT mechanism to ensure continued compliance with both federal and state law. Also provide additional touch screen systems fitted with voter verifiable paper audit trail printers as needed, particularly prior to the 2008 election cycle.

--To be funded with Title I early payments, Title II requirements payments and State matching funds.

Establishing and Maintaining a Statewide Voter Registration List:

--Initially, \$4 to \$5 million was allocated to cover base cost, plus an ongoing maintenance costs of approximately \$100,000 per year. These parameters were based on costs associated with an initial outside vendor, whose contract was terminated based on the vendor's breach in delivering a timely and HAVA compliant statewide voter registration list and accompanying statewide database and election management system.

--The State will maintain between \$2-3.5 million to cover any additional improvements made to the internally built statewide voter registration list and any additional maintenance costs which may arise.

--To be funded with Title I early payments, Title II requirements payments and State matching funds.

Provisional Voting and Voting Information Requirements:

--\$150,000 was initially allocated to create and develop enhancements to the free-access system, provide necessary training and outreach, and develop voting information.

--To be funded with Title II requirements payments and State matching funds.

Other Activities:

Ongoing assessment of polling place accessibility and ADA compliance:

--A significant portion of HAVA Title II, Section 261 funds totaling \$400,000 will continue to be expended to improve polling place accessibility. The expenditures will also include training for election officials and poll workers, along with providing information about polling place accessibility to people with disabilities.

Voter education and outreach activities:

---- \$150,000.00 in HAVA funding will be allocated to continue with voter education and outreach activities.

--To be funded with Title I requirements payments and State matching funds.

Election official and poll worker training initiatives:

-- \$150,000, in HAVA funding will be allocated to continue training both election officials and poll workers.

--To be funded with both Title I and Title II requirements payments and State matching funds.

Additional technology and elections personnel in the office of the Secretary of State:
-- Amount to be determined based upon adequate funding.

G. Maintenance of Effort

Section 254(a)(7) requires a description of how the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the state for the fiscal year ending prior to November 2000.

Consistent with the maintenance of effort requirement contained in HAVA, in using any requirements payments, the State will maintain expenditures for activities funded by the payment at a level equal to or greater than the level of such expenditures maintained by the State for its fiscal year that ended prior to November 2000. The fiscal year that ended prior to November 2000 was FY year 2000, which began July 1, 1999, and ended on June 30, 2000. The total expenditures attributable to the Secretary of State's Elections Division for FY 2000 were \$151,207. The total expenditures attributable to the Elections Division increased in the State's fiscal years 2001, 2002, 2003, 2004, 2005, 2006 and 2007 and are anticipated to increase in FY 08.

The Secretary of State's budget for FY 2005 for the Elections Division was approximately \$410,000, and the budget in FY 06 was approximately \$299,000. The proposed budget for FY 07 is approximately \$590,000. The State Legislature has the ultimate power to approve these funding levels and has been apprised of the maintenance of effort requirements contained in HAVA. In the event the additional funding request is denied, the projected state funded expenses for FY 2006 will still exceed \$250,000.

H. Performance Goals and Measures

Section 254(a)(8) requires a description of how the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

The Secretary of State, in collaboration with local election officials, has met all critical performance goals and will continue to institute processes to measure additional progress in relation to these time-specific goals, as well as ongoing performance goals. This process will provide local election officials with structure and continued measurable targets for accomplishment. In addition, each local

election official will be required to report the progress of such local jurisdiction in meeting the performance goals and measures to the Secretary of State within 60 days following every general election held in the State.

Performance Goals

The State's primary goal is to achieve election reform and compliance with HAVA through the successful implementation of the programs outlined in the State Plan. In addition, having met HAVA compliance, the State will continue to create additional goals to continue Nevada's leadership role in election reform. Following is a description of the timetable for meeting each element of the Plan and the title of the official responsible for ensuring each such element is met:

<u>Element</u>	<u>State/County Official</u>	<u>Timetable</u>
Voting Systems	State Elections Deputy County Election Official	By September 2004
Voter Registration	State Elections Deputy County Election Official	Pre 2006 election cycle
Provisional Voting	State Elections Deputy County Election Official	Ongoing
Additional Personnel	State Elections Deputy	Ongoing (as needed)
Polling Place Accessibility	State Elections Deputy County Election Official	Pre 2006 election cycle, ongoing
Voter Education/Outreach	State Elections Deputy County Election Official	Ongoing
Poll Worker Training	State Elections Deputy County Election Official	Ongoing
Complaint Procedures	Deputy Attorney General	Adopted/Ongoing

- 17 -

Performance Measures

The State will use the following criteria to measure performance:

- voter turnout statistics
- functionality of voting systems
- accuracy of the data contained in the statewide voter registration list
- voter satisfaction with equipment (accomplished through surveys or other strategies)
- complaints against poll workers
- complaints received versus complaints resolved
- ADA compliance

These criteria were developed through the State Planning Process. The State is further committed to exploring the use of additional performance measures.

I. State-Based Administrative Complaint Procedure

Section 234(a)(9) requires a description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402. This state-based administrative complaint procedure must be in effect prior to certification of the State Plan, but no later than January 1, 2004; no waiver of the procedure is permitted.

The Advisory Committee has developed and adopted a procedure for complaints that meets HAVA requirements⁶. The Secretary of State adopted regulations to place these procedures into the State Administrative Code prior to submission of the FY 03-04 State Plan.

In summary, the procedure provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of HAVA, including a violation that has occurred, is occurring, or is anticipated to occur. Any person who believes a violation of any provision of Title II has occurred may file a complaint with the Secretary of State. The complaint must be written, signed, sworn to and notarized. At the request of the complainant, the Secretary of State will conduct a hearing on the record that will be conducted in accordance with HAVA requirements. The Secretary of State will provide the appropriate remedy and will provide a final determination within the timeframes specified in HAVA. The procedure provides for alternative dispute resolution if the Secretary of State does not make a timely final determination. Finally, the procedure requires the Secretary of State to make reasonable accommodations to assist persons in need of special assistance for utilizing the complaint procedure.

⁶ See Appendix A for copy of Administrative Complaint Procedure.

- 18 -

J. Effect of Title I Payments

If the State received payment under Title I, Section 254(a)(10) requires a description of how such payment will affect the activities proposed by the State to be carried out under the plan, including the amount of funds available for such activities.

On April 30, 2003, the State received \$5 million in Title I payments. The State has expended a portion of these funds for the voting system upgrades described in this State Plan. In addition, the State has expended these funds for ancillary devices, equipment and services associated with the voting systems contract and for travel and training activities necessary for implementing the new voting systems and the statewide voter registration system. Finally, the State has contracted to expend a portion of these funds for voter outreach activities, including involvement in the *Easy Voter Project* described in this Plan. The effect this funding will have on the activities proposed by the State in this Plan has been previously discussed throughout this Plan. Section 6 of this Plan specifically sets forth the State's intended additional uses for these funds.

K. Ongoing Management of the State Plan

Section 254(a)(11) requires a description of how the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The State intends to use the State Plan as the foundation for its goals in achieving election reform and compliance with HAVA. To achieve these goals, the Secretary of State has appointed an internal committee in his office to be overseen by the Deputy Secretary for Elections. This committee is responsible for conducting ongoing management of the State Plan. To carry out this function, the committee is required to hold meetings as deemed necessary to address HAVA related issues and keep current on the State's progress toward implementation of HAVA. The Deputy Secretary for Elections, or a designee, is to report to the State Advisory Committee the activities involved with the ongoing management of the Plan. The Secretary of State will continue to hold an annual meeting of the State Advisory Committee to review and update the State Plan, as necessary. The Secretary of State may also convene the State Advisory Committee at other times during the year as deemed advisable.

L. Changes to the State Plan from the Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, Section 254(a)(12) requires a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Due to the delayed formation of the EAC, the State's FY 03-04 State Plan's publication in the *Federal Register* was not completed until May 2004. Because of this holdup in publication, the State did not fully implement all of its FY 2003-04 plan in that plan year and continued to progress toward implementation through the FY 2004-05 and current plan year. This FY 2005-06 State Plan incorporates the same basic theme as the FY 03-04 and the FY 04-05 plans, and generally reports upon the procedures implemented by the State in carrying out the previous plan, such as upgrades to voting systems throughout the State and specific voter education and outreach efforts undertaken by the State. The other key changes between the FY 04-05 and FY 05-06 plan center around federal and state funding changes, progress on implementation activities and development of new projects, and maintenance of efforts updates.

This current FY 06-07 State Plan updates the status of State performance goals and the various HAVA compliant projects, such as statewide voter registration. Also provided is a general update of achievements in the areas of training, accessibility, statewide voter registration, voter machine upkeep and maintenance, and outreach. This current plan further takes into account the Title II, Section 261 funds which had not been drawn prior to 2006.

M. Committee Description and Development of State Plan

Section 254(a)(13) requires a description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The State's Advisory Committee consists of thirteen (13) members including the Secretary of State, local election officials from the two largest counties in the State and a variety of other election stakeholders.⁷ The Secretary of State selected the committee membership and either he or his Chief Deputy acted as Chairman for each meeting held.

Members of the State Advisory Committee and their qualifications are as follows:

Thomas Allman, Rights Advocate/Project Coordinator, Nevada Disability Advocacy & Law
LaYonne Brooks, Executive Director, High Sierra Industries
Dan Burk, Washoe County Registrar of Voters
Jan Gilbert, N. NV Coordinator, Progressive Leadership Alliance of NV (PLAN)

⁷ See Appendix B for Advisory Committee biographies and party affiliations.

APPENDIX A

Administrative Complaint Procedure
NAC 293.500 – 293.560, inclusive

Barbara Griffin, Douglas County Clerk

Ross Miller, Secretary of State
Ned Reed, Senior Deputy Attorney General (Appointee of Attorney General Cortez Masto)
Joshua J. Hicks, Legal Counsel to Governor (Appointee of Governor Jim Gibbons)
Ruben Kihuen, State Assemblyman, District 11
Larry Lomax, Clark County Registrar of Voters
Nicole Lamboley, Chief Deputy Secretary of State
Tony F. Sanchez, III, Esq., President, Latin Chamber of Commerce
Dr. Richard Siegel, President, American Civil Liberties Union of Nevada

Advisory Committee Staff in the Office of the Secretary of State and their qualifications are as follows:

Matthew M. Griffin, Esq., Deputy Secretary of State for Elections
Rajinder Rai-Nielsen, Esq., State HAVA Coordinator
Lindy Johnson, Committee Secretary, Administrative Assistant

To develop this FY 06-07 State Plan, the State Advisory Committee members, with the assistance of Staff, individually proposed revisions necessary to update the plan to reflect current circumstances. The FY 06-07 State Plan was made available for public inspection and comment for a 31-day period prior to submission of the plan to the Committee. The Secretary of State published the draft plan and notice of the comment period on April 6, 2007 in his offices, on his website, in the Nevada State Library, at all main county libraries throughout the State, all city and county clerks' offices, and at various other public agencies throughout the State. The notice made it clear that the Secretary of State would accept public comment in the form of e-mails, letters, faxes, etc. through April 11, 2007. Committee meetings were publicly held and noticed in accordance with Nevada's Open Meeting Law.⁸ The committee met on April 11, 2007, to review the draft incorporating the proposed revisions and to consider comments submitted by the public. The FY 06-07 State Plan was formally adopted April 25, 2007.⁹

⁸ Chapter 241 of the Nevada Revised Statutes.

⁹ See Appendix C for corresponding meeting agenda.

COMPLAINTS ALLEGING VIOLATION OF TITLE III OF HELP AMERICA VOTE ACT OF 2002 (need to update)

NAC 293.500 Definitions. (NRS 293.124, 293.4685) As used in NAC 293.500 to 293.560, inclusive, unless the context otherwise requires, the words and terms defined in NAC 293.505 and 293.510 have the meanings ascribed to them in those sections.
(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.505 "Complainant" defined. (NRS 293.124, 293.4685) "Complainant" means a person who files a complaint with the Secretary of State pursuant to NAC 293.515.
(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.510 "Respondent" defined. (NRS 293.124, 293.4685) "Respondent" means a state or local election official against whom a complaint is filed pursuant to NAC 293.515.
(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.515 Filing; form; delivery of copy to respondents. (NRS 293.124, 293.4685)

1. A person who believes that a violation of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur may file a complaint with the Office of the Secretary of State.

2. A complaint filed pursuant to subsection 1 must:

(a) Be in writing, notarized and signed and sworn by the complainant. If the Secretary of State prescribes a form for the complaint, the complaint must be filed on that form.
(b) Provide the name of each respondent and a concise statement of the facts of the alleged violation of 42 U.S.C. §§ 15481 to 15502, inclusive.

(c) Be filed in the Office of the Secretary of State in Carson City:

(1) Not later than 60 days after the occurrence of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, is about to occur; or

(2) Not later than 60 days after the complainant knew or, with the exercise of reasonable diligence, should have known of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, is about to occur, whichever is later.

3. The complainant shall mail or deliver a copy of the complaint to each respondent not later than the date on which the complaint is filed.
(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.520 Review; dismissal and refiling. (NRS 293.124, 293.4685)

1. The Secretary of State or his designee will review each complaint filed pursuant to NAC 293.515 to determine whether the complaint:

(a) States a violation of 42 U.S.C. §§ 15481 to 15502, inclusive; and

(b) Complies with the requirements of NAC 293.515.

2. If a complaint fails to state a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, or does not comply with the requirements of NAC 293.515, the complaint will be dismissed without further action and notice of the dismissal will be provided to the complainant.

3. Except as otherwise provided in subsection 4, a complainant whose complaint has been dismissed pursuant to this section may refile the complaint within the time set forth in paragraph (c) of subsection 2 of NAC 293.515.

4. A complainant whose complaint has been dismissed for failure to state a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, may refile the complaint only one time.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.525 Consolidation; official record. (NRS 293.124, 293.4685)

1. The Secretary of State may consolidate complaints filed pursuant to NAC 293.515 if the complaints relate to the same action or event or raise a common question of law or fact. The Secretary of State will notify all interested parties if two or more complaints have been consolidated.

2. The Secretary of State will compile and maintain an official record in connection with each complaint filed pursuant to NAC 293.515.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.530 Hearing; Request; date; notice; nature. (NRS 293.124, 293.4685)

1. A complainant may request in a complaint filed pursuant to NAC 293.515 that the Secretary of State hold a hearing on the complaint.

2. If a complainant requests a hearing in accordance with subsection 1, the Secretary of State or his designee will conduct a hearing on the complaint, unless the complaint is dismissed pursuant to NAC 293.520. The hearing will be held not sooner than 10 days but not later than 30 days after a request for a hearing has been made in accordance with subsection 1.

3. The Secretary of State will provide notice of the date, time and place of the hearing at least 10 business days before the hearing:

(a) By mailing a copy of the notice to the complainant, each respondent and any interested person who has requested in writing to be advised of the hearing;

(b) By posting a copy of the notice in a prominent place at the Office of the Secretary of State that is available to the general public; and

(c) By posting a copy of the notice on the website of the Secretary of State.

4. A hearing held pursuant to this section is not a contested case for the purposes of chapter 233B of NRS.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.535 Hearing; Hearing officer; procedure. (NRS 293.124, 293.4685)

1. Except as otherwise provided in this subsection, the Secretary of State or his designee will act as the hearing officer for a hearing held pursuant to NAC 293.530. If the Secretary of State is a respondent in the complaint, the Secretary of State will appoint a designee who is an independent professionally qualified person to act as the hearing officer.

2. The complainant, any respondent and any interested member of the public may appear at the hearing, in person or by teleconference, and testify or present relevant evidence in connection with the complaint. All testimony to be considered in the hearing will be taken under oath. The hearing officer may limit the testimony of witnesses, if necessary, to ensure that all interested persons may present their views. The hearing officer may recess the hearing and reconvene the hearing at a later date, time and place, which must be announced publicly at the hearing.

3. A complainant, respondent or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.

4. Cross-examination at the hearing will be permitted only at the discretion of the hearing officer, but a person may testify or present evidence at the hearing to contradict any other testimony or evidence presented at the hearing. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence presented subsequently, that person is entitled to be heard again only at the discretion of the hearing officer, who may authorize the person to provide an oral or written response, or both.

5. The hearing will be recorded on audiotape by and at the expense of the Office of the Secretary of State. The recording will not be transcribed, but the Secretary of State, a local board of elections or any party to the hearing may obtain a transcript of the hearing at its own expense. If a board or party obtains a transcript of a hearing, the board or party shall file a copy of the transcript as part of the record and any other interested party may examine the copy of the transcript on record.

6. Any party to the proceeding may file a written brief or memorandum with the hearing officer not later than 5 business days after the conclusion of the hearing. The party shall serve a copy of any such written brief or memorandum on all other parties not later than the time the written brief or memorandum is filed with the hearing officer. No responsive or reply memorandum to such a brief or memorandum will be accepted without the specific authorization of the hearing officer.

7. At the conclusion of the hearing and after any brief or memorandum has been filed pursuant to subsection 6, the hearing officer will determine whether, by a preponderance of the evidence, a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.540 Review and determination when no hearing requested. (NRS 293.124, 293.4685) If a complainant has not requested a hearing on a complaint filed pursuant to NAC 293.515, the Secretary of State or his designee will review the complaint and any accompanying record and determine whether, by a preponderance of the evidence, a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur. If the Secretary of State is a respondent in the complaint, the Secretary of State will appoint an independent professionally qualified person to act as his designee pursuant to this section.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.545 Remedial action or dismissal; issuance of final determination. (NRS 293.124, 293.4685)

1. If the Secretary of State or his designee, whether acting as a hearing officer pursuant to NAC 293.535 or reviewing a complaint pursuant to NAC 293.540, determines that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur, the Secretary of State or his designee will provide the appropriate remedy, including, without limitation, an order to a respondent commanding the respondent to take specified action or prohibiting the respondent from taking specified action, with respect to a past or future election. Such a remedy will not include an award of money damages or attorney's fees.

2. If the Secretary of State or his designee, whether acting as a hearing officer pursuant to NAC 293.535 or reviewing a complaint pursuant to NAC 293.540, determines that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has not occurred, is not occurring or is not about to occur, the Secretary of State or his designee will dismiss the complaint.

3. The Secretary of State or his designee will issue a final determination on a complaint made pursuant to subsection 1 or 2 in writing. The final determination will include an explanation of the reasons for the determination and, if applicable, the remedy selected.

4. Except as otherwise provided in NAC 293.550, a final determination of the Secretary of State or his designee on a complaint will be issued within 90 days after the complaint is filed, unless the complainant consents in writing to an extension. The final determination will be:

- (a) Mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination;
 - (b) Posted on the website of the Secretary of State; and
 - (c) Made available by the Secretary of State, upon request, to any interested person.
- (Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.550 Proceedings for alternative dispute resolution. (NRS 293.124, 293.4685)

1. If the Secretary of State or his designee does not render a final determination on a complaint filed pursuant to NAC 293.515 within 90 days after the complaint is filed, or within any extension period to which the complainant has consented, the Secretary of State will, on or before the fifth business day after the final determination was due to be issued, initiate proceedings for alternative dispute resolution by:

(a) Retaining an independent, professionally qualified person to act as an arbitrator, if the complainant consents in writing to his appointment as the arbitrator at the time of his appointment; or

(b) Designating in writing to the complainant the name of an arbitrator to serve on an arbitration panel to resolve the complaint. If proceedings for alternative dispute resolution are initiated pursuant to this paragraph, not later than 3 business days after the complainant receives such a designation from the Secretary of State, the complainant shall designate in writing to the Secretary of State the name of a second arbitrator. Not

APPENDIX B

Advisory Committee Biographies and Affiliations

later than 3 business days after such a designation by the complainant, the two arbitrators so designated shall select a third arbitrator to complete the panel.

2. The arbitrator or arbitration panel may review the record compiled in connection with the complaint, including, without limitation, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any additional testimony or evidence unless the arbitrator or arbitration panel requests that the parties present additional briefs or memoranda.

3. The arbitrator, or arbitration panel by a majority vote, shall determine the appropriate resolution of the complaint.

4. The arbitrator or arbitration panel shall issue a written resolution of the complaint not later than 60 days after the final determination of the Secretary of State was due pursuant to NAC 293.545. This period for issuing a written resolution will not be extended.

5. The final resolution of the arbitrator or arbitration panel will be:

(a) Mailed to the complainant, each respondent and any other person who requested in writing to be advised of the final resolution;

(b) Posted on the website of the Secretary of State; and

(c) Made available by the Secretary of State, upon request, to any interested person.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.555 Final determination or resolution not subject to appeal. (NRS 293.124, 293.4685) A final determination of the Secretary of State or his designee pursuant to NAC 293.535, 293.540 or 293.545 or the final resolution of an arbitrator or arbitration panel pursuant to NAC 293.550 is not subject to appeal in any state or federal court.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.560 Assistance in using procedures. (NRS 293.124, 293.4685) The Secretary of State will make reasonable accommodations to assist persons in using the procedures set forth in NAC 293.500 to 293.560, inclusive.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

BIOGRAPHY

NAME	TITLE - ORGANIZATION	BIOGRAPHY
African, Thomas	Rights Advocate/Projects Coordinator, NADOLC	Tom has been with Nevada Disability Advocacy & Law Center (NADALC) in Las Vegas as a Rights Advocate/Project Coordinator for 1 ½ years where he has been the HAVA, IDEA, ADA, CVRA, and CAAVA Case Manager. He manages all cases involving HAVA, IDEA, ADA, CVRA, and CAAVA to ensure full compliance with the law. He also provides training to ensure full compliance to secure full access to the electoral process so that people with disabilities can register to vote and vote with complete independence and privacy. His duties include conducting voters rights outreach meetings to disability organizations, monitoring through site visits ADA compliance and ensuring that all individuals are able to participate in the electoral process. He also provides training to election officials regarding the Americans with Disabilities Act (ADA). He also provides training to election officials regarding the Americans with Disabilities Act (ADA). He also provides training to election officials regarding the Americans with Disabilities Act (ADA).
Brooks, Layonne	Executive Director, High Sierra Industries (HSI)	Brooks holds a Bachelor's and Master's in Organizational Management and Development. First Hispanic Female appointed to serve as a City of Reno Planning Commission member. She was previously employed by the State of Nevada as a Human Resources Specialist. She is currently employed by High Sierra Industries for an international consulting firm for 2 years and spent 14 years with a computer manufacturing company. She then owned her own training & development company specializing in improving performance through computer upgrades.
Burk, Dan	Registrar of Voters, Washoe County	B.A. in Public Administration, U of North Texas (1970); M.A. in History, U of Northern Colorado (1977). Worked over 20 years in all aspects of public administration. Currently working for Washoe County as Registrar of Voters. Served on the Board of Directors for the Nevada Committee for the Implementation of the ADA (American Disabilities Act) regarding Oregon's standards for handicapped access to polling stations.
Gilbert, Jan	Northern Nevada Coordinator, PLAN	B.A. Economics from UCLA. She co-founded the Progressive Legislative Alliance of Nevada (PLAN). Prior to working on economic and environmental justice issues at the state legislature for 24 years, she began advocacy work for the League of Women Voters. She has received numerous awards for her service to the community. She is currently serving as the Northern Nevada Coordinator for the League of Women Voters Committee to Aid Abused Women. She also served on the Department of Human Resources Block Grant Commission for 7 years and was Chairman for two of those years.
Griffin, Barbara	County Clerk, Douglas County	Barbara was first elected Clerk-Treasurer in 1986 but has worked in the Douglas County Clerk-Treasurers office since November of 1973. Her key interests and commitment is the election process and the advancements currently being taken to allow voters easy accessibility to vote.
Appointments Hook, Joshua	General Counsel to the Governor	Joshua Hicks joined the Governor's office as General Counsel in January 2007. He previously served as a Senior Deputy Attorney General in the Nevada Department of Justice, representing the Secretary of State, the Nevada Tax Commission and the Nevada Department of Taxation. While at the Nevada Department of Justice, Josh applied cases in front of various Nevada District Courts, the Nevada Supreme Court, the United States District Court for the District of Nevada, the Ninth Circuit Court of Appeals, and the United States Court of Appeals for the Ninth Circuit. He was the lead attorney on eight published cases before the United States District Court for the District of Nevada. Josh has also served as a law clerk to both the Nevada Supreme Court and the United States District Court for the District of Nevada. He has received his Bachelor of Arts degree from Santa Clara University in 1995 and his Juris Doctorate from Santa Clara University in 1998. He has been admitted to practice law in Nevada, California, and the United States. He is also a member of the American Bar Association and the Nevada State Bar. He is married to KC Hicks, who works as a registered nurse in the oncology department at Biocom Health.

NAME	TITLE - ORGANIZATION	BIOGRAPHY
Khuon, Ruben	Assistant Clerk District 11	Born: 1980 – Guadalupe, Jalisco, Mexico. Educated: Rancho High School, Diploma; University of Nevada, Las Vegas, Bachelor's Degree in Political Science (1997); University of Nevada, Las Vegas, Master's Degree in Public Administration (2006). Hobbies/Sports: Horses, Reading, Traveling, mountain view, soccer, weight lifting and aerobically moving. LEGISLATIVE SERVICE: Nevada Assembly, 2007 (first elected November 2006). Other Positions Held: Deputy Attorney General, Clark County Board of Commissioners, Clark County Community Development Advisory Committee Member, Norm, Las Vegas Citizens Advisory Committee, Volunteer, Professionals and Youth Building a Commitment (P.Y.B.C.), Mentor, Latin Chamber of Commerce, Member, Nevada Hispanic Democratic Club, U.S. House of Representatives, Nevada State Bar Association, Nevada State Bar. PERSONAL AND PROFESSIONAL ACHIEVEMENTS: Former Regional Representative to United States Senator Harry Reid; named DASHAPAC National Young Professional Award Winner by the American Society of Professional Managers; awarded by Senator Hillary Romney in 2008; John F. Kennedy Award, Nevada State Democratic Party, 2008; Mexican Legend Award, Julio Cesar Chavez Educational Foundation, 2008; Community Advocate of the Year, Familia Unidas de Nevada, 2005-2009; President, Nevada Hispanic Democratic Club, 2006-2007; Vice President, Nevada Hispanic Democratic Club, 2007-2008; Chairman, Nevada Hispanic Democratic Club, 2008-2009; President, 2008 Nevada Hispanic Soccer League of the Year, 1997-1998; works as Field Organizer for the Democratic National Committee for political campaigns in Virginia, Texas, and Florida.
Lamberty, Nicole	Chief Deputy Secretary of State	Nicole Lamberty, Chief Deputy Secretary of State, was appointed by Secretary Ross Miller in January 2007. Ms. Lamberty has spent the past 18 years working in different capacities in the area of public and government affairs, about half of which have been spent working in the public sector. She has worked for the Governor of Nevada, the Mayor of Reno, the City of Reno and was in charge of its city's state, federal and intergovernmental lobbying efforts. Her career also includes positions as Senior Regional Manager for the National Association of Manufacturers, Deputy Chief of Staff to former Nevada Governor Bob Beaman and Production Manager for the Herman Communications Center. Ms. Lamberty received her Bachelor's degree from the University of Nevada and her Masters degree in Public Policy from Georgetown University.
Lomas, Larry	Registrar of Voters, Clark County	B.A. in English Literature, Stanford University (1987) and Master of Business Administration from University of North Dakota (1997). He was a J.E. Smith Fellow at Washington D.C. and had the opportunity to work with legislators and staff members on a wide array of issues. He began his career as Assistant Registrar for Registrations in January of 1988 overseeing the training of 7,000 election board officers, processing of petitions and election night logistics and was appointed Registrar of Voters with full responsibility for the Clark County Election Department in March of 1999.
Miller, Ross	Secretary of State	Ross Miller was sworn into office on January 1st, 2007. Ross is a third-generation Nevadan who previously served as a Deputy District Attorney in Clark County, Nevada. Ross holds a doctorate in law (J.D.) and a Masters in Business Administration (M.B.A.) from Loyola Marymount University in Los Angeles. He completed his undergraduate studies at Stanford University in California, earning a Bachelor of Arts major in History and Government and a minor in Political Sciences. While at Stanford, Ross served as a White House intern, where he worked under then-Cabinet Liaison Thorpood Marshall.
Appelbaum, David Noel	Senior Deputy Attorney General	Edward T. "Noel" Reed is a fifth- and fifth-generation Nevadan, currently serving as a Senior Deputy Attorney General representing the Nevada Secretary of State. He grew up in Reno, and graduated from Tulane University in 1976 with a B.A. in Philosophy, and after graduation served 4 years active military as a U.S. Army officer at Fort Hood, Texas. He attended McGeorge School of Law in Sacramento, California, graduating in 1980, and practiced law in Reno from 1980 to 1990. He then moved to Carson City, NV, where he represented clients in the Third Judicial District Court in Fallon, Nevada. Deputy Attorney General Humboldt County, Nevada, from 1987 to 1990, private practice in Reno from 1990 to 1992, and since 1992 he has been a Deputy Attorney General in Carson City.

NAME	TITLE ORGANIZATION	BIOGRAPHY
Santana, Terry F., III	Attorney, Jones Vargas	B.A. UNLV (1988), Arizona State University College of Law (J.D. 1991). Served as Assistant Legislative Counsel to U.S. Senator Richard H. Bryan (1992-1995), Assistant General Counsel for the NV Public Utilities Commission (1995-1998) and Executive Assistant to Governor Bob Miller (1998-1999). President, Union Chamber of Commerce 2002 and 2003. Trades, Las Vegas Chamber of Commerce (2001-2004), Clark County Board of Supervisors (2004-2006). Served as legislative and policy advisor to Nevada's Governor and served as legislative counsel in Legislative and Government Relations, Utility and Transportation Law, Administrative Law, Planning and Zoning and Civil Litigation.
Siegel, Dr. Richard	President, ACLU of Nevada	Political Science Professor Emeritus at the University of Nevada, Reno since 1995. His academic specialties are foreign policy and international human rights. He served on the National Board of Directors of the American Civil Liberties Union from 1975-1988 and currently is President of the ACLU of Nevada. He is also active with the Nevada Committee on Foreign Relations, and the Progressive Leadership Alliance of Nevada.

APPENDIX C

Agenda for April 11, 2007 Advisory Committee Meeting

NEVADA STATE ADVISORY COMMITTEE

A G E N D A

Meeting: **Wednesday, April 11, 2007 at 1:30 p.m.**

Room 105
Blasdel Building
209 E. Musser Street
Carson City, Nevada

Room: To Be Announced
Grant Sawyer Building (via video)
555 East Washington Street
Las Vegas, Nevada

- I. Introduction and Welcome
Ross Miller, Secretary of State
- II. Update on Status of HAVA Compliance and State/Federal Funding Issues
- III. First Review of Proposed HAVA State Plan for 2006-2007
- IV. Comments of Committee Members
- V. Public Comment
- VI. Adjournment

Notice of this meeting has been posted at the following locations:

Offices of the 17 County Clerks/Registrar of Voters
The Capitol Building, 101 North Carson Street, Carson City, Nevada
Grant Sawyer State Office Building, 555 East Washington Street, Las Vegas, Nevada
The State Legislative Building, 401 South Carson Street, Carson City, Nevada
The State Library and Archives, 100 North Stewart Street, Carson City, Nevada

Notice of this meeting was posted on the following website:
<http://secretaryofstate.biz>

Posted April 6, 2007.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. Please notify the Elections Division at the Secretary of State's office by calling (775) 684-5705

APPENDIX D

Agenda for April 25, 2007 Advisory Committee Meeting

APPENDIX E

October 3, 2006 Batch Emergency Regulations

NEVADA STATE ADVISORY COMMITTEE

A G E N D A

Meeting: **Wednesday, April 25, 2007 at 1:30 p.m.**

Room 105	Suite 1400
Blasdel Building	Grant Sawyer Building (via video)
209 E. Musser Street	555 East Washington Street
Carson City, Nevada	Las Vegas, Nevada

- VII. Introduction and Welcome
Matthew M. Griffin, Deputy for Elections
- * II. Second Review of Proposed HAVA State Plan for 2006-2007
- VIII. Comments of Committee Members
- IX. Public Comment
- X. Adjournment

Items marked with '*' are items on which action may be taken

Notice of this meeting has been posted at the following locations:

Offices of the 17 County Clerks/Registrar of Voters
The Capitol Building, 101 North Carson Street, Carson City, Nevada
Grant Sawyer State Office Building, 555 East Washington Street, Las Vegas, Nevada
The State Legislative Building, 401 South Carson Street, Carson City, Nevada
The State Library and Archives, 100 North Stewart Street, Carson City, Nevada

Notice of this meeting was posted on the following website:
<http://secretaryofstate.biz>

Posted April 20, 2007

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. Please notify the Elections Division at the Secretary of State's office by calling (775) 684-5705

Written Statement of Emergency in Support of Emergency Regulations

The Nevada Secretary of State has determined that an emergency exists sufficient to warrant the enactment of emergency regulations pertaining to the statewide voter registration system required by the Help America Vote Act of 2002 (42 U.S.C. § 15301 et. seq.) ("HAVA") and NRS § 293.675. The reasons for the Secretary of State's determination are as follows:

- HAVA and NRS § 293.675 require the Secretary of State to establish and maintain an official statewide voter registration list. Prior to the enactment of HAVA and NRS § 293.675, official voter registration lists were maintained on a county by county basis.
- In 2004, the Secretary of State contracted with Covansys Corporation whereby Covansys Corporation was to develop a comprehensive and interactive statewide voter registration list and election management system. In early 2006, the Secretary of State was forced to terminate the contract with Covansys Corporation after it became apparent that development of the promised statewide voter registration list and election management system was significantly behind schedule and would not be ready for use in the 2006 primary and general election.
- The Secretary of State thereafter developed a comprehensive and interactive statewide voter registration list in only a few months using his own staff and resources. The statewide voter registration system was named NevVoter and is fully operational and ready for use in the 2006 general election.
- The emergency regulations set forth the procedures by which the statewide voter registration list is utilized and updated by state and county election officials. The procedures are necessary to clearly establish uniform rules by which the list is to be used by election officials throughout the State.

- 1 -

FOR EMERGENCY REGULATIONS ONLY Effective date <u>September 25, 2006</u> Expiration date <u>January 24, 2007</u>	 Secretary of State
--	---------------------------------------

SECRETARY OF STATE FILING DATA For Filing Administrative Regulations Agency <u>Secretary of State</u>	Date of Adoption by Agency: <u>September 25, 2006</u>
--	--

Classification: ☐ PROPOSED : ☒ ADOPTED BY AGENCY : X EMERGENCY

Brief description of action Update election regulations pertaining to the statewide voter registration list required by NRS 293.675 and 42 U.S.C. 15483. Specifically, these regulations set out the procedures by which the statewide voter registration list is maintained and utilized.

Authority citation other than 233B: NRS 293.124, 293.247, 293.468, 293.507, 293.523, and 293.524.

Notice dates: N/A
Adoption Hearing: N/A
Hearing dates: N/A
Adoption Hearing: N/A

The Secretary of State envisions that the emergency regulations will be enacted as permanent regulations after the 2006 general election. Due to the impending general election, the Secretary of State is currently without the time to undertake the process to enact permanent or temporary regulations for the statewide voter registration list.

September 25th, 2006.


DEAN HELLER
Secretary of State

I, Governor Kenny C. Guinn, endorse the Secretary of State Dean Heller's statement of emergency.

~~October~~
September 3, 2006.


KENNY C. GUINN
Governor

PROPOSED EMERGENCY REGULATION OF

THE SECRETARY OF STATE

LCB File No. _____

Effective: October 3, 2006

EXPLANATION – These regulations pertain to the statewide voter registration list required by NRS 293.675 and 42 U.S.C. 15483. Specifically, these regulations set out the procedures by which the statewide voter registration list is maintained and utilized.

EXPLANATION – Matter in italics is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: NRS 293.124; 293.675.

A REGULATION relating to elections and providing other matters properly relating thereto.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 29, inclusive, of this regulation.

Sec. 2. Purpose.

1. *The purpose of these emergency regulations is to establish standards and procedures for the processing, transmittal, and maintenance of voter registration records in a manner that conforms with the statewide voter registration list requirements set forth in the Help America Vote Act of 2002 (HAVA) (Pub. L. No. 107-252 (2002) 116 Stat. 1666, 42 U.S.C. § 15483) and NRS 293.675.*

2. *These emergency regulations apply to the Secretary of State and all elections officials within the State of Nevada responsible for the processing, transmittal, and maintenance of voter registration records in this state.*

Sec. 3. Statewide Voter Registration Database.

1. *The statewide voter registration list will be maintained in a single, official, uniform, centralized and interactive computerized database administered and maintained by the Secretary of State. The database shall be known as "NewVoter."*

2. *NewVoter will contain the official and exclusive voter registration list to be used for the conduct of all state and federal elections in Nevada. NewVoter shall contain the name and pertinent registration information of every registered voter in Nevada.*

3. Registration information held solely in a county or local database is not considered part of NevVoter unless and until that information is electronically submitted to NevVoter as prescribed by regulation.

4. Each county or local election official must maintain interactive and compatible software and protocols that allow a daily transfer of required registration information from County Election Management Systems to NevVoter.

Sec. 4. Definitions.

As used in this Chapter, the following words have the following definitions:

1. "Active voter" means any registered voter that is legally entitled to vote.
2. "Business day" means any calendar day except Saturday and Sunday or a legal holiday pursuant to Nevada law.
3. "Canceled" means the status of a voter whose registration has been canceled pursuant to law and is therefore ineligible to vote, including but not limited to convicted felons who have not had their civil rights restored and persons who have been adjudicated mentally incompetent. A voter on canceled status is deemed not registered to vote.
4. "Critical Eligibility Criteria" means voter information that, if missing, renders a person ineligible to vote. Such information includes: name; residence address; date of birth, signature; Nevada driver's license number, last four digits of social security number; unique identification number or indication that person has signed the affidavit prescribed by NRS 293.507(5).
5. "County Elections Management System" means any computerized application and database that manages voter registration and related election functions for a county, other than NevVoter.
6. "County Elections Official" means a county clerk or registrar of voters who is responsible for collecting, maintaining and processing voter registration data within a jurisdiction in the State of Nevada.
7. "Data Exchange Standards" means the document prepared by the Secretary of State that sets forth the technical rules and requirements of NevVoter.
8. "Deficient registration record" means those records submitted to NevVoter that do not meet the NevVoter data exchange standards set forth in the "Data Exchange Standards Document".
9. "Federal election" means any general, special, primary, or runoff election for any Federal office (President, Vice President, U.S. Senator or U.S. Representative), including presidential preference primaries.

10. "Full load file" means an electronic data file containing all county voter registration records. Such a file must adhere to the format standards and requirements set forth in the "Data Exchange Standards Document".

11. "Inactive voter" means a voter whose mail is returned from the address at which he registered to vote and has not provided a County Elections Official with a new residence address. Inactive voters retain the legal right to vote, but need not be mailed election material.

12. "List maintenance notices" mean any notices mailed to a registered voter for the purpose of verifying registration information about a voter and to determine a voter's ongoing eligibility to vote.

13. "Nevada driver's license" means a voter's Nevada driver's license or state identification number that has been issued by the Nevada Department of Motor Vehicles.

14. "NevValidator" means the computer interface by which an election official can compare a Nevada driver's license number or social security number on a voter's registration record with the voter's Nevada driver's license number or social security number recorded with the Nevada Department of Motor Vehicles and the Social Security Administration.

15. "NevVoter Procedures Manual" means the most recent version of the procedures manual prepared by the Secretary of State for use by County Election Officials in the administration of NevVoter.

16. "Official Identification" means the forms of proof of residency and identity required by NRS 293.517.

17. "P-17" means the status for a voter who was under age 18 at the time his voter registration was submitted, but who will be age 18 or older by election day and who has met all other legal requirements to vote.

18. "Pending" means the status for a voter who has submitted a voter registration application that is missing certain information and includes:

- (a) "Active Pending" means a voter with certain registration information that needs to be confirmed but who has otherwise provided all critical eligibility criteria, or a voter who is required to provide some type of identification before voting but who is otherwise is still eligible to vote; and
- (b) "Fatal Pending" means a voter who is missing critical eligibility criteria and who is ineligible to vote until the missing information is submitted to the appropriate County Elections Official.

19. "Registration record" means electronically stored data associated with an individual registered voter.
20. "Social security number" means the last four digits of a voter's social security number issued by the Social Security Administration.
21. "Voided" means the status of a voter whose registration information has been declared void pursuant to law and is therefore ineligible to vote. A voter on voided status is deemed not registered to vote.
22. "Voting History" means the electronic record of each time a voter participates in a state or Federal election.

Sec. 5. Official Statewide Voter Registration List.

1. A County Elections Official shall submit the voter registration information required by the Data Exchange Standards Document for his respective county to NevVoter in accordance with Section 1.2.
2. The official statewide voter registration list for Federal elections shall be maintained in NevVoter. County Elections Officials must use the NevVoter list to determine eligibility to vote, issuance of ballots, whether or not to count a provisional ballot, and for any other election related functions.
3. For the purposes of establishing the official voter registration list for a Federal election and determining voter eligibility to vote in that election, including determining the validity of any provisional ballot cast in that election, the Secretary of State shall archive a copy of all eligible voters in NevVoter on the 19th day prior to an election. No changes may be made to the archived records prior to the upcoming election except under the following circumstances:

- (a) New or updated voter registration data received pursuant to the production and filing of a certified copy of a judgment of a court of competent jurisdiction directing registration to be made;
 - (b) Voter registration data regarding a voter determined by the Secretary of State or a County Elections Official to have been legally registered to vote as of the close of registration; or
 - (c) Voter registration data submitted pursuant to NRS 293.502.
4. County Election Officials shall continue to submit information to NevVoter after the 19th day prior to an election but any such records shall not be included in the archived list for the upcoming election created pursuant to subsection 3.

5. The Secretary of State shall prepare an official statewide voter registration list for the upcoming election for distribution to each County Election Official from the archived records created pursuant to subsection 3 and which must be consistent with pollbooks, rosters, master lists, and posting logs generated from a County Elections Management System for use in the upcoming election and for all other official election purposes.

6. No later than four calendar days before an election, the Secretary of State shall prepare a final official statewide voter registration list for use in the upcoming election which reflects the archived records created pursuant to subsection 3, along with any permitted changes to those records, for distribution to each County Election Official and which must be consistent with pollbooks, rosters, master lists and posting logs generated from a County Elections Management System for use on the upcoming election day and for all other official election purposes.

7. Within 45 days of the date the election is certified, a County Elections Official must submit a full load file which includes the Voting History for each voter in a County Election Management System. The Secretary of State shall thereafter update the list created pursuant to subsection 6 with the Voter History of all eligible voters, and the list shall then be archived and preserved.

Sec. 6. Status of Voters in NevVoter.

1. Every person in NevVoter shall be assigned a status that will be used to determine eligibility to vote in an election.
2. Persons with "active," "inactive" or "active pending" status shall be considered eligible to vote.
3. Persons with "p-17" status shall be considered eligible to vote in any election that takes place on or after that person's eighteenth birthday.
4. Persons with "void," "cancelled" or "fatal pending" status shall be considered ineligible to vote. A person with any such status may be placed on a different status up to the date of the election if a County Election Official determines pursuant to law that the person's status should be changed, and that change is thereafter made to a County Election Management System and submitted to NevVoter.

Sec. 7. Action Required.

1. A County Elections Official who receives a notice from the Secretary of State or another County Elections Official requesting a change to, or cancellation of, or verification of, a voter's registration record shall commence the requested action, including sending any required notices, within five (5) calendar days after receipt of the notice. A County Elections Official shall undertake all reasonable and legally required actions to research and comply with the requested action. A County Elections Official shall follow the procedures set forth in the NevVoter Procedures Manual.

Sec. 9. County Elections Management System Requirements.

Each elections official shall maintain a County Elections Management System that is able to submit information required by the Data Exchange Standards Document to NevVoter in accordance with Section 5 and Section 12. The Elections Management Systems shall also maintain and process all of the following information:

1. The voter's Nevada driver's license number, or for voters without a Nevada driver's license number, the last four digits of the voter's social security number, or for voters without a Nevada driver's license or a social security number, a record of whether the voter signed the affidavit required by NRS 293.507(5);
2. Whether the voter is an Active voter or whether critical eligibility criteria are missing;
3. Voting history of each registered voter in the county in which the elections official conducts and administers the elections;
4. Whether any voter failed to provide the requisite identification at the time his voter registration application was submitted;
5. Whether any voter registered by mail after January 1, 2006 and has not previously voted in a federal election;
6. The date and type for each mailing list maintenance notice sent to a voter, whether the voter to whom the list maintenance notice was directed responded to the notice, and any resulting updates to voter registration records;
7. For a voter who is listed in an Elections Management System as an inactive voter, the reason for the change in status to inactive voter and the date of the change;
8. For a voter who is listed in an Elections Management System as having a cancelled or void registration, the reason for the change in status to cancelled or void and the date of the change;
9. For a voter who is listed in an Elections Management System as having a pending registration, the reason for the pending status; and
10. The voter's unique identifier assigned pursuant to Section 29 of these regulations.

Sec. 10. Critically Deficient Registration Records.

A registration record submitted for the purposes of updating NevVoter that does not contain critical eligibility criteria shall be placed on fatal pending status. A County Elections Official shall take all reasonable steps to correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set

2. In the event that a County Elections Official is required by law to provide a notice to a voter in order to comply with the requested action, a County Elections Official must complete the requested action and submit a fully complete and updated full load file to NevVoter within thirty (30) calendar days of the date the County Elections Official receives the notice set forth in subsection 1 of this section.

3. In the event that a County Elections Official is not required by law to provide a notice to a voter in order to comply with the requested action, including but not limited to data entry errors, a County Elections Official must complete the requested action and submit a fully complete and updated full load file to NevVoter within ten (10) calendar days of the date the County Elections Official receives the notice set forth in subsection 1 of this section.

4. A County Elections Official shall give priority to all notices received from the Secretary of State pursuant to subsection 1 of this section which pertain to voter registration applications submitted on and after January 1, 2006.

5. A County Elections Official who receives a notice pursuant to subsection 1 of this section before the date of an election must expedite and complete the required action by the date of the election.

6. A County Elections Official may, in his discretion, resolve any data entry errors regardless of how or by whom such errors were generated.

Sec. 8. Data Exchange Standards.

1. The Secretary of State shall regularly check and identify records that are not compliant with the Data Exchange Standards Document. County Elections Officials must correct deficient registration records in accordance with Section 7.

2. Except as provided in Section 5, County Elections Officials must submit all registration records listed in the Data Exchange Standards Document to NevVoter. Such records shall adhere to proper format as noted in the Data Exchange Standards Document.

3. The Secretary of State shall transmit registration records, notices, and other information regarding NevVoter to County Elections Officials each night.

4. Each County Elections Official must access NevVoter each business day to obtain the most current voter registration information.

5. The Data Exchange Standards Document may be accessed by elections officials by contacting the Secretary of State's Office.

8. All voter registration applications submitted on and after January 1, 2006 and before an election must be processed by the date of the close of registration for that election.

Sec. 12. Full Load Files.

Except as provided in Section 5, County Elections Officials shall submit a full load file to NevVoter at least once every twenty-four hours.

Sec. 13. Updating NevVoter with New Registration Records and Changes to Existing Registration Records.

Except as provided in Section 5, whenever a County Elections Official receives a new registration record or a change to an existing registration record or makes a change to an existing registration record, whether in response to a notice from the Secretary of State or otherwise, the County Elections Official shall process such information and transmit a full load file to NevVoter in accordance with Section 12 on the same business day in which the changes are made to the County Elections Management System. Additionally, the County Elections Official shall keep a record of all changes made.

Sec. 14. State Death Records.

1. The Secretary of State shall compare all voter registration records with records of deceased persons from the Department of Health and Human Services each time the Department of Health and Human Services updates its records of deceased persons.
2. Whenever the Secretary of State receives new records of deceased persons from the Department of Health and Human Services the records shall be compared to the voter registration records in NevVoter to identify potential matches.
3. Upon identifying potential matches, the Secretary of State shall transmit notices of the potential matches to the appropriate County Elections Officials.
4. A County Elections Official shall correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations and the NevVoter Procedures Manual.
5. If a match is confirmed by the County Elections Official, the County Elections Management System shall be updated accordingly and a full load file shall be submitted to NevVoter in accordance with Section 7 and Section 12. If a match is confirmed, a County Elections Official may consider the notice sent by the Secretary of State pursuant to subsection 3 of this section to be a sufficient notice to cancel a registration pursuant to NRS 293.540(1).
6. If a match is not confirmed by the County Elections Official, the County Elections Official shall notify the Secretary of State and shall not list the voter as deceased in a County Elections Management System.

forth in Section 7 of these regulations, and at the latest, by the Wednesday before an election. A voter who is the subject of the critically deficient registration record shall not be deemed eligible to vote until the deficient registration record is corrected, resubmitted to and accepted by NevVoter. This Section shall not preclude the right of an individual to cast a provisional ballot.

Sec. 11. Verification of Nevada Driver's License Numbers on Registration Applications Submitted on or After January 1, 2006.

1. Each business day the Secretary of State shall compare driver's license numbers for each voter in NevVoter with the driver's license data file from the Nevada Department of Motor Vehicles in order to match Nevada driver's license numbers for all registered voters in NevVoter.
2. The Secretary of State shall immediately notify a County Elections Official of any voters who the Secretary of State determines have an unmatched driver's license number as the result of the process in subsection 1 of this section.
3. A County Elections Official noticed pursuant to subsection 2 of this section shall take the necessary steps to correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations and the NevVoter Procedures Manual.
4. If, as a result of the procedure set forth in subsection 3 of this section, a County Elections Official determines that an unmatched driver's license number was the result of a data entry error, the County Elections Official shall correct the error and submit a full load file to NevVoter.
5. If a County Elections Official is unable to obtain a driver's license number as the result of the procedure set forth in subsection 3 of this section, a voter shall not be allowed to cast any ballot except a provisional ballot unless the voter has provided his social security number or has signed the affidavit required by NRS 293.507(5). A voter who provides proof of his correct driver's license number at a polling place shall be considered to have provided the correct number as of the last day to register for that election. A County Elections Official shall enter the correct number into a County Elections System and submit a full load file to NevVoter at the next time a full load file is required by these regulations.
6. The provisions of this section apply only to voter registration applications submitted on and after January 1, 2006.
7. The provisions of this section do not apply if a voter has provided a social security number that has been verified pursuant to Section 17 or if a voter has signed the affidavit required by NRS 293.507(5).

Sec. 15. Felony Records.

1. Each County Elections Official shall compare all voter registration records with records of convicted felons received from any law enforcement agency or from the Secretary of State whenever the County Elections Official receives updated felony records.
2. Whenever the County Election Official receives new records of convicted felons the records shall be compared to the voter registration records in County Elections Management System to identify potential matches.
3. Upon identifying potential matches, the County Election Official shall determine whether the convicted felon has had his right to vote restored pursuant to NRS 213.090, 213.155, 213.157 or 293.540.
4. If a County Election Official determines that a convicted felon has had his right to vote restored, the County Election Management System shall be updated accordingly and a full load file shall be submitted to NevVoter in accordance with Section 7 and Section 12.
5. If a County Elections Official determines that a convicted felon has not had his right to vote restored, the County Elections Official shall cancel the registration of that person in a County Election Management System and a full load file shall be submitted to NevVoter in accordance with Section 7 and Section 12.

Sec. 16. Duplicate Registration Records.

1. Each business day, the Secretary of State shall conduct checks within the NevVoter statewide registration list to identify potential duplicate registrations for the same voter within that list, based on established rotating criteria. Upon identification of potential duplicate registration records, the Secretary of State shall automatically send an electronic notice to the county or counties with the record or records created prior to the latest date.
2. A County Elections Official noticed pursuant to subsection 1 of this section shall correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations and the NevVoter Procedures Manual.
3. If a County Election Official confirms that duplicate registrations exist, all but the most current registration shall be cancelled in a County Election Management System and a full load file shall be submitted to NevVoter in accordance with Section 7 and Section 12. If a duplicate registration is confirmed, a notice sent pursuant to subsection 1 of this section shall operate as a cancellation notice for purposes of NRS 293.527.

Sec. 17. Verification of Social Security Numbers Listed on Registration Applications Submitted on or After January 1, 2006.

1. Each business day, the Secretary of State shall compare social security numbers for each voter in NevVoter with the social security number data file from the Social Security Administration in order to match social security numbers for all registered voters in NevVoter.
2. The Secretary of State shall immediately notify a County Elections Official of any voters who the Secretary of State determines have an unmatched social security number as the result of the process in subsection 1 of this section.
3. A County Elections Official noticed pursuant to subsection 2 of this section shall take the necessary steps to correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations and the NevVoter Procedures Manual.
4. If, as a result of the procedure set forth in subsection 3 of this section, a County Elections Official determines that an unmatched social security number was the result of a data entry error, the County Elections Official shall correct the error and submit a full load file to NevVoter.
5. If a County Elections Official is unable to obtain a social security number as the result of the procedure set forth in subsection 3 of this section, a voter shall not be allowed to cast any ballot except a provisional ballot unless the voter has provided a Nevada driver's license number or has signed the affidavit required by NRS 293.507(5). A voter who provides proof of the correct social security number at a polling place shall be considered to have provided the correct number as of the last day to register for that election. A County Elections Official shall enter the correct number into a County Elections System and submit a full load file to NevVoter at the next time a full load file is required by these regulations.
6. The provisions of this section apply only to voter registration applications submitted on or after January 1, 2006.
7. The provisions of this section do not apply if a voter has provided a Nevada driver's license number that has been verified pursuant to Section 11 or if a voter has signed the affidavit required by NRS 293.507(5).
8. All voter registration applications submitted on and after January 1, 2006 and before an election must be processed by the date of the close of registration for that election.

Sec. 18. Voting History.

A County Elections Official shall submit to the Secretary of State the Voter History of all voters who cast a ballot in each statewide and Federal election by the 45th day after each election.

Sec. 19. Certification of Elections Official.

By submitting a full load file to NevVoter, a County Election Official certifies that the information contained therein is accurate, is in compliance with State and Federal law, and was submitted to NevVoter via secure file transfer protocols and in accordance with applicable law.

Sec. 20. Obligations of State and Local Election Officials.

Any voter registration information obtained by a County Elections Official shall be electronically entered into the County Elections Management System and into NevVoter on an expedited basis at the time the information is provided. The Secretary of State shall provide such support as may be required so County Election Officials are able to submit any voter registration information into NevVoter.

Sec. 21. Computerized List Maintenance and Conduct.

1. *A County Election Official is responsible for daily and routine upkeep and maintenance of all voter registration information in an Election Management System and any information that is submitted to NevVoter. Daily and routine upkeep must include efforts to identify and remove ineligible voters from the active voter rolls.*
2. *Routine upkeep and maintenance must be done in a manner that ensures that the name of each eligible and registered voter appears in NevVoter.*

Sec. 22. Pollbooks, Rosters, Master Lists and Posting Logs.

A County Elections Official may print pollbooks, rosters, master lists and posting logs for use at a polling place from an Election Management System so long as the voter information on the Election Management System is identical to the voter information maintained in NevVoter as of the date on which the roster will be used and so long as the County Elections Official has made all certifications required by these regulations.

Sec. 23. Reports.

A County Election Official shall submit to the Secretary of State all reports generated by a County Election Official pursuant to the Data Exchange Standards Document.

Sec. 24. Security.

1. *All transmissions of data to and from a County Elections Management System and NevVoter must be secured pursuant to the standards set forth in the Data Exchange Standards Document.*
2. *A County Elections Official shall ensure that any voter registration information that is deemed confidential by law is not disclosed to unauthorized personnel in any transmissions to and from NevVoter or NevValidator.*
3. *NevVoter and NevValidator may only be utilized by authorized personnel for election purposes. The Secretary of State may establish minimum criteria, including but not limited to background checks, for any such authorized personnel.*

Sec. 25. Confidential Address Program.

All voter records that are confidential pursuant to NRS 293.5002 shall be maintained in a manner ensuring these records are accessible only to authorized personnel and shall not be accessible to the public. Confidential voter records under this section shall be maintained only in a County Election Management System and shall not be submitted into NevVoter.

Sec. 26. Confidential Voter Addresses and Telephone Numbers.

A County Elections Management System shall note any voter who has requested that his address and telephone number be kept confidential pursuant to NRS 293.558. Such a notation shall be submitted to NevVoter as part of a full load file.

Sec. 27. County Elections Official Override.

A County Elections Official may override a notice from the Secretary of State or another County Elections Official sent pursuant to Sections 11, 14, 15, 16 or 17 if both the County Elections Official and the Secretary of State agree that the notice was sent in error. In the event of an override, the County Elections Official must maintain in a County Elections Management System a detailed description of the reason for the override, and must also note in the next full load file to NevVoter that an override was executed.

Sec. 28. Voters Who Are Exempt From Identification Requirements.

If a voter is exempt by law from a requirement to show identification at a polling place, such an exemption shall be noted in a County Elections Management System and shall be included in a submission of any full load file.

Sec. 29. Unique Identifier.

Each voter in NevVoter shall be assigned a unique identification number. The unique identification number shall be assigned pursuant to the procedures set forth in the Nevada Procedures Manual and the Data Exchange Standards.

**INFORMATIONAL STATEMENT FOR EMERGENCY REGULATIONS AS
REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE _____**

The following statement is submitted for the emergency regulations pertaining to Nevada Administrative Code chapter 293, in accordance with NRS 233B.066(2).

1. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

These emergency regulations do not have any economic effect on any business or on the public.

2. The estimated cost to the agency for enforcement of the proposed regulation.

No additional cost is anticipated to enforce these emergency regulations. These regulations clarify the procedures by which the statewide voter registration list is maintained. They are applicable only to state and local election officials.

3. A description of any regulations of the state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The emergency regulations do not duplicate or overlap any other state or government agency regulations.

4. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

The emergency regulations do not include provisions that are more stringent than a federal regulation regulating the same activity.

5. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

The emergency regulations do not establish a new fee or increase an existing fee.

APPENDIX F

July 14, 2006 Election Regulations

SECRETARY OF STATE FILING DATA JUL 14 2006 10:05 AM 1000		For Filing Administrative Regulations Agency <u>Secretary of State</u>	FOR EMERGENCY REGULATIONS ONLY Effective date _____ Expiration date _____
		Governor's signature _____	

Classification: ☐ PROPOSED : ☒ ADOPTED BY AGENCY ☐ EMERGENCY

Brief description of action: Update election regulations to comply with legislative changes and otherwise clarify various portions of Title 24 pertaining to provisional voting, voter identification, post-election audits, signature stamps, ballot and petition formats, election supplies and reimbursement, polling places, absentee ballots, recounts, election boards, voting conduct, identification numbers, restoration of civil rights, voter registrations, ballot security and equipment testing. These regulations also update campaign finance regulations to comply with legislative changes and otherwise clarify various of Title 24 including updates pertaining to contributions, expenses, reporting and civil penalties.

Authority citation other than 233B: NRS 293.124, 293.247, 293.323, 293.367, 293.507, 293.523, 293.534, 293B.105, 294A.380 and 295.055.

Notice dates: Workshop 1 - 2/15/06; Workshop 2 - 3/9/06; Date of Adoption by Agency: June 7, 2006

Adoption Hearing - 4/20/06

Hearing dates: Workshop 1 - 3/2/06; Workshop 2 - 3/28/06;

Adoption Hearing - 5/13/06; Adoption Hearing - 6/7/06

REVISED ADOPTED REGULATION OF

THE SECRETARY OF STATE

LCB File No. R072-06

Effective July 14, 2006

(Note: Section 41, pertaining to personal use of campaign funds, has been removed from this regulation and is now located in R164-06)

EXPLANATION – Matter in *italics* is new; matter in brackets [revised material] is material to be omitted.

AUTHORITY: §§1, 3, 5, 10, 11, 26, 33, 34, 40, and 47, NRS 293.124; §§2 and 25, NRS 293.124 and 293.507; §§4, 6 and 7, NRS 293.124 and 293.3081; §§8 and 9, 14-21, 35-37 and 39, NRS 293.124 and 293.247; §12, NRS 293.124 and 293.250; §13, NRS 293.124 and 293.565; §22, NRS 293.124, 293.247 and 293B.103; §§23 and 38, NRS 293.124, 293.247 and 293.3677; §24, NRS 293.124 and 293.524; §27, NRS 293.124 and 293.540; §§28-32, NRS 293.124 and 293.5235; §§41-44, NRS 293.124 and 294A.380; §45, NRS 293.124, 294A.380 and 294A.420; §46, NRS 293.124, 293.247 and 295.055.

A REGULATION relating to elections; providing an interpretation of the term “official identification” for the purposes of providing proof of residence and identity to register to vote; providing an interpretation of the term “current and valid photo identification” for the purposes of allowing certain voters to vote in certain elections; providing procedures for the casting and counting of provisional ballots; making various changes concerning the use of mechanical voting systems; making various changes concerning the observation of the conducting of elections; prohibiting the use of campaign contributions for the payment of any civil or criminal penalty; and providing other matters properly relating thereto.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *For the purposes of NRS 293.517:*

--1--

Revised Adopted Regulation R072-06

1. *The Secretary of State interprets “official identification” to mean a government-issued, or otherwise official, article or combination of articles, which establishes both the identity and residence of a person submitting an application to register to vote.*

2. *The following articles may be used to establish identity:*

(a) *A current and valid Nevada driver’s license;*

(b) *A current and valid identification card issued by the Department;*

(c) *A current and valid identification card issued by a branch of the Armed Forces of the United States;*

(d) *A current and valid identification card issued by a sheriff of a Nevada county to an employee as a condition of his employment by certain business enterprises;*

(e) *A current and valid identification card issued by an agency of the State of Nevada or political subdivision thereof or the United States, including, without limitation, a public school, college or university;*

(f) *A current and valid student identification card from an accredited private school, college or university;*

(g) *A current and valid United States passport;*

(h) *A current and valid insurance plan identification card which the county clerk determines, in his discretion, to be a reliable indication of the true name and identity of the person;*

(i) *A current and valid tribal identification card;*

(j) *A current and valid employee identification card which the county clerk determines, in his discretion, to be a reliable indication of the true name and identity of the person; or*

--2--

Revised Adopted Regulation R072-06

(k) Any other official article which the county clerk determines, in his discretion, to be a reliable indication of the true name and identity of the person, including, without limitation, an expired article listed in paragraphs (a) to (j), inclusive, if that article has been expired for 30 calendar days or less and is otherwise valid.

3. The following articles may be used to establish residency if the current residential address of the applicant, as indicated on the application to register to vote, is displayed on the article:

- (a) Any article set forth in subsection 2;
- (b) A current and valid utility bill, including, without limitation, a bill for electricity, gas, oil, water, sewer, septic, telephone, cellular telephone or cable television;
- (c) A current and valid bank or credit union statement;
- (d) A current and valid paycheck;
- (e) A current and valid income tax return;
- (f) A current and valid statement concerning the mortgage, rental or lease of a residence;
- (g) A current and valid motor vehicle registration;
- (h) A current and valid document issued by a governmental agency;
- (i) A current and valid property tax statement; or
- (j) Any other official article which the county clerk determines, in his discretion, to be a reliable indication of the true residential address of the person.

Sec. 3. 1. The Secretary of State interprets "current and valid photo identification," for purposes of NRS 293.2725, to mean an article described in subsection 2 of section 2 of this regulation, which also bears a legible photograph of the voter.

--3--

Revised Adopted Regulation R072-06

2. A document issued by an election official to a person in the course of the administration of voter registration or an election, including, without limitation, a voter registration card, sample ballot or receipt, does not satisfy the requirements of paragraph (a) or (b) of subsection 1 of NRS 293.2725.

3. The requirements set forth in NRS 293.2725 are in addition to the requirements set forth in subsection 1 of NRS 293.517 and do not affect the mandate that a voter who failed to show proof of both identity and residency at the time the voter registered to vote must show such identification before any ballot may be cast, except that a voter may cast a provisional ballot pursuant to the provisions of NRS 293.3081 to 293.3086, inclusive.

Sec. 4. 1. A person who completes the written affirmation required by NRS 293.3082 must be provided with a provisional ballot, regardless of whether the person is at the wrong polling place or precinct.

2. If an election official becomes aware that a person appearing to vote is a registered voter who has appeared to vote in the wrong polling place, the election official must inform the person of the location of the correct polling place for the person. The election official must also inform the person that although a provisional ballot may be cast at the incorrect precinct, the provisional ballot will not be counted unless the voter casts the provisional ballot at a polling place that is:

(a) Located in the congressional district in which the voter resides; or

(b) Not located in the congressional district in which the voter resides because the voter was directed to the incorrect polling place by an election official.

--4--

Revised Adopted Regulation R072-06

3. Except as otherwise provided in subsection 5, a county clerk shall count a provisional ballot if the county clerk determines that all the following requirements were satisfied by the date of the election for which the provisional ballot was cast:
 - (a) The voter was properly registered in the county where the provisional ballot was cast;
 - (b) The voter was a citizen of the United States;
 - (c) The voter was 18 years of age or older;
 - (d) The voter had continuously resided in the county where he registered to vote for at least 30 days;
 - (e) The voter had continuously resided in the precinct for which he registered to vote for at least 10 days;
 - (f) The voter had not been convicted of a felony or, if the voter had been convicted of a felony, the civil rights of the voter had been lawfully restored;
 - (g) The voter signed the required affirmation;
 - (h) If the provisional ballot was cast at a polling place, the voter did not cast any other ballot, including an absent or mail-in ballot;
 - (i) If the voter did not show proof of residence and identity at the time he registered to vote, that the voter provided official identification establishing residence and identity by 5 p.m. on the Friday following election day;
 - (j) The voter cast the provisional ballot at a polling place that was authorized to accept a ballot for the congressional district in which the voter resides; and
 - (k) The provisional ballot cast listed the correct federal offices for the congressional district in which the voter resides.
4. The county clerk shall, not earlier than 5 p.m. on the Friday immediately following election day, post and submit to the Secretary of State the totals of provisional votes counted. The county clerk shall post and submit the updated results in the same manner and form as election day results.
5. If a voter is directed by an election official to a polling place that was not located in the congressional district in which the voter resides, the voter may notify the county clerk not later than 5 p.m. on the day after election day. The county clerk must determine not later than 5 p.m. on the Friday immediately following election day whether the voter was directed to an incorrect polling place by an election official. If the county clerk determines that the voter satisfies the requirements of paragraphs (a) to (i), inclusive, of subsection 3 and was directed by an election official to an incorrect polling place not located in the congressional district in which the voter resides, the county clerk shall count the votes cast by the voter for the Office of President of the United States, the Office of Vice President of the United States and the Office of United States Senator.
- Sec. 5. A county clerk must require a person wishing to register in a county where the person has not previously been registered to comply with the provisions of NRS 293.517, regardless of whether the person was previously registered elsewhere.
- Sec. 6. The county clerk, or his designee, shall inform any person whose name does not appear on a voter registration list as an eligible voter for a polling place, or who an election official asserts is not eligible to vote at the polling place, of the ability of the person to cast a provisional ballot.

Sec. 7. 1. A county clerk, or his designee, shall inform each voter who casts a provisional ballot of the availability of the free access system established in accordance with NRS 293.3086.

2. The county clerk shall provide the Secretary of State, in the format the Secretary of State prescribes, with all information on whether the provisional ballots cast by each person were counted and, if not, the reason why such a ballot was not counted. The Secretary of State will add the information to the free access system to make such information available to the voters who cast a provisional ballot.

3. The free access system must be available to a person who casts a provisional ballot for the period beginning on the eighth day immediately following the date of the election and continuing for at least 30 days after the date of the election in which the person cast the provisional ballot.

Sec. 8. 1. After each election, a county clerk shall conduct a postelection certification audit of VYPATs randomly selected pursuant to subsection 3 or 4, as applicable, to ensure that the paper record produced by a VYPAT accurately records all votes cast by voters on a mechanical recording device.

2. A county clerk must conduct a postelection certification audit of a VYPAT by comparing each vote cast for each candidate and on each measure which was electronically recorded on the mechanical recording device to each vote cast for each candidate and on each measure which was recorded on the attached VYPAT. Such comparison may be conducted manually or by a mechanical device determined by the Secretary of State to be capable of

--7--
Revised Adopted Regulation R072-06

accurately reading the votes cast and printed and otherwise qualified for use in the State pursuant to applicable state and federal law.

3. The county clerk of a county whose population is 100,000 or more must randomly select a number of mechanical recording devices equal to 2 percent of the number of mechanical recording devices with attached VYPATs used in the election, or not less than 20 mechanical recording devices, whichever is greater, for the postelection certification audit.
4. The county clerk of a county whose population is less than 100,000 must randomly select a number of mechanical recording devices equal to 3 percent of the number of mechanical recording devices with attached VYPATs used in the election, or not less than four mechanical recording devices, whichever is greater, for the postelection certification audit.
5. The county clerk shall transmit the results of the audit to the Secretary of State within 7 working days after the date of the election.

6. Any member of the public who observes the postelection certification audit shall not interfere with the conduct of the audit.

Sec. 9. If a voter presents a signature stamp obtained pursuant to chapter 426 of NRS for use on a document as set forth in chapter 426 of NRS, the county clerk shall require verification of the identity of the owner of the signature stamp in accordance with NRS 426.257.

Sec. 10. NAC 293.010 is hereby amended to read as follows:

293.010 As used in this chapter, unless the context otherwise requires:

1. "Ballot stock" means the material upon which:

(a) A ballot is printed; and

--8--
Revised Adopted Regulation R072-06

(b) A voter directly indicates his vote.

2. "Department" means the Department of Motor Vehicles.

3. "Results cartridge" means the cartridge of a mechanical recording device which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

4. "Signature stamp" has the meaning ascribed to it in NRS 426.257.

5. "Voter verifiable paper audit trail printer" or "VVPAT" means the device attached to a mechanical recording device and the paper it prints to record all votes cast by a voter for any and all candidates and for or against any and all measures, enabling that voter to visually verify that the mechanical voting system has accurately recorded the votes of the voter.

6. "Voting booth" means any place or compartment used to screen a voter from the observation of others.

Sec. 11. NAC 293.040 is hereby amended to read as follows:

293.040 1. The Secretary of State will, not later than March 15 of the year in which a primary election is held, prepare and send to each county clerk a written notice which designates the statewide and multicounty district offices for which candidates are to be nominated at the primary election.

2. Within 10 days after receipt of the notice required to be sent pursuant to subsection 1, the county clerk shall publish once in a newspaper published in his county that portion of the notice which applies to his county. If no newspaper is published in his county, the publication must be made in any newspaper of general circulation which is published in the nearest county of this State.

--9--

Revised Adopted Regulation R072-06

Sec. 12. NAC 293.090 is hereby amended to read as follows:

293.090 1. Preceding every statewide question or constitutional amendment to be voted upon must be a number, to be assigned by the Secretary of State, in boldface type. ~~{not smaller than 24-point;}~~

2. *The Secretary of State will prepare statewide ballot questions, the accompanying explanations, arguments and condensations, the forms for applications to register to vote, other statewide forms and election information prescribed by the Secretary of State pursuant to NRS 293.247 in the appropriate minority language to affected jurisdictions pursuant to Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a and provide them to the county clerks for distribution to the public.*

3. *The county clerks shall prepare all ballot questions other than those described in subsection 2, the accompanying explanations, arguments and condensations, the notice of offices to be filled and other county and local forms and election information in the appropriate minority language to affected jurisdictions pursuant to Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.*

4. If any question is to be submitted to a vote of the people, it must be printed upon the ballot or ballot page assembly in a manner which enables a voter to vote "Yes" or "No" upon the question submitted.

Sec. 13. NAC 293.120 is hereby amended to read as follows:

293.120 The county clerk shall:

1. Mail a copy of the sample ballot for the primary election, as provided in NRS 293.565, to each candidate who has filed with him a declaration of candidacy or an acceptance of candidacy.

--10--

Revised Adopted Regulation R072-06

The copy must be mailed to the mailing address which is stated in the declaration of candidacy or acceptance of candidacy.

2. Mail a copy of the sample ballot for the primary election, as provided in NRS 293.565, to each candidate who has been certified to him by the Secretary of State.
3. If a candidate's name appears on more than one type of sample ballot, mail a copy of at least one of the sample ballots to the candidate, but the county clerk shall make a copy of each sample ballot available to the candidate upon request.
4. Mail a copy of *at least five sample ballots and provide an electronic copy of each sample ballot* for a primary election, as provided in NRS 293.565, to the Secretary of State.
5. Post a copy of the sample ballot or a list of candidates in a conspicuous place in his office.

Sec. 14. NAC 293.150 is hereby amended to read as follows:

293.150 1. At least 2 days before any election, every county clerk shall prepare the following supplies for each polling place:

- (a) One flag of the United States.
- (b) ~~Cards for providing:~~

~~(1) The appropriate warning regarding interference with the conduct of the election.~~

~~(2) Notice of the law prohibiting voting more than once.~~

~~(3) Notice of the law prohibiting electioneering within 100 feet from the entrance to the voting area or the building or other structure in which a polling place is located, as applicable.~~

Any notices or other materials required to be posted at each polling place pursuant to NRS 293.177, 293.2549, 293.2955, 293.301, 293.302, 293.3025, 293.361, 293.740 and 293.780.

--11--
Revised Adopted Regulation R072-06

(c) One copy of the statutes and regulations governing elections, or one copy of a compilation of the statutes and regulations governing elections.

(d) If a procedure for bilingual voting is used in the county, the required notices in the appropriate foreign language.

2. The county clerk may prepare for each polling place any additional supplies he considers necessary or desirable for carrying out the election.

3. On or before the day preceding the day of an election, each county clerk may deliver the election supplies to the sheriff of his county or a person designated by the clerk for further distribution. The election supplies may be delivered in sealed containers and may include any other accountable items. The sheriff or other designated person shall sign a receipt for all of the items received by him. The sheriff or other designated person shall immediately, and in a safe manner, distribute the election supplies to *those polling places or to* those members of election boards who are designated by the county clerk to receive and take custody of the supplies. ~~The sheriff or other designated person shall obtain a signed receipt from each member of an election board to whom the sealed container or any other accountable item is delivered.~~

4. When an election board accepts delivery of election supplies, it shall check the supplies against the list of inventory and immediately notify the county clerk of any shortage. The county clerk shall immediately correct the shortage.

5. At each polling place within the county, the county clerk shall provide a quantity of booths which is sufficient to allow voters to vote their ballots conveniently and in a manner that allows their voting to be screened from the view of others.

--12--
Revised Adopted Regulation R072-06

6. Each of the booths must, during the election, be provided with the necessary supplies for voting ballots. ~~f. and must be sufficiently lighted to enable voters to read clearly all of the printing on ballots or ballot page assemblies and to enable members of election boards to perform their duties;~~

~~7. Before opening the polls, the members of the election board shall carefully inspect the ballot box to ensure that nothing remains in the ballot box from a previous election. The ballot box must be locked after the inspection, and the key to any lock on the ballot box must be delivered to the chairman of the election board or, if there is no lock, the ballot box must be sealed by a seal approved by the Secretary of State. The ballot box must not be opened during the election except as otherwise provided in NRS 293B.325.~~

Sec. 15. NAC 293.160 is hereby amended to read as follows:

293.160 1. The chairman of the election board shall designate the officer of the election board who is to make the proclamation required pursuant to NRS 293.273. That officer shall make the proclamation at the entrance or inside of the polling place.

2. During the time the polls are open, the members of an election board may take time for meals or personal needs, except that only one member may be absent at any time from a polling place where four or fewer members are employed, and only two members may be absent at any time from a polling place where five or more members are employed.

3. The election board shall, to the extent possible, prevent any person who has given assistance in voting to another from disclosing the nature of the assisted person's vote.

4. ~~[The number of replacement ballots which may be issued to a voter who spoils his ballot may be decided, in good faith, by the election board.]~~

-13-

Revised Adopted Regulation R072-06

~~5. The chairman of the election board shall make a record of the cancelled ballots. The envelope in which cancelled ballots are placed must be marked with the words "cancelled ballots."~~

~~6. Any election board which receives mailing ballots from the county clerk shall follow the procedure prescribed for absent ballots in NRS 293.333 and [293.355.]~~

~~7. 293.335.~~

5. When it is time to close the polls, a member of the election board shall proclaim that the polls are closed for voting.

~~6. After the completion of an election, all [ballot-boxed] ballots and paper records of V/PATs must be returned by the sheriff or representative of the county clerk and placed by him in a secure storage area designated and provided by the county clerk.~~

~~7. If an absent ballot central counting board is appointed, the members of the board shall meet at a place designated by the county clerk as soon as the polls close. The board of county commissioners shall prepare abstracts of votes on a form which was submitted by the county clerk to and approved by the Secretary of State.~~

Sec. 16. NAC 293.162 is hereby amended to read as follows:

293.162 1. Any registered voter of this State may be appointed to observe the conduct of voting at a polling place as the representative of:

(a) Any candidate whose name appears on a ballot for the election for which the representative is appointed; or

(b) Any political party or committee sponsored by a political party.

2. A representative appointed pursuant to subsection 1:

-14-

Revised Adopted Regulation R072-06

(a) Shall present a written certificate of his appointment to the chairman of the election board upon his arrival at the polling place. The certificate must contain:

- (1) The name and signature of the representative;
 - (2) The name of the candidate, political party or committee appointing the person as its representative; and
 - (3) The precinct, polling place and date of the election for which the representative is appointed.
- (b) ~~{May sit or stand at such a location near the election board as to observe and hear conveniently the activities conducted at the polling place for which he is appointed without interfering with the voting.}~~ *Must comply with the same requirements that apply to members of the general public pursuant to NRS 293.274, 293.305 and 293.730.*
- (c) *May remain in the designated area in the polling place after the polls close pursuant to NRS 293.273 so as to observe the closing of the polling place. The representative shall not interfere with the closing of the polling place.*

3. *The representative shall remain in an area designated by the chairman of the election board to observe and hear conveniently the activities conducted at the polling place for which the representative is appointed without interfering with the voting. The designated area must allow for meaningful observation, but must not be located in an area that would allow an observer to infringe on the privacy and confidentiality of the ballot of the voter.*

4. No person may be appointed pursuant to this section to observe the conduct of voting at more than one polling place.

Sec. 17. NAC 293.169 is hereby amended to read as follows:

--15--
Revised Adopted Regulation R072-06

293.169 1. In a county in which the county clerk has appointed an absent ballot central counting board and posted a statement pursuant to subsection 2, the county clerk may, not earlier than 4 working days before election day and not later than 5 p.m. on the second working day before election day, deliver the absent voters' ~~{ballot-boxes}~~ *ballots* to the absent ballot central counting board. When the ~~{ballot-boxes}~~ *ballots* are received, the absent ballot central counting board shall:

(a) ~~{Withdraw the ballots and return the ballot-boxes to the county clerk;}~~

~~—(b)—~~ Sort the ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting *district, unless the system for counting the ballots produces an accounting of the ballots by precinct or voting district;*

~~{(c)}~~ (b) Count the number of ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district;

~~{(d)}~~ (c) Account for all ballots on the statement of ballots;

~~{(e)}~~ ~~Duplicate any ballots that necessitate duplicating as authorized by and in the manner set forth in NRS 293B.375; and~~

~~—(f)— and~~

(d) Place all the ballots ~~{including any ballots produced pursuant to paragraph (e)}~~ and the statement of ballots into the container provided by the county clerk to transport those items to a central counting place and seal the container. The container and seal used must comply with the provisions of NRS 293.462.

--16--
Revised Adopted Regulation R072-06

2. Not later than 2 working days before the date of delivery of the ~~{ballot-boxes}~~ ballots pursuant to subsection 1, the county clerk must post a statement in his office that notifies the public of any actions that will be taken pursuant to subsection 1.

3. Any absent ballots received by the county clerk after he delivers the ~~{ballot-boxes}~~ ballots pursuant to subsection 1 must be:

(a) ~~{Deposited into the appropriate absent-voters' ballot-boxes}~~ *Stored and secured* pursuant to the provisions of NRS ~~{293.309 to 293.340, inclusive}~~ 293.325 after those ~~{ballot-boxes}~~ ballots have been returned pursuant to subsection 1; and

(b) Processed pursuant to the provisions of NRS 293.3625 to 293.397, inclusive.

4. The county clerk shall allow members of the general public to observe the handling of the absent ballots conducted pursuant to subsection 1 if those members do not interfere with the handling of the absent ballots.

Sec. 18. NAC 293.182 is hereby amended to read as follows:

293.182 1. A person who submits a petition that consists of more than one document to the county clerk for verification of the signatures shall sequentially number each page of each document in the petition, beginning with the number 1.

2. If a petition consists of more than one document, each of those documents must, in addition to any other requirements:

(a) Contain sequentially numbered spaces for:

- (1) The name of each person signing the petition . ~~{}~~
- (2) The signature of the person ~~{}~~ *signing the petition.*

--17--

Revised Adopted Regulation R072-06

(3) The ~~{residential address of the person}~~ *street address of the residence where the person signing the petition actually resides, unless a street address has not been assigned. If a street address has not been assigned, the document may contain the mailing address of the person signing the petition.*

(4) The name of the county where the person is a registered voter . ~~{-and}~~

(5) The date of the signature.

(6) *If the petition is a municipal initiative or referendum proposed pursuant to NRS 295.195 to 295.220, inclusive, the name of the city in which the person signing the petition is registered to vote.*

(b) Have attached to it, when filed ~~{-~~

____(1) ~~The affidavit required pursuant to Section 3 of Article 19 of the Constitution of the State of Nevada; and~~

____(2) ~~An~~ , an affidavit signed by the person who circulated the document in substantially the following form:

STATE OF NEVADA

COUNTY OF _____

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state);

(2) that I am 18 years of age or older; (3) that I personally circulated this document; (4)

that all signatures were affixed in my presence; (5) that I believe them to be genuine

--18--

Revised Adopted Regulation R072-06

signatures; and (6) that I believe each person who signed was at the time of signing a registered voter in the county of his residence.

Signature of circulator

Subscribed and sworn to or affirmed
before me this ____ day of _____, ____

Notary public or other person licensed
to administer an oath

3. Any document of a petition may consist of more than one page. If a document consists of more than one page:

- (a) Each page, including a blank signature page, must be numbered sequentially, beginning with the number 1 for each document;
- (b) All the pages must be permanently attached in numerical order; and
- (c) The ~~affidavits~~ *affidavit* required by paragraph (b) of subsection 2 must appear on the last pages of the document.

-19-
Revised Adopted Regulation R072-06

4. As used in this section, "petition" means a petition containing signatures which are required to be verified pursuant to NRS 293.128, 293.165, 293.172, 293.200, 293.056, 298.109, 306.035 or 306.110.

Sec. 19. NAC 293.200 is hereby amended to read as follows:

293.200 1. The Secretary of State will reimburse the counties for the cost of the basic stock for ballots. Reimbursement will not be made for setup and other costs, including the cost of personalized printing, stitching, binding ~~to-numbering, or prenumbering~~ or numbering of the ballots.

2. Payment will be made after a claim of cost is presented to the Secretary of State. A county clerk shall present the claim not later than December 31 of a year in which a general election is held. A manufacturer's invoice showing an itemized list of all charges must accompany the claim. *The Secretary of State will not pay claims presented more than 30 days after December 31 of the year in which the general election was held.*

Sec. 20. NAC 293.220 is hereby amended to read as follows:

293.220 1. At least 2 days before any election, the county clerk shall prepare the following supplies for each precinct:

- (a) The election ~~board register~~;
- ~~—(b) Copies of the roster and pollbook in such a quantity and form as the clerk determines appropriate;~~
- ~~—(c) roster;~~
- (b) A quantity of mechanical voting devices which assures an efficient flow of voters;
- ~~—(d) A container;~~

-20-
Revised Adopted Regulation R072-06

(c) *A means for transporting ballots and VVPATs which [is-equipped] allows the ballots and VVPATs to be secured with a lock and key, numbered seal or other device which prevents unauthorized entry;*

~~{(c)}~~ (d) At least three copies of each sample ballot which pertains to the election;

~~{(d)}~~ (e) A procedural checklist for election boards; and

~~{(e)}~~ (f) One list of the inventory of the supplies provided to the election board. ~~[including a notation whether the supplies have been inserted into the container for transporting ballots.]~~

2. Each county clerk may prepare for the precincts any additional supplies he considers necessary or desirable for carrying out the election.

Sec. 21. NAC 293.230 is hereby amended to read as follows:

293.230 1. Each member of the election board must be present in the polling place where he is to serve at least 45 minutes before the time the polling place is to open.

2. The election board shall set up the vote recording devices in a manner which creates the most efficient flow of voters.

~~{2. The election board shall ensure that the correct ballot page assemblies have been properly inserted into the vote recording devices. As a check, the boards shall compare a sample ballot for the particular precinct with the official ballot page assemblies being inserted into the recording devices to assure that they contain the same candidates and questions.}~~

Sec. 22. NAC 293.240 is hereby amended to read as follows:

293.240 1. After a person is identified as being a registered voter ~~[,]~~ and has signed the roster, a member of the election board shall ~~[give him all appropriate ballot cards and a~~

--21--

Revised Adopted Regulation R072-06

protective sleeve and shall record the number of the card or series of the card in the pollbook opposite the voter's name:

~~2. The election board shall direct each voter [issue the voter a receipt, and direct him to a voting booth [which contains a vote recording device which is appropriately] equipped to handle the voter's ballot. [~~

~~2.]~~ 2. A member of the election board shall not permit any person to enter a voting booth to vote until he ascertains that the person understands how to operate the vote recording device.

~~{4. To carry out NRS 293B.103, the election board shall:~~

~~(a) Upon issuing a ballot to a voter, retain the top portion of the ballot card or stub which is stapled to the back of ballot cards;~~

~~(b) When the voter returns his voted ballot, give him the detachable portion which is located immediately above the ballot and contains holes for the alignment of the ballot on the recording device;~~

~~5.]~~ 3. If it is obvious to the members of an election board that a voter is trying to delay an election by repeatedly ~~[depositing his ballot cards]~~ voiding his selections and not casting a ballot, a member of the election board must warn the voter that such actions are unlawful and offer assistance if necessary. *If the voter continues to try to delay the election, the election board may take any appropriate action to expedite the election [The stub on a spoiled ballot must be left attached to the ballot.*

~~6.]~~, including, without limitation, removing the voter from the polling place if the county clerk has approved his removal.

--22--

Revised Adopted Regulation R072-06

4. Before the commencement of voting and periodically throughout the election, members of the election board shall examine the voting booths to ensure that each booth does not contain any campaign cards, political advertising, partisan notes or any other matter which constitutes an unauthorized attempt to influence the voters. ~~{During each examination, a special ballot card used to test the device must be inserted into the vote recording device to verify that the device is functioning properly. If the device uses punchcards, the special ballot card must be punched at random to verify that the device is functioning properly.}~~

Sec. 23. NAC 293.250 is hereby amended to read as follows:

293.250 1. If a difference exists between the number of persons voting and the number of ballots cast, the difference must be reported in writing to the county clerk, together with any known reasons for the difference.

2. The total number of voters must be entered by the election board on the forms provided by the county clerk.

3. The chairman of an election board is responsible for the safe delivery of the ~~{ballot cards}~~ *ballots and VVPATs* to the central place designated by the county clerk for the counting of ballots, except that a ballot pick-up board, if established, is responsible for the delivery.

4. After closing the polls, the election board shall compare the quantity of its *results cartridges, VVPATs, mechanical recording devices and other essential election supplies* which were furnished by the county clerk with the county clerk's inventory, ~~{and}~~ shall note any shortages ~~{}~~ *and shall immediately notify the county clerk if any shortages are noted*. The chairman of the election board is responsible for the safe return of all supplies, including all

--23--
Revised Adopted Regulation R072-06

records, ~~{and}~~ equipment pertaining to the election ~~{}~~ *and essential election supplies*, in accordance with the directions of the county clerk.

~~{5. Votes on a ballot card must not be counted if it is impossible or extremely difficult to determine the voter's intention because he has placed his ballot incorrectly in the vote recording device.}~~

Sec. 24. NAC 293.410 is hereby amended to read as follows:

293.410 1. A voter registration agency shall place in a conspicuous position in each of its offices a sign which indicates that a person may register to vote in that office.

2. A registered voter may change his name, address or political party affiliation on the application to register to vote.

3. The information required by the application to register to vote must be printed in black *or blue* ink with a ballpoint pen.

4. A voter registration agency may not accept an application to register to vote which includes any erasure of or line drawn through information provided by the applicant relating to his political party affiliation.

5. A voter registration agency shall include with each application to register to vote or group of applications which is transmitted to the county clerk or registrar of voters a transmittal form prescribed and provided by the agency.

6. A voter registration agency shall not void an application unless the applicant is present. If the agency voids an application, the agency shall:

- (a) Write or stamp the word "void" on the front of the application;
- (b) Forward the voided application to the county clerk; and

--24--
Revised Adopted Regulation R072-06

(c) Maintain a record of the voided application.

7. A voter registration agency shall ascertain whether a file stamp obliterates the portion of the application reserved for the applicant's signature. If a file stamp does obliterate this portion, the voter registration agency shall issue a new application to the applicant.

8. Before each application completed by an employee of the Department is forwarded to the county clerk or registrar of voters, it must be reviewed by a second employee of the Department who shall determine whether the application is legible. If the employee determines that an application is illegible, he shall cause a computer-generated copy of the information contained in the records relating to the applicant's driver's license or identification card to be attached to the application.

9. A voter registration agency shall, in cooperation with the county clerks and registrar of voters, conduct training programs once every 6 months to familiarize the employees of the agency with the required procedures for registering voters through the agency.

10. A voter registration agency shall maintain a record of the transmittal of each application to the county clerk or registrar of voters pursuant to the agency's schedule for the retention and disposal of records.

11. A voter registration agency shall stamp the original and the voter's copy of the completed application with the date of receipt. Except as otherwise provided in this subsection, the stamp used by the agency must not include the name of the agency. The stamp used by the Department may include the name of the Department.

Sec. 25. NAC 293.411 is hereby amended to read as follows:

--25--

Revised Adopted Regulation R072-06

293.411 The Secretary of State will assign to each county a series of numbers that must be used by the county clerk in assigning ~~fees~~ a unique identification number to a person who *does not have a current and valid driver's license issued by the Department or a social security number* and wishes to register to vote pursuant to NRS ~~293.507 and is unable, or does not wish, to provide the clerk with the number indicated on the identification described in subparagraph (1) of paragraph (a) of subsection 4 of NRS~~ 293.507. *Before the clerk may issue the person an identification number, the person must sign an affidavit under penalty of perjury pursuant to subsection 5 of NRS 293.507 stating that he does not have a current and valid driver's license or a social security number.*

Sec. 26. NAC 293.412 is hereby amended to read as follows:

293.412 1. A county clerk:

(a) May maintain a separate list of inactive voters or designate inactive voters as such on regular lists of registered voters and election board registers.

(b) Shall, at the request of the Secretary of State, report to the Secretary of State the total number of inactive voters.

2. The name of each inactive voter:

(a) Must be included on any list made available for public inspection pursuant to NRS 293.440 unless the person requesting the list requests the exclusion of those names.

(b) Must not be included on any list made available for public inspection pursuant to NRS 293.557.

3. The signature of an inactive voter shall be deemed to be the signature of a registered voter for all purposes regarding any petition authorized or required pursuant to title 24 of NRS.

--26--

Revised Adopted Regulation R072-06

4. ~~Except as otherwise provided in this subsection, for the purpose of mailing sample ballots, an inactive voter shall be deemed not to be a registered voter unless he requests the city or county clerk, in person, in writing or by telephone, to provide him with a sample ballot. A county or city clerk shall mail sample ballots to all inactive voters in a mailing precinct. A city or county clerk is not required to send a sample ballot to an inactive voter.~~

5. As used in this section, "inactive voter" means a voter designated as inactive pursuant to NRS 293.530 whose registration has not been cancelled.

Sec. 27. NAC 293.414 is hereby amended to read as follows:

293.414 1. The Secretary of State will immediately provide the county clerks with any information he receives from the Attorney General of the United States regarding the conviction of any person of a felony.

2. A county clerk may, for the purpose of making the determination to *cancel the registration of a person* required by subsection 3 of NRS 293.540, rely upon any information he receives from the Secretary of State pursuant to subsection 1 or from the Central Repository for Nevada Records of Criminal History regarding the conviction of any person of a felony.

3. *The Secretary of State will immediately provide the county clerks with any information he receives regarding a person convicted of a felony who has had his right to vote restored and is currently eligible to register to vote.*

4. *A county clerk may, for purposes of determining whether a person applying to register to vote who was convicted of a felony has had his right to vote restored and is currently eligible to register, rely on:*

(a) *The information received from the Secretary of State pursuant to subsection 3;*

--27--
Revised Adopted Regulation R072-06

(b) *An order of any federal or state court restoring the right to vote to the applicant;*
(c) *A document issued to the applicant by a penal agency of the State of Nevada, any other state or the Federal Government verifying that the right to vote of the applicant has been restored; or*

(d) *A document issued by a penal agency of the State of Nevada, any other state or the Federal Government verifying that the applicant received a pardon or was discharged from probation, parole or prison before July 1, 2003.*

5. *If a county clerk has reason to believe that a document described in subsection 4 is invalid or forged, the county clerk shall attempt to verify the document. The county clerk must accept the document as legitimate unless he can verify that the document is invalid or forged.*

Sec. 28. NAC 293.420 is hereby amended to read as follows:

293.420 1. The Secretary of State will create a standard form for use by persons who are applying to register to vote *in person or by mail*. The form will include:

(a) An application to register to vote, *which may be submitted in person or by mail*;

~~—(b) An explanation of Nevada's laws on closed primary elections;~~

~~—(c) to the county clerk of the county in which the applicant resides;~~

(b) Instructions to assist the applicant in completing the application;

~~{(d)} (c) A notice stating that the application will not be processed unless an identification number is on the application;~~

~~—(e) must contain the Nevada driver's license number of the applicant or, if the applicant has no Nevada driver's license, at least the last four digits of the social security number of the~~

--28--
Revised Adopted Regulation R072-06

applicant or, if the applicant has no social security number, a unique identification number assigned by the county clerk pursuant to NAC 293.411 and subsection 5 of NRS 293.507;

(d) A list of the addresses and telephone numbers of county election officers;

~~{(f)}~~ (e) A notice that ~~{the application must be complete before it is effective}~~ if the

applicant indicates on the application that the applicant is not a citizen of the United States or will not be at least 18 years of age on or before election day, the applicant may not register to vote;

(f) *The option for the applicant to receive a sample ballot in larger type;* and

(g) Instructions to the applicant to contact the county clerk if the applicant does not within ~~{20}~~ 10 days after he submits the application to the county clerk receive his voter registration card indicating that his registration has been accepted.

2. The Secretary of State will assign a control number to each application and will determine the sequence of the control numbers. The control numbers will consist of a two-digit alphabetical code followed by a five-digit numerical code.

3. The control number must be printed:

(a) On a ~~{duplicate copy of the application or a}~~ receipt of the application; and

(b) On the application to be returned to the county clerk.

4. *On application forms that do not contain a control number, including, without limitation, the Federal Post Card Application submitted to a county clerk, the county clerk must enter the control number:*

(a) *On the application and a receipt of the application, if the application is submitted in person; or*

--29--
Revised Adopted Regulation R072-06

(b) *On the application, if the application is submitted by mail.*

5. Each county clerk shall, *and the Secretary of State will*, after obtaining a series of control numbers from the Secretary of State, cause the forms to be printed. The county clerk shall continue to make available a sufficient number of the forms to meet the needs of the residents of the county.

Sec. 29. NAC 293.425 is hereby amended to read as follows:

293.425 1. The county clerk shall make the forms *to apply to register* available to individual candidates, political parties, civic groups, and groups organized for or against questions on a ballot.

2. Except as otherwise provided in subsection 3, an applicant may request such a form from the clerk in person, by telephone, in writing or by electronic facsimile machine. The clerk shall respond to each such request by mailing the requested form within 5 working days.

3. Each request for more than 50 such forms must be made on a request form prescribed by the Secretary of State ~~{-}~~ that requires the person or group requesting such forms to describe a plan for distribution of the forms, including, without limitation, identification of the county or counties with which the person or group plans to file the completed forms.

4. The county clerk shall, *and the Secretary of State will*, record on the completed request form the control numbers assigned to the applications which he provided in response to the request. *The Secretary of State will provide a copy of the completed request form to each*

county clerk in the counties identified in the distribution plan provided pursuant to subsection

3. The county clerk shall, *and the Secretary of State will*, maintain the request for multiple applications with his records.

--30--
Revised Adopted Regulation R072-06

Sec. 30. NAC 293.430 is hereby amended to read as follows:

293.430 1. The county clerk shall, after obtaining written permission from the responsible person, make the forms to apply to register ~~{by mail}~~ available as appropriate throughout his county at:

- (a) United States Post Offices;
- (b) Public libraries;
- (c) Local offices of public utilities;
- (d) Financial institutions;
- (e) Community centers for aging persons;
- (f) Educational institutions;
- (g) Governmental offices;
- (h) Offices of county and state political central committees;
- (i) Union halls;
- (j) Offices of civic organizations;
- (k) Campaign headquarters of presidential, federal and statewide candidates;
- (l) Places of worship; and
- (m) Such other locations as the county clerk deems appropriate.

2. At each location where the forms are made available, the county clerk shall post a notice requesting persons to take no more than one form per person.

Sec. 31. NAC 293.435 is hereby amended to read as follows:

293.435 1. ~~{Each such application must be received by the county clerk before the close of registration for the next election in order for the applicant to be registered for that election. An~~

--31--
Revised Adopted Regulation R072-06

~~application received after the close of registration will apply to registration for the next election for which registration remains open.~~

~~2. The~~ *An applicant who is registering to vote or his assistant, who is acting in accordance with subsection 2 of NAC 293.440, shall pay any postage required to return the application to the county clerk ~~{,}~~, unless the application is preprinted with the address of the county clerk of the county in which the applicant resides and the application provides for postage paid return of such application.*

2. If the application is postage paid and preprinted with the address of a county clerk of a county that is not the county in which the applicant resides, the applicant or his assistant, who is acting in accordance with subsection 2 of NAC 293.440, shall correct the address of the county clerk and pay any postage required to return the application to the county in which the applicant resides.

Sec. 32. NAC 293.450 is hereby amended to read as follows:

293.450 The notice sent pursuant to NRS 293.5235 to an applicant for registration by mail which informs him that his application is incomplete must ~~{contain a detachable portion which:~~

- ~~1. May be mailed back to the county clerk; and~~
- ~~2. Is designed to allow the applicant to furnish the necessary information.}~~

1. Allow the applicant to provide the information needed to complete his application; or

2. If the applicant is required to complete and submit a new application, include an explanation to the applicant of the reason why a new application is required and a new application form.

Sec. 33. NAC 293B.010 is hereby amended to read as follows:

--32--
Revised Adopted Regulation R072-06

293B.010 As used in this chapter, unless the context otherwise requires ~~{“mechanical”}~~:

1. *“Mechanical recording device” has the meaning ascribed to it in NRS 293B.032.*

2. *“Mechanical voting system” has the meaning ascribed to it in NRS 293B.033.*

3. *“Results cartridge” means a cartridge which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.*

4. *“Voter verifiable paper audit trail printer” or “VVPAT” means the device attached to a mechanical recording device and the paper it prints to record all votes cast by a voter for any and all candidates and for or against any and all measures, enabling that voter to visually verify that the mechanical voting system accurately recorded the votes of the voter.*

Sec. 34. NAC 293B.040 is hereby amended to read as follows:

293B.040 1. A county clerk ~~{in a county using a mechanical voting system}~~ shall:

(a) Store ~~{ballot-eards}~~ ballots, results cartridges and VVPATs upon receipt in a vault or

secure area that is accessible only by the county clerk and persons designated by him;

(b) Provide for the security and protection of the stored ~~{ballot-eards}~~ ballots, results cartridges and VVPATs;

(c) Control access to the stored ~~{ballot-eards}~~ ballots, results cartridges and VVPATs; and

(d) Maintain a record of the persons allowed access to the stored ~~{ballot-eards}~~.

2. ~~The ballot statement must include the time that ballot boxes are removed from the polling place to be taken to the central counting place.~~

~~3.1~~ *ballots, results cartridges and VVPATs.*

2. Except as otherwise provided in this subsection, each county clerk shall, not later than the 90th day before the primary election, submit to the Secretary of State for approval a plan to carry

--33--
Revised Adopted Regulation R072-06

out the provisions of paragraph (l) of subsection 2 of NRS 293.247 concerning the procedures to be used to ensure the security of the ballots ~~{}~~, results cartridges and VVPATs. If there is no change to the plan submitted in the previous year, the county clerk is not required to submit another plan to the Secretary of State. The county clerk shall notify the Secretary of State, in writing, if there is no change to the plan. The plan must include, without limitation:

(a) The person who is responsible for transporting the ~~{ballot-box}~~ ballots, results cartridges and VVPATs from the polling place to the central counting place; and

(b) The time allotted for travel from the polling place to the central counting place. ~~{and~~

~~—(c) The method for verifying the number of marked and unmarked ballots.~~

Sec. 35. NAC 293B.060 is hereby amended to read as follows:

293B.060 1. A ballot ~~{eard}~~ used in performing a test of a mechanical voting system must be conspicuously marked “TEST.”

2. A county using a mechanical voting system with a multiple ~~{eard}~~ ballot reader shall, in addition to its other tests of the system, conduct an independent test of each ~~{eard}~~ reader.

3. ~~{A manual tabulation of ballots must be made in each precinct for which a discrepancy is detected by}~~ If the tests conducted pursuant to NRS 293B.150 and 293B.165 ~~{}~~ detect that the ballots have not been accurately tabulated, the cause of the problem must be determined and corrected, and the ballots must be retabulated.

4. A dedicated or equally secure computer system must be used for all tests conducted before or after an election, and for the tabulation of votes immediately after an election.

Sec. 36. NAC 293B.070 is hereby amended to read as follows:

--34--
Revised Adopted Regulation R072-06

203B.070 1. {A county using a mechanical voting system shall conduct a test of the accuracy of its hardware for tabulating votes not less than 3 months before a primary election.

The test deck must contain 1,000 ballot cards in a county whose population is 100,000 or more, and 200 ballot cards in a county whose population is less than 100,000. Except as otherwise provided in subsection 2, the test must be conducted in the following manner:

—(a) One fourth of the cards must have the first, fifth, ninth and every succeeding fourth voting position punched to the end of the card;

—(b) One fourth of the cards must have the second, sixth, tenth and every succeeding fourth voting position punched to the end of the card;

—(c) One fourth of the cards must have the third, seventh, eleventh and every succeeding fourth voting position punched to the end of the card; and

—(d) One fourth of the cards must have the fourth, eighth, twelfth and every succeeding fourth voting position punched to the end of the card.

—2. If cards with pre punched columns are used, the county shall also conduct a test of the accuracy of its hardware for tabulating pre punched codes. Except as otherwise provided in subsection 2, the test must be conducted in the following manner:

—(a) One fourth of the cards must have the:

—(1) Twelfth, second and sixth positions punched in the first column;

—(2) Eleventh, third and seventh positions punched in the second column;

—(3) Zero, fourth and eighth positions punched in the third column; and

—(4) First, fifth and ninth positions punched in the fourth column;

—(b) One fourth of the cards must have the:

—(1) Eleventh, third and seventh positions punched in the first column;

—(2) Zero, fourth and eighth positions punched in the second column;

—(3) First, fifth and ninth positions punched in the third column; and

—(4) Twelfth, second and sixth positions punched in the fourth column;

—(c) One fourth of the cards must have the:

—(1) Zero, fourth and eighth positions punched in the first column;

—(2) First, fifth and ninth positions punched in the second column;

—(3) Twelfth, second and sixth positions punched in the third column; and

—(4) Eleventh, third and seventh positions punched in the fourth column;

—(d) One fourth of the cards must have the:

—(1) First, fifth and ninth positions punched in the first column;

—(2) Twelfth, second and sixth positions punched in the second column;

—(3) Eleventh, third and seventh positions punched in the third column; and

—(4) Zero, fourth and eighth positions punched in the fourth column;

—3. If the software or system is not designed to allow testing to be conducted in the manner prescribed in subsection 1 or 2, the county clerk shall use the test provided by the seller of the mechanical voting system to determine the accuracy of that system;

—4. If an event occurs during the tabulation of ballots which requires the repair or adjustment of a ~~test~~ ballot reader, the ~~test~~ reader must be retested for accuracy before it may again be used.

~~{5-}~~ 2. If any of the equipment used for the tabulation of ballots fails to function properly as the result of a surge in or failure of power, the prescribed methods for certification of the mechanical voting system must be completed before the system may again be used.

~~{6-}~~ 3. A county clerk in a county using a mechanical voting system shall:

- (a) Determine the most reasonable and practical method for completing the process of tabulating ballots in the event the existing system fails; and
- (b) Develop a plan for the tabulation of ballots in the event that a failure in the existing system precludes the tabulation of ballots at the usual and customary location.

Sec. 37. NAC 293B.080 is hereby amended to read as follows:

293B.080 A county clerk in a county using a mechanical voting system shall develop a separate test deck ~~to~~:

- ~~1. For~~ 1. Contain not less than the same number of ~~tested~~ ballots as there are valid voting positions for an office in that county; and
- ~~{6}~~ 2. Allow for the testing of each precinct, including the preparation of a cumulative report of the total votes cast for each voting position and a total count of the number of precincts.

~~{2. For the determination of how the system responds to errors, including:~~

- ~~(a) Header cards that are upside down;~~
- ~~(b) Header cards that are reversed;~~
- ~~(c) Ballots that are upside down;~~
- ~~(d) Ballots that are reversed; and~~
- ~~(e) Invalid punches denoting a precinct or group.~~

--37--
Revised Adopted Regulation R072-06

Sec. 38. NAC 293B.090 is hereby amended to read as follows:

293B.090 1. Before and after each election, as provided in NRS 293B.140 to 293B.170, inclusive, the county clerk in a county using a mechanical voting system shall ensure that each mechanical recording device which directly records votes electronically, each VVPAT and the automatic tabulating equipment and programs to be used in the election will accurately record the votes cast for all offices and on all measures by completing the tests required pursuant to this section and chapter 293B of NRS.

2. A county clerk shall, in the course of performing his other tests of the system, conduct a test to ascertain that the VVPAT correctly records on the paper record the selection made on the mechanical voting device for all offices and all measures on the ballot. If a county clerk is required to conduct an election in more than one language, the test ballots must be processed in each required language.

3. A county clerk shall conduct the test required pursuant to subsection 2 by:

(a) Processing on a mechanical recording device, during the period prescribed in NRS

293B.150 and 293B.165, a group of logic and accuracy test ballots voted so as to record:

- (1) A vote for each candidate and a vote for and against each measure on the ballot;
- (2) A vote for "None of these candidates" for all statewide contests;
- (3) "No selection made" for each contest and ballot measure; and
- (4) In all contests in which a voter may vote for more than one candidate, each option

available to the voter, from "No selection made" to the total number of candidates a voter may select.

--38--
Revised Adopted Regulation R072-06

- (f) Protection from an overvote;
- (g) A method for the voter to review his selections and make changes before the ballot is cast;

- (h) A notice advising the voter to confirm his selections before casting his ballot and informing him that casting the ballot is irrevocable;
- (i) A verification that the vote has been cast; and
- (j)  An electronic record of each ballot stored by the mechanical voting system.

{4} 7. A mechanical recording device which directly records votes electronically must

- (a) Only ballots cast by authorized voters have been included in the tally list;
- (b) All ballots have been unmodified since they were cast;
- (c) All ballots cast have been accounted for; and
- (d) The results of the tabulation of the ballots have been correctly accumulated from the ballots of the authorized voters and are capable of repetition with the same results.

8. *Persons authorized to observe the tests conducted pursuant to NRS 293B.150 and 293B.165 must not interfere with the conduct of such tests. The results of the tests conducted pursuant to this section are confidential pursuant to NRS 293B.155.*

- Sec. 39.** NAC 293C.110 is hereby amended to read as follows:
- 293C.110 The city clerk shall:
1. Mail a copy of the sample ballot for the primary city election, as provided in NRS

has undervoted in a contest in which the voter may select more than one candidate;

2. Mail a copy of the sample ballot for the primary city election, as provided in NRS 293.565, to each candidate who has been certified to him by the Secretary of State.
3. If a candidate's name appears on more than one type of sample ballot, mail a copy of at least one of the sample ballots to the candidate, but the city clerk shall make a copy of each sample ballot available to the candidate upon request.

4. Mail a copy of *at least five sample ballots and provide an electronic copy of each sample ballot* for a primary city election, as provided in NRS 293.565, to the Secretary of State.

5. Post a copy of the sample ballot or a list of candidates in a conspicuous place in his office.

Sec. 40. NAC 293C.195 is hereby amended to read as follows:

293C.195 1. In a city in which an absent ballot central counting board has been appointed and the city clerk has posted a statement pursuant to subsection 2, the city clerk may, not earlier than 4 working days before election day and not later than 5 p.m. on the second working day before election day, deliver the absent voters' ballot boxes to the absent ballot central counting board. When the ballot boxes are received, the absent ballot central counting board shall:

(a) ~~Withdraw the ballots and return the ballot boxes to the city clerk;~~

~~—(b)—~~ Sort the ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district ~~;~~

~~—(c)—~~, *unless the counting system produces an accounting of the ballots by precinct or voting district;*

(b) Count the number of ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district ~~;~~

—41—

Revised Adopted Regulation R072-06

~~—(d)—~~, *unless the counting system produces an accounting of the ballots by precinct or voting district;*

(c) Account for all ballots on the statement of ballots;

~~[(e) Duplicate any ballots that necessitate duplicating as authorized by, and in the manner set forth in, NRS 293C.655; and~~

~~—(f)— and~~

(d) Place all the ballots ~~[(including any ballots produced pursuant to paragraph (c))]~~ and the statement of ballots into the container provided by the city clerk to transport those items to a central counting place and seal the container. The container and seal used must comply with the provisions of NRS 293C.700.

2. Not later than 2 working days before the date of delivery of the ballot boxes pursuant to subsection 1, the city clerk must post a statement in his office that notifies the public of any actions that will be taken pursuant to subsection 1.

3. Any absent ballots received by the city clerk after he delivers the ballot boxes pursuant to subsection 1 must be:

(a) Deposited into the appropriate absent voters' ballot boxes pursuant to the provisions of NRS 293C.305 to 293C.340, inclusive, after those ballot boxes have been returned pursuant to subsection 1; and

(b) Processed pursuant to the provisions of NRS 293C.3615 to 293C.395, inclusive.

4. The city clerk shall allow members of the general public to observe the handling of the absent ballots conducted pursuant to subsection 1 if those members do not interfere with the handling of the absent ballots.

—42—

Revised Adopted Regulation R072-06

Sec. 41. NAC 294A.040 is hereby amended to read as follows:

294A.040 1. Any campaign contribution received or campaign expense incurred or paid on a candidate's behalf by his campaign committee, by his personal representative, or by any other authorized person during a period for which a report is required must be reported as the candidate's campaign contribution or expense.

2. Reporting requirements are not removed by special circumstances.

~~{3. A candidate's report of his campaign expenses must contain the type and amount of expenditures which he contracted for or made during the reporting period.}~~

Sec. 42. NAC 294A.075 is hereby amended to read as follows:

294A.075 The form of the report of campaign expenses required to be filed pursuant to NRS 294A.125, 294A.200, 294A.210, 294A.220, 294A.280 or 294A.360 must include:

1. For each expenditure of more than \$100:

(a) The category of the expenditure;

(b) ~~[[The] Except as otherwise provided in subsection 3, the name and address of the person who received payment for the expenditure; and~~

(c) The amount and date of the payment for the expenditure.

2. The total amount spent for all categories of expenditures.

3. *A report of campaign expenses required to be filed pursuant to NRS 294A.125, 294A.200, 294A.210, 294A.220, 294A.280 or 294A.360 is not required to include the names and addresses of each person who received payment for circulating a petition for purposes of gathering signatures, provided that such report contains the total amount paid to such*

--43--
Revised Adopted Regulation R072-06

circulators as a group and, if such payments were calculated on a per signature basis, the amount paid per signature.

Sec. 43. NAC 294A.080 is hereby amended to read as follows:

294A.080 ~~{1. The form of the report of campaign contributions required to be filed pursuant to NRS 294A.120 or 294A.125 must include the number of contributions of \$100 or less that have been received by a candidate.~~

~~2.}~~ On the form of the report of campaign contributions required to be filed pursuant to NRS 294A.120 or 294A.125, if a candidate has received a series of contributions from any natural person or other entity during a reporting period and the contributions total over \$100, the series must be treated as a single contribution and be separately identified on the candidate's report, with the name and address of the contributor and the date of each contribution in the series.

Sec. 44. NAC 294A.097 is hereby amended to read as follows:

294A.097 The Secretary of State may waive a civil penalty for good cause pursuant to subsection 4 of NRS 294A.420, if the person or entity that is subject to a civil penalty pursuant to subsection 2 of NRS 294A.420:

1. Files a written request for a waiver setting forth the basis for the waiver;

2. Properly files the appropriate report pursuant to the applicable provisions of NRS 294A.120, 294A.140, 294A.150, ~~{294A.180,}~~ 294A.200, 294A.210, 294A.220, 294A.270, 294A.280 or 294A.360; and

3. Establishes that:

--44--
Revised Adopted Regulation R072-06

(f) *The violation was not due to mere inadvertence, mistake or neglect, and circumstances exist of a similarly serious nature as set forth in this subsection to justify a waiver of the civil penalty, including, without limitation, an obligation to report for active military service or to serve in an official capacity in response to a public emergency.*

Sec. 45. NAC 294A.098 is hereby amended to read as follows:

294A.098 A candidate shall not use campaign contributions to satisfy a civil penalty or criminal penalty imposed pursuant to NRS 294A.420, by law.

Sec. 46. NAC 295.020 is hereby amended to read as follows:

295.020 1. A person who submits a petition that consists of more than one document to the county clerk for verification of the signatures shall sequentially number each page of each document in the petition, beginning with the number 1.

2. If a petition for an initiative or referendum consists of more than one document, each document must, in addition to any other requirements, contain the full text of the proposed measure and:

(a) Include sequentially numbered spaces for:

(1) The name of each person who signs the petition.

(2) The signature of the person signing ~~the~~ the petition.

(3) The street address of the residence where the person signing the petition actually resides, unless a street address has not been assigned. If a street address has not been assigned, the document may contain the mailing address of the person signing ~~the~~ the petition.

(4) The name of the county where the person who signs is a registered voter.

(5) The date of the signature.

--45--

Revised Adopted Regulation R072-06

(a) Within a reasonable time before or on the date the applicable report was due, the candidate or a member of the family of the candidate, within the second degree of consanguinity ~~or affinity~~, died, had a serious medical condition or was hospitalized; ~~or~~

(b) The candidate is experiencing extreme financial hardship ~~or~~ to the extent that payment of the penalty would result directly in the loss or inability of the candidate to obtain the minimal necessities of food, medicine and shelter;

(c) The candidate or each officer and representative of the entity is or was a member of the Armed Forces of the United States serving outside of the State or country within a reasonable period of time before or on the date the applicable report was due and the candidate or each officer and representative of the entity executes an affidavit under penalty of perjury attesting to such facts;

(d) The candidate has been directly impacted by a natural disaster;

(e) The entity is organized as a nonprofit under the laws of the State of Nevada, has no paid employees and is comprised only of volunteers and:

(1) The representative of the entity who is responsible for filing the appropriate report on behalf of the entity pursuant to the applicable provisions of NRS 294A.140, 294A.150, 294A.210, 294A.220, 294A.270 or 294A.280, or a member of the family of such a representative, meets the conditions set forth in paragraph (a); or

(2) The representative of the entity who is responsible for filing the appropriate report on behalf of the entity pursuant to the applicable provisions of NRS 294A.140, 294A.150, 294A.210, 294A.220, 294A.270 or 294A.280 has, without notice, severed his relationship with the entity within a reasonable time before or on the date that the applicable report was due; or

--46--

Revised Adopted Regulation R072-06

(6) If the petition is a municipal initiative or referendum proposed pursuant to the provisions of NRS 295.195 to 295.220, inclusive, the name of the city in which the person who signs is registered to vote.

(b) Have attached to it, when filed:

____ (1) ~~The affidavit required pursuant to Section 3 of Article 19 of the Constitution of the~~

~~State of Nevada; and~~

____ (2) ~~An~~, an affidavit signed by the person who circulated the document in substantially the following form:

STATE OF NEVADA

COUNTY OF _____

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures; and (6) that I believe each person who signed was at the time of signing a registered voter in the county of his residence.

Signature of circulator

--47--
Revised Adopted Regulation R072-06

Subscribed and sworn to or affirmed
before me this _____ day of _____,

Notary public or other person licensed
to administer an oath

3. ~~[A]~~ Any document of a petition may consist of more than one page. If a document consists of more than one page:

- (a) Each page, including a blank signature page, must be numbered sequentially, beginning with the number 1 for each document;
- (b) All the pages must be permanently attached together in numerical order; and
- (c) The ~~affidavits~~ affidavit of the circulator required by NRS 295.095 or 295.205 must appear on the last pages of the document.

4. As used in this section, "petition" means a petition described in Article 19 of the Nevada Constitution or NRS 295.015 or 295.045.

Sec. 47. NAC 293.100, 293.176, 293.199, 293.290, 293.300, 293.310, 293.340, 293.360, 293.380, 294A.047, 294A.048, 294A.085 and 294A.095 are hereby repealed.

--48--
Revised Adopted Regulation R072-06

1. The county central committee of each political party shall:
 - (a) Not later than 90 days before an election, submit to the county clerk a copy of the form for the written statement authorizing its representatives to examine pollbooks pursuant to NRS 293.301.

(b) To the extent possible, submit to the county clerk at least 7 days before the election, a list of the names of the representatives who are authorized to examine pollbooks for each precinct.

2. Each representative who is authorized to examine pollbooks must present a written statement of authorization from the county central committee and proof of his identity to the chairman of the election board for the appropriate precinct upon his arrival at the polling place. The chairman of each election board shall not allow any person who does not provide proof of his identity and a written statement of authorization from the county central committee to examine pollbooks.

3. The chairman shall ensure that the examination of the pollbooks does not interfere with the conduct of the election.

4. This section does prevent a person who is not authorized by a political party to examine pollbooks from observing the conduct of the election.

293.199 Applicability. (NRS 293.124, 293.247) The provisions of NAC 293.199 to 293.250, inclusive, apply only to polling places in which a mechanical voting system is used.

293.290 Applicability. (NRS 293.124, 293.247) The provisions of NAC 293.290 to 293.380, inclusive, do not apply to polling places in which a mechanical voting system is used.

--50--
Revised Adopted Regulation R072-06

TEXT OF REPEALED SECTIONS

293.100 Ballots: Quantity required. (NRS 293.124, 293.247)

1. Each county clerk shall prepare for each precinct a quantity of ballots at least equal to the number of registered voters in the precinct.

2. For the purposes of this section, to determine the number of registered voters in a precinct for:

(a) A primary election, the county clerk shall use the number of voters who are registered on June 30 immediately preceding the date of the primary election.

(b) A general election, the county clerk shall use the number of voters who are registered on August 31 immediately preceding the date of the general election.

(c) A recall election, the county clerk shall use the number of voters who are registered on the date the call for the recall election is issued pursuant to NRS 306.040.

(d) Any special election other than a recall election, the county clerk shall use the number of voters who are registered 60 days before the date of the special election.

293.176 Examination of pollbook by representative of political party. (NRS 293.124, 293.347)

--49--
Revised Adopted Regulation R072-06

293.300 Printing of ballots generally. (NRS 293.124, 293.247) The county clerk shall provide official printed ballots to be used at an election. The ballot stock must be ordered by the county clerk within 2 days after the date set for closing of registration for the election.

293.310 Size of ballots. (NRS 293.124, 293.250)

1. Official ballots for elections must be wide enough to comply with the provisions of the election laws, and must be at least 12 inches wide, including the numbered stub and the numbered perforated strip.
2. Official ballots for elections must be of a length which permits the proper placement of the required captions, headings, designations of political parties, directions to voters and names of candidates.

293.340 Form of ballots for special elections. (NRS 293.124, 293.250)

1. Each ballot for a special election must have a perforated line extending from top to bottom one-half inch from the right-hand side of the ballot. No writing or printing, except the number of the ballot, may be made upon the 1/2-inch strip formed by the perforated line.
2. The words "Yes" and "No," separated by a light-faced line, must be printed on the ballot after each question. To the right of each word must be printed a light square at least three-eighths of an inch on each side.

293.360 Supplies and equipment. (NRS 293.124, 293. 247)

1. There must be an adequate supply, as determined by the county clerk, of voting booths for each precinct.
2. The county clerk shall, at least 2 days before the day of any election, prepare the following supplies for each precinct:

--51--
Revised Adopted Regulation R072.06

- (a) The election board register;
 - (b) Copies of the roster and pollbook in such a quantity and form as the clerk determines appropriate;
 - (c) A container for transporting ballots which is equipped with a lock and key, numbered seal or other device which prevents unauthorized entry;
 - (d) At least three copies of each sample ballot which pertains to the election; and
 - (e) Such other supplies as are necessary for conducting the election.
3. The county clerk shall print, in plain type, sets of instructions for voters for obtaining and marking their ballots. On the day of an election, the election board shall post at least one set of instructions in each voting booth and at least three additional sets of instructions at places open to public view in or about the polling place.
4. The chairman of each election board shall require the members of his board to prepare the ballots and any other supplies or equipment necessary for voting and may assign specific duties to the members of the election board to complete the preparation.
- 293.380 Procedures after voting. (NRS 293.124, 293.247)**

1. After all eligible voters have cast their votes, the election board shall, in the following manner, count the number of official ballots it received:

- (a) The board shall total the number of voters' signatures recorded in the roster book and enter that number on the ballot statement provided by the county clerk.
- (b) The board shall then unlock or unseal the ballot box and count the number of official ballots, comparing this number with the number of signatures recorded on the ballot statement.

--52--
Revised Adopted Regulation R072.06

(c) The numbers of signatures and ballots should be the same. If they are not, the board shall recount the number of signatures and the number of ballots. If a discrepancy still exists, the board shall make a notation to that effect on the ballot statement.

2. Each member of the counting board must be present in the polling place where he is to serve not later than the time set for the closing of the polling place. If any polling place is closed early because all of the voters registered in the precinct have voted, the election board shall immediately notify the members of the counting board of the closing.

3. After the polls are closed, the election board shall compare the quantity of its supplies which were furnished by the county clerk with the county clerk's inventory and make a notation upon the inventory of any materials which were lost, used or stolen.

4. After voting is completed, the chairman of the election board shall deliver the keys to the ballot boxes to the chairman of the counting board.

5. Each chairman of a counting board shall assign duties to the members of his board in a manner which facilitates the counting of votes. If any person interferes in any way with the counting of the votes, the chairman of the counting board shall request a deputy sheriff to remove the person.

6. The members of the counting board shall count and make the record of the votes in the manner prescribed by the county clerk.

7. If the counting board rejects a ballot, it shall place that ballot in a separate envelope, seal the envelope and write upon the envelope the word "Rejected" and the reason for the rejection.

8. Every member of the counting board or the computer program and processing accuracy board as created by the county clerk pursuant to NRS 293B.385 shall sign the copy of the

--53--
Revised Adopted Regulation R072-06

election return which is required by NRS 293.383 to be posted on the outside of the polling place.

294A.047 Filing of reports of contributions made by certain persons and political organizations on behalf of candidate or group of candidates. (NRS 294A.140, 294A.210, 294A.380, 294A.420)

1. Every person who is not under the direction or control of a candidate or group of candidates or of any person involved in the campaign of that candidate or group who makes an expenditure on behalf of the candidate or group which is not solicited or approved by the candidate or group, and every committee for political action, political party and committee sponsored by a political party which makes an expenditure on behalf of a candidate or group of candidates shall:

(a) If the first contribution that is received is a contribution required to be reported pursuant to paragraph (b) of subsection 1 of NRS 294A.140, file the report required pursuant to paragraph (b) of subsection 1 of NRS 294A.140 at the time the report required pursuant to paragraph (b) of subsection 1 of NRS 294A.140 is due indicating that no contributions were received during the period set forth in paragraph (a) of subsection 1 of NRS 294A.140.

(b) If the first contribution that is received is a contribution required to be reported pursuant to paragraph (c) of subsection 1 of NRS 294A.140, file the reports required pursuant to paragraphs (a) and (b) of subsection 1 of NRS 294A.140 at the time the report required pursuant to paragraph (c) of subsection 1 of NRS 294A.140 is due indicating that no contributions were received during the periods set forth in paragraphs (a) and (b) of subsection 1 of NRS 294A.140.

--54--
Revised Adopted Regulation R072-06

- (b) If the first contribution that is received is a contribution required to be reported pursuant to paragraph (c) of subsection 1 of NRS 294A.150, file the reports required pursuant to paragraphs (a) and (b) of subsection 1 of NRS 294A.150 at the time the report required pursuant to paragraph (c) of subsection 1 of NRS 294A.150 is due indicating that no contributions were received during the periods set forth in paragraphs (a) and (b) of subsection 1 of NRS 294A.150.
- (c) If the first expenditure that is made is an expenditure required to be reported pursuant to paragraph (b) of subsection 1 of NRS 294A.220, file the report required pursuant to paragraph (a) of subsection 1 of NRS 294A.220 at the time the report required pursuant to paragraph (b) of subsection 1 of NRS 294A.220 is due indicating that no expenditures were made during the period set forth in paragraph (a) of subsection 1 of NRS 294A.220.
- (d) If the first expenditure that is made is an expenditure required to be reported pursuant to paragraph (c) of subsection 1 of NRS 294A.220, file the reports required pursuant to paragraphs (a) and (b) of subsection 1 of NRS 294A.220 at the time the report required pursuant to paragraph (c) of subsection 1 of NRS 294A.220 is due indicating that no expenditures were made during the periods set forth in paragraphs (a) and (b) of subsection 1 of NRS 294A.220.
2. If a report is timely filed pursuant to subsection 1, the Secretary of State will waive any civil penalty imposed pursuant to NRS 294A.420 because of the date the report is filed.

294A.085 Form of report of campaign contributions: Inclusion of categories for reporting opening balance and amount of interest and income earned. (NRS 294A.380)

The form of the report of campaign contributions required pursuant to NRS 294A.120, 294A.125, 294A.140, 294A.150, 294A.270 or 294A.360 must include a category for reporting:

--56--
Revised Adopted Regulation R072-06

- (c) If the first expenditure that is made is an expenditure required to be reported pursuant to paragraph (b) of subsection 1 of NRS 294A.210, file the report required pursuant to paragraph (a) of subsection 1 of NRS 294A.210 at the time the report required pursuant to paragraph (b) of subsection 1 of NRS 294A.210 is due indicating that no expenditures were made during the period set forth in paragraph (a) of subsection 1 of NRS 294A.210.
- (d) If the first expenditure that is made is an expenditure required to be reported pursuant to paragraph (c) of subsection 1 of NRS 294A.210, file the reports required pursuant to paragraphs (a) and (b) of subsection 1 of NRS 294A.210 at the time the report required pursuant to paragraph (c) of subsection 1 of NRS 294A.210 is due indicating that no expenditures were made during the periods set forth in paragraphs (a) and (b) of subsection 1 of NRS 294A.210.
2. If a report is timely filed pursuant to subsection 1, the Secretary of State will waive any civil penalty imposed pursuant to NRS 294A.420 because of the date the report is filed.
- 294A.048 Filing of reports of contributions by person or group of persons advocating passage or defeat of question on ballot. (NRS 294A.150, 294A.220, 294A.380, 294A.420)**
1. Every person or group of persons organized formally or informally who advocates the passage or defeat of a question or group of questions on the ballot at any election including any recall or special election shall:
- (a) If the first contribution that is received is a contribution required to be reported pursuant to paragraph (b) of subsection 1 of NRS 294A.150, file the report required pursuant to paragraph (a) of subsection 1 of NRS 294A.150 at the time the report required pursuant to paragraph (b) of subsection 1 of NRS 294A.150 is due indicating that no contributions were received during the period set forth in paragraph (a) of subsection 1 of NRS 294A.150.

--55--
Revised Adopted Regulation R072-06

1. The opening balance of the campaign fund at the beginning of the first period for which the report is required; and
2. The total amount of interest and income, after deducting any applicable charges, earned from the investment of money received from campaign contributions.

294A.095 Reports regarding disposition of unspent campaign contributions:

Exemption from certain filing requirements. A person who:

1. Files a report pursuant to subsection 2 of NRS 294A.180 which indicates that all the campaign contributions he has received have been expended, committed for expenditure, or otherwise disposed of; and
 2. Does not receive any additional campaign contributions after the period to which that report relates,
- is not required to comply with the provisions of paragraphs (b) and (c) of that subsection.

DEAN HELLER
Secretary of State

RENEE L. PARKER
*Chief Deputy Secretary
of State*

PAMELA A. RUCKEL
*Deputy Secretary for
Southern Nevada*

STATE OF NEVADA



OFFICE OF THE
SECRETARY OF STATE

CHARLES E. MOORE
Securities Administrator

SCOTT W. ANDERSON
*Deputy Secretary
for Commercial Recordings*

ELLYCK C. HSU
*Deputy Secretary
for Elections*

KIM A. HUYS
*Deputy Secretary
for Operations*

NOTICE OF ADOPTION OF REGULATION

The Secretary of State – Elections Division adopted regulations assigned LCB File No. R072-06 that pertain to chapters 293, 293B, 294A, and 295 of the Nevada Administrative Code on June 7, 2006. A copy of the regulations as adopted are attached hereto.

(b) **Testified at each hearing:**

March 2, 2006 Workshop: 6
 March 28, 2006 Workshop: 4
 May 23, 2006 Hearing: 3
 June 7, 2006 Hearing: 3

(c) **Submitted to the agency written comments:**

The American Civil Liberties Union
 The Progressive Leadership Alliance of Nevada
 Assemblywoman Chris Giunchigliani

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Notices soliciting comments were sent via e-mail and U.S. Mail to those individuals that had requested such notices from the Secretary of State. Notices were also sent to each of the City and County Clerks/Registrars of Voters in Nevada. Notices were also posted at the Capitol Building, State Library, the Legislative Building in Carson City, the Secretary of State's office in Reno, and the Grant Sawyer Building in Las Vegas.

A copy of the submitted written comments may be obtained by calling the Secretary of State, Elections Division at (775) 684-5705 or by writing to the Secretary of State, Elections Division at 101 North Carson Street, Suite 3, Carson City, Nevada 89701

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Changes were made to the proposed regulations based on comments we received.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

This regulation does not have any effect on any business.

6. The estimated cost to the agency for enforcement of the proposed regulation.

No additional cost is anticipated to enforce these proposed regulations. These regulations merely further clarify provisions already in place in the NRS or NAC.

7. A description of any regulations of the state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that these regulations duplicate.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

These regulations do not include provisions that are more stringent than a federal regulation which regulates the same activity.

9. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

These regulations do not establish a new fee or increase an existing fee.

List of Bills: (as of 4/11/07)

SB57 AB79
 SB78 AB80
 SB79 AB121
 SB80 AB142
 SB121 AB160
 SB122 AB246
 SB144 AB301
 SB149 AB312
 SB230 AB322
 SB248 AB328
 SB303 AB335
 SB371 AB342
 SB385 AB372
 SB401 AB384
 SB411 AB450
 SB423 AB505
 SB425 AB506
 SB489 AB516
 SB492 AB517
 SB493 AB570
 SB494 AB569
 SB495 AB604
 SB517 AB605
 SB549 AB606

SJR1
 SJR2
 SJR3
 SJR4

AJR1
 AJR6
 AJR8
 AJR10
 AJR11
 AJR12

SCR19

ROSS MILLER
Secretary of StateNICOLE J. LAMBOLEY
Chief Deputy Secretary
of StateCHRIS LEE
Deputy Secretary for
Southern Nevada

STATE OF NEVADA



OFFICE OF THE
SECRETARY OF STATE
 December 17, 2007

Thomas R. Wilkey, Executive Director
 United States Election Assistance Commission
 1225 New York Avenue N.W. Suite 1100
 Washington, D.C. 20005

RE: Nevada's FY 2007-2008 State Plan

Dear Mr. Wilkey:

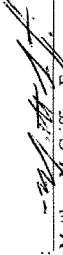
Nevada hereby submits the State Plan for FY 2007-2008, which has been developed pursuant to § 254 of the Help America Vote Act of 2002, P.L. 107-252 (HAVA).

We thank you in advance for arranging the publication in the Federal Register pursuant to § 255 of HAVA.

Please send confirmation that you have received Nevada's Plan, and feel free to contact me at (775) 684-5705 if you have any questions or concerns.

Respectfully,

ROSS MILLER
 Secretary of State

By: 
 Matthew M. Griffin, Esq.
 Deputy Secretary for Elections

RM:MG:ij

NEVADA STATE CAPITOL
 101 N. Carson Street, Suite 3
 Carson City, Nevada 89701-4786
 Telephone: (775) 684-5708
 Fax: (775) 684-5725

COMMERCIAL RECORDINGS
 MEYER'S ANNEX OFFICE
 202 N. Carson Street
 Carson City, Nevada 89701-4201
 Telephone: (775) 684-5708
 Fax: (775) 684-5725

LAS VEGAS OFFICE
 555 E. Washington Avenue
 Las Vegas, Nevada 89101-1090
 SECURITIES: Suite 5200
 Telephone: (702) 486-2440
 Fax: (702) 486-2452
 CORPORATIONS: Suite 4000
 Telephone: (702) 486-2440
 Fax: (702) 486-2888

SECURITIES SATELLITE OFFICE
 1755 E. Plumb Lane, Suite 231
 Reno, Nevada 89502-3691
 Telephone: (775) 688-1855
 Fax: (775) 688-1858

(NPSD Rev. 1/07)

(0) 432

Secretary of State Ross Miller Seeks Public Comments on

NEVADA'S FY 2007-2008 STATE PLAN FOR ELECTION REFORM

The President signed the Help America Vote Act of 2002 (HAVA) into law October 29, 2002, requiring the 50 States to reform state and local election procedures in order to improve and preserve the integrity of the United States voting process. HAVA affects virtually every element of the voting process, and federal funds have been made available to assist states in this task.

Federally mandated changes include, but are not limited to:

- Implementation of a Statewide Voter Registration System
- Upgrading Voting Machines throughout the State
- Improving Voter Education and Poll Worker Training
- Requiring Provisional Ballots
- Requiring voting accessibility for people with disabilities

HAVA requires each State to form a State Plan describing how the State will implement HAVA and use federal money to carry out HAVA's requirements. The Plan is developed by the Secretary of State's office and the HAVA Advisory Committee, which is made up of election officials and various members of the community. The Committee developed an initial Plan for FY 2003-2004 and finalized it after receiving public comment.

Each State must update its Plan every fiscal year and report on the State's progress toward implementation of HAVA, and the framework for continuing its activities to meet the requirements of HAVA. The HAVA Advisory Committee approved this preliminary version of the FY 2007-2008 State Plan on October 8, 2007. The Secretary of State and the HAVA Advisory Committee are now soliciting comments from the public before finalization of Nevada's FY 2007-2008 State Plan, as required by HAVA.

Accordingly, Nevada's 2007-2008 State Plan for election reform is open to public comment for a thirty day period ending November 21, 2007. **If you are interested in voicing your comments and opinions on the draft of Nevada's State Plan, please submit them in writing to be received by the Secretary of State on or before close of business on November 21, 2007.** Please address your comments to one of the following:

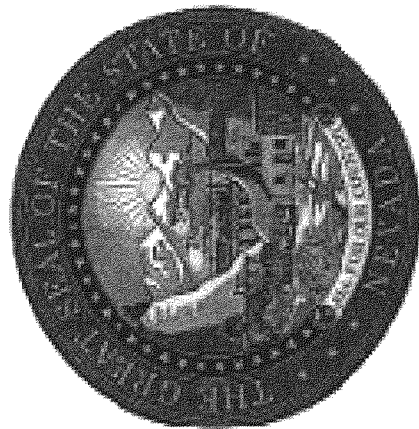
By postal Mail: Nevada Secretary of State Elections Division
101 North Carson Street, Suite 3
Carson City, Nevada 89701-3714

By E-mail: nvelect@goval.state.nv.us

Copies of this notice have been posted at the following locations listed on page 2: Nevada State Library and all the main County Libraries, all City Clerks and County Clerks/Registrars of Voters, Washoe County Registrar of Voters, Clark County Election Department, all Nevada Community Colleges, University of Nevada Reno and Las Vegas, the Attorney General's Offices in Carson City and Reno, the Grant Sawyer State Building in Las Vegas, and the Capitol Building and Legislative Counsel Bureau in Carson City.

A free copy of Nevada's draft State Plan also may be obtained by visiting the Secretary of State's office at the above location, by contacting the Elections Division at (775) 684-5705, from the Secretary of State's website at www.secretaryofstate.biz, or from your local Election Department.

Page 1 of 2



State of Nevada

Fiscal Year 2007-2008

State Plan

As required by Public Law 107-252
Help America Vote Act of 2002, Section 253 (b)

Office of the Nevada Secretary of State
101 N. Carson Street, Suite 3
Carson City, NV 89701
October 8, 2007

FY 2007-08 State Plan Table of Contents	
I. Introduction.....	1
II. The Backdrop for Nevada's State Plan Information.....	1
III. Nevada's State Plan.....	2 - 18
A. Use of Requirement Payments.....	2 - 4
1. Voting System Standards.....	2
2. Provisional Voting & Voting Information Requirements.....	2 - 3
3. Statewide Voter Registration List & Registration by Mail.....	3 - 4
a. Statewide Voter Registration System	
b. Requirements for Voters Who Register by Mail	
4. Other Administration of Elections Improvements.....	4 - 5
a. Accessibility for People with Disabilities	
b. State IT Committee	
B. Distribution of Requirements Payments & Eligibility.....	5
C. Voter Education, Election Official, and Poll Worker Training.....	6 - 7
1. Voter Education.....	6
2. Election Official and Poll Worker Training.....	6 - 7
D. Voting System Guidelines & Processes.....	7
E. Establishment of Election Fund.....	7 - 8
F. Proposed HAVA Budget.....	8 - 12
1. Total Funding Received to Date.....	8
2. Total Funding Expended to Date.....	9
Proportionate Breakdown, Graph A.....	9
3. Total Funding Remaining.....	10
Proportionate Breakdown, Graph B.....	10
4. Allocation of Remaining Funding.....	11 - 12
Proportionate Breakdown, Graph C.....	14
a. Voting Systems Purchases/Upgrades	
b. Statewide Voter Registration List Maintenance	
c. Provisional Voting & Voting Information	
d. Polling Place Accessibility, Ongoing Assessment	
e. Voter Education & Outreach Activities	
f. Election Official and Poll Worker Training	
g. Technology and Personnel	
G. Maintenance of Effort.....	13
H. Performance Goals and Measures.....	13-14
1. Goals.....	13 - 14
2. Measures.....	14
I. Administrative Complaint Procedure.....	15
J. Effect of Title I Payments.....	16
K. Ongoing Management of Plan.....	16
L. Changes to Plan from Previous Year.....	16 - 17
M. Committee Description & Development of Plan.....	17 - 18
Appendix A: Administrative Complaint Procedure	
Appendix B: Advisory Committee Biographies & Affiliations	
Appendix C: July 26 th , 2007, Advisory Committee Meeting Agenda	
Appendix D: October 8 th , 2007, Advisory Committee Meeting Agenda	
Appendix E: Temporary Statewide Voter Registration Maintenance Regulations	

III. NEVADA'S STATE PLAN

STATE OF NEVADA FISCAL YEAR 2007-2008 STATE PLAN

I. INTRODUCTION

The Help America Vote Act of 2002 (HAVA or Act) requires each state to develop a comprehensive plan for implementing the mandatory changes to the administration of elections that are called for in the legislation. HAVA affects virtually every element of the voting process, focusing on the following areas:

- Development of a Statewide Voter Registration System
- Replacement of Punch Card Voting Machines
- Improvement of Voter Education and Poll Worker Training
- Establishment of Opportunity to Cast Provisional Ballots
- Improved Accessibility for Voters with Disabilities

Like the previous State Plans developed pursuant to HAVA, this Plan (FY 07-08) was created under the direction of the Secretary of State through a State Plan Advisory Committee (Advisory Committee).

II. THE BACKDROP FOR NEVADA'S STATE PLAN

The Secretary of State is the Chief Officer of Elections for the State of Nevada, and, as such, is responsible for the execution and enforcement of state and federal laws relating to elections.

Nevada remains one of the fastest growing states in the country. Based on figures obtained from Census 2000, Nevada's population increased by 796,424 persons between 1990 and 2000. In 2006, the State's demographer estimated Nevada's population at 2,623,050. Nevada's largest county, Clark County, continues to add approximately 5,000 new citizens per month. Currently, the State has approximately 1.2 million registered voters spread throughout its 17 counties. Moreover, more than 1,500 state, county and municipal political campaigns come under the jurisdiction of local or state election officials during each election cycle.

The Secretary of State's Office will continue to work closely with local election officials, advocacy groups, the State Legislature, and local and state law enforcement agencies to protect the integrity of Nevada's election process. This cooperative effort will include establishing various committees, including but not limited to, the State Training Committee, Election Command Center Committee, State Regulatory & Compliance Committee and the State IT Committee. The State will continue to mitigate costs associated with HAVA implementation and compliance and continue to be fiscally responsible in best utilizing the State's remaining funds.

A. Use of Requirements Payments

Section 254(a)(1) requires a description of how the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections. Title III requires the establishment of certain voting system standards, provisional voting, public posting of voting information, a computerized statewide voter registration list, and voter registration application modifications.

1. Voting Systems Standards

Section 301(a) establishes several voting system standards which must be met by January 1, 2006. Under this section, no waiver of the requirements is permitted.

HAVA requires each voting system in the state to: (a) permit voters to verify whom they have voted for and make changes to their vote in a private, secret and independent manner; (b) notify voters if they have overvoted, what happens in instances of an overvote and provide an opportunity to correct the ballot; (c) ensure that any notification to the voter maintains the privacy, secrecy and independence of the voter's ballot; (d) produce a permanent paper record with manual audit capacity; (e) be accessible for people with disabilities through the use of at least one (1) DRE voting system placed at each polling place; (f) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965; (g) comply with error rates established by the Federal Elections Commission (FEC) as of the time HAVA was adopted; and (h) have a definition of what constitutes a vote and what will be counted. These requirements have been incorporated into Nevada statutes or regulations.

A significant amount of federal funding that has been appropriated to date was used to upgrade the voting systems throughout the State and to purchase new systems in order to comply with the above requirements. The State implemented uniform DRE voting systems for polling places throughout the state, with all DRE machines being fitted with the voter verifiable paper trail printers.

To ensure proper training for election administrators and the voting citizens of Nevada, the State has used, and depending on the availability of funds, may use additional requirements payments to educate individuals about the proper use of the voting systems. Requirements payments will be used for maintaining, modifying and improving all voting systems in the State to ensure compliance with HAVA Section 301(a) standards. Additional uses include continued education on the operation and maintenance of voting systems.

2. Provisional Voting and Voting Information Requirements

Section 302 requires the establishment of provisional voting and the posting of voting information at polling places by January 1, 2004. Under this section, no waiver permitted.

HAVA requires provisional voting procedures in all states to ensure that no voter who appears at the polls and desires to vote is turned away for any reason. The State adopted legislation proposed by the Secretary of State that enacts procedures to allow

for provisional voting in federal races throughout the State. The procedures¹ that were adopted meet the requirements of Section 302.

The State will continue using requirements payments to maintain the free access system required by HAVA to provide voters who cast provisional ballots the ability to discover whether their ballot was counted. The State also continues to use requirements payments to develop procedures for provisional voting and to plan and conduct training and outreach concerning a voter's ability to receive and cast a provisional ballot. Finally, if adequate federal funding is available, the State may use requirements payments to assist local governments with funding offsets necessary to prepare and process provisional ballots.

Section 302 of HAVA also mandates that a sample ballot and other voting information be posted at polling places on Election Day. The State anticipates using requirements payments to defray the cost of developing, printing and posting this information in the upcoming election cycle.

The State Training Committee will continue to promulgate signage for counties to utilize as well as provide continued assistance in evaluating a county's election signage prior to printing and posting. The Secretary of State will continue to provide guidance and clarification in signage requirements.

3. Computerized Statewide Voter Registration List and Requirements for Voters Who Register by Mail

Section 303 requires the establishment of a computerized statewide voter registration list, first time voters who register by mail to provide identification when they cast their ballots, and changes to be made to the voter registration application by January 1, 2004. A waiver is permitted to extend compliance with Section 303(a) to January 1, 2006.

a. Statewide Voter Registration System (SVRS)

Section 303 of HAVA requires that all states establish a statewide computerized registration list of all eligible voters. This "single, uniform, official, centralized, interactive, computerized statewide voter registration list" must be administered at the State level and is considered the official list of legally registered voters in the State.

The Secretary of State's Office has a HAVA compliant statewide voter registration system in place. The Secretary of State's system was implemented prior to the 2006 election cycle and has the ability to interface with Nevada's Department of Motor Vehicles and other appropriate agencies, as required by HAVA. Additionally, this statewide voter registration database allowed all 17 counties to clear thousands of records, including duplicate records.

The State will continue to expend a portion of its requirements payments and Title I payments to fund additional upgrades and maintenance of the statewide voter registration system. Additionally, the Secretary of State will continue to explore options of database interfacing with other agencies which may not currently have

electronic databases. Regulations specific to statewide voter registration maintenance procedures were promulgated prior to the 2006 election cycle.

b. Requirements for Voters Who Register by Mail

With respect to requirements for voters who register by mail, the State revised its voter registration form in May of 2007. These recent revisions include clarifying language for identification requirements as well as providing an opportunity for county election officials to recruit poll workers.

4. Other Activities to Improve the Administration of Elections (Section 251(b)(2))

a. Improving Voting Accessibility for People with Disabilities

Every polling site in the State was surveyed for Americans with Disabilities Act² (ADA) accessibility and various types of equipment were purchased to improve access to needed areas. During FY 2007-2008, the Secretary of State will continue to improve accessibility, apply for additional federal funding to ensure ADA compliance and proper training of poll workers, and continue both voter outreach efforts to the people with disabilities community and statewide training on ADA compliance issues.

b. Develop State IT Committee

The Secretary of State will continue to utilize a statewide IT committee comprised of county and Secretary of State IT representatives and elections staff. This committee is headed by the Secretary of State's Office and works to: 1) address overall security improvements to voting equipment and the statewide voter registration database; 2) develop updates to the statewide voter registration database and accompanying changes to county election management systems; 3) coordinate election night reporting; 4) assist state training committee on preparing technical training materials; and 5) testing for voting machine software and state certification.

The State intends to continue using requirements payments to fund other activities to improve the administration of elections, including, but not limited to: (a) establishing a polling place accessibility program to ensure that all polling places in Nevada are and continue to be in compliance with the ADA; (b) providing necessary assistance to persons with limited proficiency in the English language; (c) engaging in a variety of voter education and outreach activities, including public service announcements, voting machine demonstrations, mass mailings and other related media avenues; (d) providing election official and poll worker training initiatives; (e) establishing poll worker recruitment programs; and (f) continuing to develop the Secretary of State's website to offer up-to-date, detailed election information to the public.

The State will also continue using requirements payments to fund staff positions to allow for ongoing operations and maintenance of programs and projects to sustain

² Public Law 336 of the 101st Congress, enacted July 26, 1990.

¹ See Nevada Revised Statutes (NRS) Sections 293.3081 through 293.3086, inclusive.

HAVA compliance. The State will continue to evaluate staffing needs to determine if additional positions are needed to fulfill HAVA requirements.

B. Distribution of Requirements Payments and Eligibility for Distribution

Section 254(a)(2) of the act requires a description of how the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in Section 254(a)(1), including a description of—

- (A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and
- (B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under Section 254(a)(8).

The Office of the Secretary of State will centrally manage activities funded by requirements payments. The Secretary of State will be accountable for all expenditures, funding levels and program controls and outcomes. The Secretary of State, in conjunction with local election officials, will determine the appropriate level of support for local activities.

To the extent that a decision is made to distribute requirements payments to units of local government and other entities for carrying out the activities described in Section 254(a)(1), the criteria to be used for determining eligibility include, but are not limited to: (a) the priority of the project to which the distribution is intended to be applied, as it relates to complying with HAVA; (b) the extent to which the recipient is in compliance with Title III of HAVA and all other state and federal election laws; (c) the recipient must maintain its current level of funding for its elections budget outside of any HAVA funds received; (d) the recipient must cooperate with the State in maintaining the statewide voter registration list and must timely implement list purging activities and reporting as required by the Secretary of State; (e) the need for the payment to ensure continued compliance with state and federal elections laws; (f) the availability to the recipient of other funding sources, including other HAVA related grants; (g) the recipient must acknowledge that it will be required to reimburse the State for all federal funds received if it does not meet the deadlines for compliance in HAVA; and (h) the recipient must develop a comprehensive accounting plan in accordance with federal criteria for separately identifying and tracking any federal funds received. The criteria for receipt of requirements payments will be agreed to in writing in advance by the Secretary of State and the unit or entity receiving the payment.

If requirements payments are so distributed, the Secretary of State will monitor the performance of each activity funded by requirements payments on a case-by-case basis. The methods to be used by the State to monitor the performance of the payment recipients may include, without limitation: (a) requiring the recipient to prepare and submit comprehensive timely reports to the Secretary of State detailing the expenditures and their relation to complying with Title III of HAVA; (b) implementing financial controls that establish financial reporting methods; and (c) developing performance indicators on a case-by-case basis for all activities funded.

C. Voter Education, Election Official and Poll Worker Training

Section 254(a)(3) of the Act requires a description of how the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

1. Voter Education

With voter participation and turnout declining nationally over the last twenty years, the Secretary of State's office is making a concerted effort to expand Nevada's voter outreach and education efforts.

Education is the key to improving Nevada's voter participation rate. Further exploration as to reaching various socio-economic groups as well as providing information for those who have had their rights restored or qualify to have their voting rights restored will also be included.

The Secretary of State's office has produced and published several informative brochures designed to educate Nevada's citizens about the voter registration process, the significance of every single vote, and the requirements of HAVA. The agency's website (<http://secretaryofstate.biz>) contains a wealth of information useful to individuals and groups seeking to advance voter participation and citizen knowledge of the elections process.

The 2003 Legislature moved the Advisory Committee on Participatory Democracy (ACPD) under the auspices of the Secretary of State's office, and established the goals of 75 percent voter registration and 70 percent voter turnout by those registered voters in Nevada by 2008.

In June 2006, the Advisory Committee for Participatory Democracy (ACPD) solicited grant applications to conduct voter education and outreach to the citizens of Nevada. The grant was funded through Section 101 HAVA with minimum funding requests of \$15,000 and a maximum of \$65,000. The grant was limited to nonprofit, nonpartisan organizations organized for the purpose of voter education and outreach to increase participation in the election process. The Secretary of State, as recommended by the ACPD, awarded grants to four entities totaling \$65,824. Each entity was required to enter into a Notice of Subgrant Award with the Secretary of State, Elections Division to ensure HAVA compliance and for reporting purposes.

The Secretary of State and the ACPD will focus on establishing partnerships with the business sector to enhance voter participation and Election Day support, while also building relationships with educational institutions and community organizations to increase youth voter participation.

2. Election Official and Poll Worker Training

The State, in conjunction with all 17 counties, has instituted a training program to provide a more centralized source of training, versus the more localized training programs that have existed in the past. In lieu of the disproportionate range of

- (B) The requirements payment made to the State under this part.
- (C) Such other amounts as may be appropriated under law.
- (D) Interest earned on deposits of the fund.

The State created a special election fund in the state treasury that provides the Secretary of State with the authority to deposit into this fund all HAVA grants and state matching fund appropriations. This fund is fully compliant with Section 254(b) of HAVA. The Secretary of State works closely with the State's Budget Division and the State Controller's office to implement and enforce all fiscal controls and policies required by both state and federal law.

F. Nevada's Proposed HAVA Budget

Section 254(a)(6) requires a description of the State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

- (A) The costs of the activities required to be carried out to meet the requirements of Title III
- (B) The portion of the requirements payment which will be used to carry out activities to meet such requirements; and
- (C) The portion of the requirements payment which will be used to carry out other activities.

1. Total Funding Received to Date:

Federal Fiscal Year	Federal Appropriations	Nevada's Share	5% Match
Title I Early Payments	\$650 million	\$5 million	n/a
2003	\$833 million	\$5.7 million	\$304,313
2004	\$1.5 billion	\$10.3 million	\$546,062
2005	\$0	\$0	\$0
2006	\$0	\$0	\$0
2007	\$0	\$0	\$0
Total	\$3.02 billion	\$21.2 million	\$850,375

The State has also received an additional \$500,000, under HAVA Title II, Section 261 for polling place accessibility. The State has been awarded yearly increments of \$100,000 over the last five years. The State began drawing these funds for the first time in 2006. These funds will continue to be utilized for voter outreach projects, improved accessibility and poll worker training.

resources available at the local level across the State, building a centralized source of training has been critical in ensuring all 17 counties have access to all the training necessary to maintain their role in achieving HAVA compliance. Centralized training in 2006 covered: 1) maintenance of the statewide voter registration list; 2) DRE maintenance, testing, programming and security; 3) provisional voting and provisional phone line reporting; 4) election date signage requirements; 5) requirements under UOCAVA for overseas citizens and the military, including use of FWAB ballots; 6) ADA accessibility training for poll workers and election staff; 7) general improvements for poll worker recruitment, training and management; 8) overall communication; 9) additional federal reporting requirements; 10) conducting mandatory post election VVPAT audit and 11) additional certifications for various federal and state requirements. The State will continue to revise and update the training materials and procedures created in 2006 through the guidance of a State Training Committee. This committee is comprised of two Secretaries of State employees and four County Clerks/Registrar of Voters. Training topics will include but are not limited to: 1) restoration of felon voting rights; 2) voter identification requirements; 3) poll watchers; 4) provisional voting; 5) election security; 6) electioneering; and 7) polling place assistance.

In preparation for the 2008 Elections, comprehensive training sessions and materials addressing election issues will be conducted and distributed to all election officials. These sessions will also include independent training sessions tailored to address the various needs of Nevada's election officials.

D. Voting System Guidelines and Processes

Section 254(a)(4) requires a description of how the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

Nevada law mirrors the voting system guidelines and processes set forth in HAVA section 301, as outlined in Section III(A)(1) of this Plan. In addition, the Secretary of State is responsible for certifying voting systems for use in the State. The Secretary of State, in accordance with state law, cannot certify any voting system in the State unless it meets or exceeds the standards for voting systems established by the FEC. The Secretary of State will develop new guidelines and processes as necessary to ensure all voting systems in the State continue to remain in compliance with Section 301.

E. Establishment of Election Fund

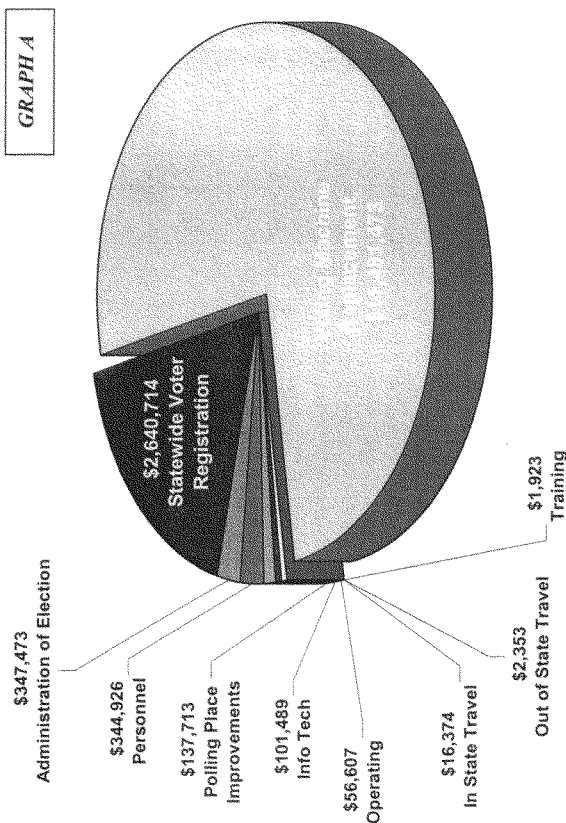
Section 254(a)(5) requires a description of how the State will establish a fund described in Section 254(b) for purposes of administering the State's activities under this part, including information on fund management.

- (b) Requirements for Election Fund—
 - (1) Election Fund Described.—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(4) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part.

2. Total Funding Expended to Date:

Of the initial HAVA funding received, \$15,131,081 has been expended to date to meet the various requirements set forth under HAVA.

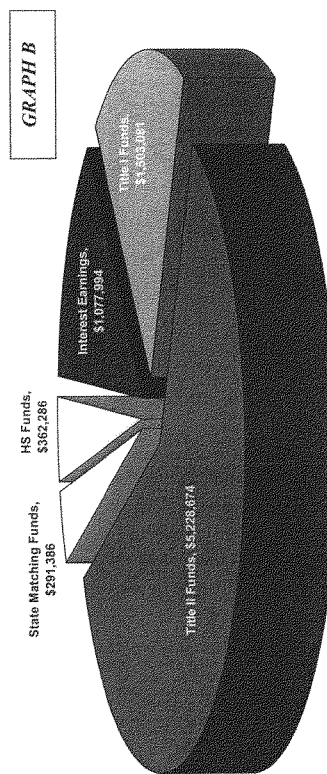
Proportionate Breakdown of HAVA Expenditures to Date

9

3. Total Funding Remaining to Date:

Budget Account 1051 - HAVA
Funding Received and Remaining as of June 30, 2007

Funding Source	Date Rec'd	Amount Rec'd	Amount Remaining
Title I	05/01/03	\$5,000,000	\$1,503,081
Title II (Federal FY 03)	08/09/04	\$5,785,410	\$0
Title II (Federal FY 04)	11/29/04	\$10,381,400	\$5,228,674
State Match - GF	07/01/04	\$299,820	\$0
State Match - SS	08/05/04	\$550,555	\$291,386
HHS Funds - FFY 2003		\$100,000	\$0
HHS Funds - FFY 2004		\$100,000	\$62,286
HHS Funds - FFY 2005		\$100,000	\$100,000
HHS Funds - FFY 2006		\$100,000	\$100,000
HHS Funds - FFY 2007		\$100,000	\$100,000
FY 04 Interest Earned	06/30/04	\$87,430	\$87,430
FY 05 Interest Earned	06/30/05	\$214,828	\$214,828
FY 06 Interest Earned	06/30/06	\$371,193	\$371,193
FY 07 Interest Earned	06/30/07	\$404,543	\$404,543
Totals:		\$23,595,179	\$8,463,422

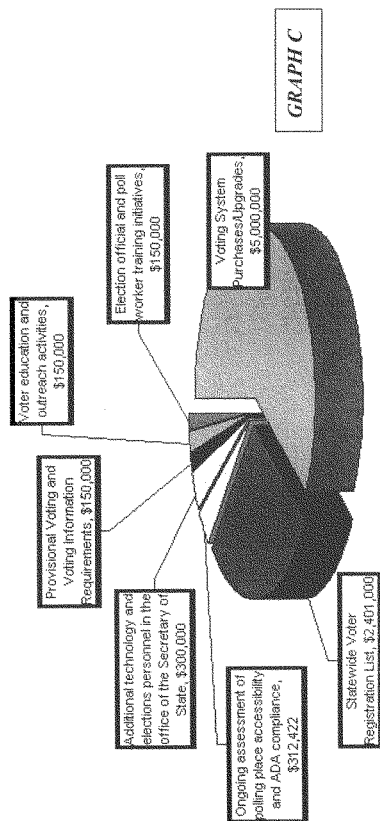
Proportionate Breakdown of Remaining HAVA Funding

10

4. Allocation of Remaining HAVA Funding For FY 07-08:

The remaining \$8,463,422 will be utilized to continue to maintain statewide HAVA compliance. Additionally funding will be set aside to ensure that both the voting systems and the statewide voter registration database can be maintained, updated and adequately supported. As ongoing projects, funding needs have been taken into account post FY 07-08.

Estimated Allocation of Remaining HAVA Funding



GRAPH C

a. Voting System Purchases/Upgrades:

--Continue to develop strategies to obtain funding, to update DRE machines and their respective VVPAT mechanism to ensure continued compliance with both federal and state law. Also provide additional touch screen systems fitted with voter verifiable paper audit trail printers as needed prior to the 2008 and 2010 election cycles.

--To be funded with Title I early payments, Title II requirements payments and State matching funds.

--Cost to date: \$11,481,473

--Expected costs for FY 07-08: \$2,000,000

--Expected costs for FY 08-09: \$3,000,000

b. Establishing and Maintaining a Statewide Voter Registration List:

--Approximately, \$4 to \$5 million was allocated to cover base cost, with estimated ongoing maintenance costs of approximately \$100,000 per year.

--The State will maintain between \$2.3 million to cover any additional improvements to be made to the internally built statewide voter registration list and any additional maintenance costs which may arise.

--To be funded with Title I early payments, Title II requirements payments and State matching funds.

--Cost to date: \$2,640,714

--Expected costs for FY 07-08: \$401,000

--Expected costs for FY 08-09: \$2,000,000

11

c. Provisional Voting and Voting Information Requirements:

--\$150,000 was initially allocated to create and develop enhancements to the free-access system, provide necessary training and outreach, and develop voting information.

--To be funded with Title II requirements payments and State matching funds.

--Expected costs for FY 07-08: \$150,000

d. Ongoing assessment of polling place accessibility and ADA compliance:

--A significant portion of HAVA Title II, Section 261 funds totaling \$362,286 will continue to be allocated to improve polling place accessibility. The expenditures will also include training for election officials and poll workers, along with providing information about polling place accessibility to people with disabilities.

--Expected costs for FY 07-08: \$312,422

e. Voter education and outreach activities:

--\$150,000.00 in HAVA funding will be allocated to continue with voter education and outreach activities.

--To be funded with Title I requirements payments and State matching funds.

--Expected costs for FY 07-08: \$150,000

f. Election official and poll worker training initiatives:

--\$150,000, in HAVA funding will be allocated to continue training election officials and poll workers.

--To be funded with both Title I and Title II requirements payments and State matching funds.

--Expected costs for FY 07-08: \$150,000

g. Additional technology and elections personnel in the office of the Secretary of State:

--\$344,926.00 has been expended on elections personnel since the implementation of HAVA in 2002.

--Additional considerations include creating a HAVA information technology position to help maintain various aspects of HAVA compliance including programming related to voting equipment as well as statewide voter registration maintenance and further development.

--Expected costs for FY 07-08: \$300,000

The State's FY 07-08 Plan, as presented herein, is limited to the extent State appropriations are made available, and is based on the assumption that adequate federal funding will be appropriated. While the State intends to fully comply with HAVA, if adequate federal funding is not made available, the manner in which the funds are disbursed or dedicated and the priorities given to particular projects may be altered from the information contained in this FY 07-08 Plan.

12

G. Maintenance of Effort

Section 254(a)(7) requires a description of how the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the state for the fiscal year ending prior to November 2000.

Consistent with the maintenance of effort requirement contained in HAVA, in using any requirements payments, the State will maintain expenditures for activities funded by the payment at a level equal to or greater than the level of such expenditures maintained by the State for its fiscal year that ended prior to November 2000. The total expenditures attributable to the Elections Division increased in the State's fiscal years 2001, 2002, 2003, 2004, 2005, 2006 and 2007 and are anticipated to increase in FY 08.

The State Legislature has the authority to approve these funding levels and has been apprised of the maintenance of effort requirements contained in HAVA. At this time, the Secretary of State's total HAVA budget is \$8,463,422.00. \$5,228,674.00 of this total amount is held in a Title II reserve fund, \$1,503,081.00 is held in a Title I reserve fund, \$291,386 consists of state match funds, \$362,286 is held in HHS funding and \$1,077,994.00 consists of accrued interest. Projected state funded expenses for FY 2007-2008 will still exceed \$250,000.

H. Performance Goals and Measures

Section 254(a)(8) requires a description of how the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

The Secretary of State, in collaboration with local election officials, has met all critical performance goals and will continue to institute processes to measure additional progress in relation to these time-specific goals, as well as ongoing performance goals. This process will provide local election officials with structure and continued measurable targets for accomplishment. In addition, each local election official will be required to report the progress in meeting the performance goals and measures to the Secretary of State within 60 days following every general election held in the State.

1. Performance Goals

In developing the FY 07-08 update to the State Plan, the strategies for achieving these HAVA compliant goals in the previous State Plans continue to be applicable: (1) obtain federal funding; (2) implement legislation fostering voter participation and compliance with HAVA; (3) conduct an assessment of the condition of the statewide voter registration process given these standards; (4) suggest changes to voting technology and processes to ensure accurate and reliable elections and voter confidence; and (5) develop and implement follow-through accountability activities and feedback mechanisms for complaints.

The State's primary goal is to achieve election reform and compliance with HAVA through the successful implementation of the programs outlined in the State Plan. In addition, having met HAVA compliance, the State will continue to create additional goals to continue Nevada's leadership role in election reform. Following is a description of the timetable for meeting each element of the Plan and the title of the official responsible for ensuring each such element is met:

<u>Element</u>	<u>State/County Official</u>	<u>Timetable</u>
Voting Systems	State Elections Deputy County Election Official	Accomplished September 2004
Voter Registration	State Elections Deputy County Election Official	Accomplished in 2006
Provisional Voting	State Elections Deputy County Election Official	Ongoing
Additional Personnel	State Elections Deputy	Ongoing (as needed)
Polling Place Accessibility	State Elections Deputy County Election Official	Ongoing
Voter Education/Outreach	State Elections Deputy County Election Official	Ongoing
Poll Worker Training	State Elections Deputy County Election Official	Ongoing
Complaint Procedures	Deputy Attorney General	Adopted/Ongoing

2. Performance Measures

The State will use the following criteria to measure performance:

- voter turnout statistics
- functionality of voting systems
- accuracy of the data contained in the statewide voter registration list
- voter satisfaction with equipment (accomplished through surveys or other strategies)
- complaints against poll workers
- complaints received versus complaints resolved
- ADA compliance

These criteria were developed through the State Planning Process. The State is further committed to exploring the use of additional performance measures.

I. State-Based Administrative Complaint Procedure

Section 254(a)(9) requires a description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402. This state-based administrative complaint procedure must be in effect prior to certification of the State Plan, but no later than January 1, 2004; no waiver of the procedure is permitted.

The Advisory Committee has developed and adopted a procedure for complaints that meets HAVA requirements³. The Secretary of State adopted regulations to place these procedures into the State Administrative Code prior to submission of the FY 03-04 State Plan. The Secretary of State will continue to review and update regulatory language on an ongoing basis. The Secretary of State has assembled the State Regulatory Committee which will continually review statutes needing clarification and develop regulatory language as needed.

In summary, the procedure provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of HAVA, including a violation that has occurred, is occurring, or is anticipated to occur. Any person who believes a violation of any provision of Title II has occurred may file a complaint with the Secretary of State. The complaint must be written, signed, sworn to and notarized. At the request of the complainant, the Secretary of State will conduct a hearing on the record that will be conducted in accordance with HAVA requirements. The Secretary of State will provide the appropriate remedy and will provide a final determination within the timeframes specified in HAVA. The procedure provides for alternative dispute resolution if the Secretary of State does not make a timely final determination. Finally, the procedure requires the Secretary of State to make reasonable accommodations to assist persons in need of special assistance for utilizing the complaint procedure.

The Secretary of State's Office has also established a statewide Election Command Center Committee which will further modify and improve various aspects of the complaint procedures to ensure the process remains a uniform and nondiscriminatory state-based administrative process. In addition to coordinating with local law enforcement agencies, the Secretary of State's Office will work closely with local district attorneys and the State's Attorney General to ensure complaints are handled proficiently and swiftly. The Secretary of State will deploy investigators from another division of the office to assist local and state agencies investigative staff and the Elections Division during voting periods to investigate complaints as they are recorded by the Secretary of State's Election Fraud and Complaint Hotline. This committee will be a concerted effort and will work closely with the State Training Committee as well on complaint procedures.

J. Effect of Title I Payments

If the State received payment under Title I, Section 254(a)(10) requires a description of how such payment will affect the activities proposed by the State to be carried out under the plan, including the amount of funds available for such activities.

On April 30, 2003, the State received \$5 million in Title I payments. The State has expended a portion of these funds for the voting system upgrades described in this State Plan. In addition, the State has expended these funds for ancillary devices, equipment and services associated with the voting systems contract and for travel and training activities necessary for implementing the new voting systems and the statewide voter registration system. Section 6 of this Plan specifically sets forth the State's intended additional uses for these funds.

K. Ongoing Management of the State Plan

Section 254(a)(11) requires a description of how the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

- (A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;*
- (B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and*
- (C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).*

The State intends to use the State Plan as the foundation for its goals in achieving election reform and compliance with HAVA. To achieve these goals, the Secretary of State has appointed an internal committee in his office to be overseen by the Deputy Secretary for Elections. This committee is responsible for conducting ongoing management of the State Plan. To carry out this function, the committee is required to hold meetings as deemed necessary to address HAVA related issues and keep current on the State's progress toward implementation of HAVA. The Deputy Secretary for Elections, or a designee, is to report to the State Advisory Committee the activities involved with the ongoing management of the Plan. The Secretary of State will continue to hold an annual meeting of the State Advisory Committee to review and update the State Plan, as necessary. The Secretary of State may also convene the State Advisory Committee at other times during the year as deemed advisable.

L. Changes to the State Plan from the Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, Section 254(a)(12) requires a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

This FY 2007-08 State Plan incorporates the same basic theme as the previous plans, and generally reports on the procedures implemented by the State in carrying out the previous plan, such as upgrades to voting systems throughout the State and specific voter education and outreach efforts undertaken by the State.

³ See Appendix A for copy of Administrative Complaint Procedure.

This current FY 07-08 State Plan updates the status of State performance goals and the various HAVA compliant projects, such as statewide voter registration. Also provided is a general update of achievements in the areas of training, accessibility, statewide voter registration, voter machine upkeep and maintenance, and outreach. This current plan further takes into consideration the Title II, Section 261 funds which had not been drawn prior to 2006.

M. Committee Description and Development of State Plan

Section 254(a)(13) requires a description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The State's Advisory Committee consists of fifteen (15) members including the Secretary of State, local election officials from the two largest counties in the State and a variety of other election stakeholders⁴. The Secretary of State selected the committee membership and either he or his Chief Deputy acted as Chairperson for each meeting held.

Members of the State Advisory Committee and their qualifications are as follows:

Ross Miller, Secretary of State
Nicole Lamboley, Chief Deputy Secretary of State
Ned Reed, Senior Deputy Attorney General (Appointee of Attorney General Cortez Masto)
Thomas Allman, Rights Advocate/Project Coordinator, Nevada Disability Advocacy & Law
LaVonne Brooks, Executive Director, High Sierra Industries
Dan Burk, Washoe County Registrar of Voters
Heidi Gansert, Assemblywoman, Washoe District 25
Jan Gilbert, N. NV Coordinator, Progressive Leadership Alliance of NV (PLAN)
Barbara Griffin, Douglas County Clerk
Joshua J. Hicks, Legal Counsel to Governor (Appointee of Governor Jim Gibbons)
Ruben Kihuen, State Assemblyman, District 11
Jennifer Lazovich, Esq., Kummer, Kaempfer Bonner Renshaw
Larry Lomax, Clark County Registrar of Voters
Dr. Richard Siegel, President, American Civil Liberties Union of Nevada
Monica Martinez Simmons, Henderson City Clerk

Advisory Committee Staff in the Office of the Secretary of State and their qualifications are as follows:

Matthew M. Griffin, Esq., Deputy Secretary of State for Elections
Rajinder Rai-Nielsen, Esq., State HAVA Coordinator
Lindy Johnson, State Advisory Committee Secretary

In developing this FY 07-08 State Plan, the State Advisory Committee members, with the assistance of staff, individually proposed revisions necessary to update the plan to reflect current circumstances. The committee met July 26, 2007, to review the initial draft incorporating the member's proposed revisions. The committee met again on October 8, 2007, to review the draft incorporating final proposed revisions by members and to consider comments submitted by the public. The FY 07-08 State

Plan was formally adopted by the committee on October 8, 2007. Committee meetings were publicly held and noticed in accordance with Nevada's Open Meeting Law. The FY 07-08 State Plan was then made available for public inspection and comment for a 30-day period prior to submission to the Election Assistance Commission (EAC). The Secretary of State published the draft plan and notice of the comment period on October 23, 2007 in his offices, on his website, in the Nevada State Library, at all main county libraries throughout the State, all city and county clerks' offices, and at various other public agencies throughout the State. The notice made it clear that the Secretary of State would accept public comment in the form of e-mails, letters, faxes, etc. through November 21, 2007. After receiving no public comments, the committee-adopted FY 2007-08 Plan was subsequently submitted to the EAC.

⁴ See Appendix B for Advisory Committee biographies and party affiliations.

APPENDIX A

Administrative Complaint Procedure
NAC 293.500 – 293.560, inclusive

COMPLAINTS ALLEGING VIOLATION OF TITLE III OF HELP AMERICA VOTE ACT OF 2002 (need to update)

NAC 293.500 Definitions. (NRS 293.124, 293.4685) As used in NAC 293.500 to 293.560, inclusive, unless the context otherwise requires, the words and terms defined in NAC 293.505 and 293.510 have the meanings ascribed to them in those sections.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.505 "Complainant" defined. (NRS 293.124, 293.4685) "Complainant" means a person who files a complaint with the Secretary of State pursuant to NAC 293.515.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.510 "Respondent" defined. (NRS 293.124, 293.4685) "Respondent" means a state or local election official against whom a complaint is filed pursuant to NAC 293.515.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.515 Filing; form; delivery of copy to respondents. (NRS 293.124, 293.4685)

1. A person who believes that a violation of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur may file a complaint with the Office of the Secretary of State.

2. A complaint filed pursuant to subsection 1 must:

(a) Be in writing, notarized and signed and sworn by the complainant. If the Secretary of State prescribes a form for the complaint, the complaint must be filed on that form.

(b) Provide the name of each respondent and a concise statement of the facts of the alleged violation of 42 U.S.C. §§ 15481 to 15502, inclusive.

(c) Be filed in the Office of the Secretary of State in Carson City:

(1) Not later than 60 days after the occurrence of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, is about to occur; or

(2) Not later than 60 days after the complainant knew or, with the exercise of reasonable diligence, should have known of the action or event that forms the basis for the complaint or for the belief of the complainant that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, is about to occur, whichever is later.

3. The complainant shall mail or deliver a copy of the complaint to each respondent not later than the date on which the complaint is filed.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.520 Review; dismissal and refiling. (NRS 293.124, 293.4685)

1. The Secretary of State or his designee will review each complaint filed pursuant to NAC 293.515 to determine whether the complaint:

(a) States a violation of 42 U.S.C. §§ 15481 to 15502, inclusive; and

(b) Complies with the requirements of NAC 293.515.

2. If a complaint fails to state a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, or does not comply with the requirements of NAC 293.515, the complaint will be dismissed without further action and notice of the dismissal will be provided to the complainant.

3. Except as otherwise provided in subsection 4, a complainant whose complaint has been dismissed pursuant to this section may refile the complaint within the time set forth in paragraph (c) of subsection 2 of NAC 293.515.

4. A complainant whose complaint has been dismissed for failure to state a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, may refile the complaint only one time.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.525 Consolidation; official record. (NRS 293.124, 293.4685)

1. The Secretary of State may consolidate complaints filed pursuant to NAC 293.515 if the complaints relate to the same action or event or raise a common question of law or fact. The Secretary of State will notify all interested parties if two or more complaints have been consolidated.

2. The Secretary of State will compile and maintain an official record in connection with each complaint filed pursuant to NAC 293.515.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.530 Hearing; Request; date; notice; nature. (NRS 293.124, 293.4685)

1. A complainant may request in a complaint filed pursuant to NAC 293.515 that the Secretary of State hold a hearing on the complaint.

2. If a complainant requests a hearing in accordance with subsection 1, the Secretary of State or his designee will conduct a hearing on the complaint, unless the complaint is dismissed pursuant to NAC 293.520. The hearing will be held not sooner than 10 days but not later than 30 days after a request for a hearing has been made in accordance with subsection 1.

3. The Secretary of State will provide notice of the date, time and place of the hearing at least 10 business days before the hearing:

(a) By mailing a copy of the notice to the complainant, each respondent and any interested person who has requested in writing to be advised of the hearing;

(b) By posting a copy of the notice in a prominent place at the Office of the Secretary of State that is available to the general public; and

(c) By posting a copy of the notice on the website of the Secretary of State.

4. A hearing held pursuant to this section is not a contested case for the purposes of chapter 233B of NRS.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.535 Hearing; Hearing officer; procedure. (NRS 293.124, 293.4685)

1. Except as otherwise provided in this subsection, the Secretary of State or his designee will act as the hearing officer for a hearing held pursuant to NAC 293.530. If the Secretary of State is a respondent in the complaint, the Secretary of State will appoint a designee who is an independent professionally qualified person to act as the hearing officer.

NAC 293.545 Remedial action or dismissal; issuance of final determination.
(NRS 293.124, 293.4685)

1. If the Secretary of State or his designee, whether acting as a hearing officer pursuant to NAC 293.535 or reviewing a complaint pursuant to NAC 293.540, determines that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur, the Secretary of State or his designee will provide the appropriate remedy, including, without limitation, an order to a respondent commanding the respondent to take specified action or prohibiting the respondent from taking the specified action, with respect to a past or future election. Such a remedy will not include an award of money damages or attorney's fees.

2. If the Secretary of State or his designee, whether acting as a hearing officer pursuant to NAC 293.535 or reviewing a complaint pursuant to NAC 293.540, determines that a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has not occurred, is not occurring or is not about to occur, the Secretary of State or his designee will dismiss the complaint.

3. The Secretary of State or his designee will issue a final determination on a complaint made pursuant to subsection 1 or 2 in writing. The final determination will include an explanation of the reasons for the determination and, if applicable, the remedy selected.

4. Except as otherwise provided in NAC 293.550, a final determination of the Secretary of State or his designee on a complaint will be issued within 90 days after the complaint is filed, unless the complainant consents in writing to an extension. The final determination will be:

- (a) Mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination;
 - (b) Posted on the website of the Secretary of State; and
 - (c) Made available by the Secretary of State, upon request, to any interested person.
- (Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.550 Proceedings for alternative dispute resolution. (NRS 293.124, 293.4685)

1. If the Secretary of State or his designee does not render a final determination on a complaint filed pursuant to NAC 293.515 within 90 days after the complaint is filed, or within any extension period to which the complainant has consented, the Secretary of State will, on or before the fifth business day after the final determination was due to be issued, initiate proceedings for alternative dispute resolution by:

- (a) Retaining an independent, professionally qualified person to act as an arbitrator, if the complainant consents in writing to his appointment as the arbitrator at the time of his appointment; or
- (b) Designating in writing to the complainant the name of an arbitrator to serve on an arbitration panel to resolve the complaint. If proceedings for alternative dispute resolution are initiated pursuant to this paragraph, not later than 3 business days after the complainant receives such a designation from the Secretary of State, the complainant shall designate in writing to the Secretary of State the name of a second arbitrator. Not

2. The complainant, any respondent and any interested member of the public may appear at the hearing, in person or by teleconference, and testify or present relevant evidence in connection with the complaint. All testimony to be considered in the hearing will be taken under oath. The hearing officer may limit the testimony of witnesses, if necessary, to ensure that all interested persons may present their views. The hearing officer may recess the hearing and reconvene the hearing at a later date, time and place, which must be announced publicly at the hearing.

3. A complainant, respondent or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.

4. Cross-examination at the hearing will be permitted only at the discretion of the hearing officer, but a person may testify or present evidence at the hearing to contradict any other testimony or evidence presented at the hearing. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence presented subsequently, that person is entitled to be heard again only at the discretion of the hearing officer, who may authorize the person to provide an oral or written response, or both.

5. The hearing will be recorded on audiotape by and at the expense of the Office of the Secretary of State. The recording will not be transcribed, but the Secretary of State, a local board of elections or any party to the hearing may obtain a transcript of the hearing at its own expense. If a board or party obtains a transcript of a hearing, the board or party shall file a copy of the transcript as part of the record and any other interested party may examine the copy of the transcript on record.

6. Any party to the proceeding may file a written brief or memorandum with the hearing officer not later than 5 business days after the conclusion of the hearing. The party shall serve a copy of any such written brief or memorandum on all other parties not later than the time the written brief or memorandum is filed with the hearing officer. No responsive or reply memorandum to such a brief or memorandum will be accepted without the specific authorization of the hearing officer.

7. At the conclusion of the hearing and after any brief or memorandum has been filed pursuant to subsection 6, the hearing officer will determine whether, by a preponderance of the evidence, a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.540 Review and determination when no hearing requested. (NRS 293.124, 293.4685) If a complainant has not requested a hearing on a complaint filed pursuant to NAC 293.515, the Secretary of State or his designee will review the complaint and any accompanying record and determine whether, by a preponderance of the evidence, a violation of 42 U.S.C. §§ 15481 to 15502, inclusive, has occurred, is occurring or is about to occur. If the Secretary of State is a respondent in the complaint, the Secretary of State will appoint an independent professionally qualified person to act as his designee pursuant to this section.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

APPENDIX B

Advisory Committee Biographies and Affiliations

later than 3 business days after such a designation by the complainant, the two arbitrators so designated shall select a third arbitrator to complete the panel.

2. The arbitrator or arbitration panel may review the record compiled in connection with the complaint, including, without limitation, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any additional testimony or evidence unless the arbitrator or arbitration panel requests that the parties present additional briefs or memoranda.

3. The arbitrator, or arbitration panel by a majority vote, shall determine the appropriate resolution of the complaint.

4. The arbitrator or arbitration panel shall issue a written resolution of the complaint not later than 60 days after the final determination of the Secretary of State was due pursuant to NAC 293.545. This period for issuing a written resolution will not be extended.

5. The final resolution of the arbitrator or arbitration panel will be:

(a) Mailed to the complainant, each respondent and any other person who requested in writing to be advised of the final resolution;

(b) Posted on the website of the Secretary of State; and

(c) Made available by the Secretary of State, upon request, to any interested person.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.555 Final determination or resolution not subject to appeal. (NRS 293.124, 293.4685) A final determination of the Secretary of State or his designee pursuant to NAC 293.535, 293.540 or 293.545 or the final resolution of an arbitrator or arbitration panel pursuant to NAC 293.550 is not subject to appeal in any state or federal court.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

NAC 293.560 Assistance in using procedures. (NRS 293.124, 293.4685) The Secretary of State will make reasonable accommodations to assist persons in using the procedures set forth in NAC 293.500 to 293.560, inclusive.

(Added to NAC by Sec'y of State by R077-03, eff. 12-4-2003)

State Plan Advisory Committee: Member Biographies

City of Orlando	Clark, Jan Gilbert, Jan	Northern Nevada Commission, Ft Ann	E.A. Evansworth from UCA. She completed her Proposition Leadership Alliance at Nevada State. Proch activities in sports and environmental justice issues at the state legislative level for 24 years, she began advocacy work for the Lesbian Women Voters. She has received several Municipal Awards including the "Women's role Model Award from the Attorney General and the Humanitarian Award from the Committee to Aid Abused Women". She also served on the Department of Human Resources Grant Commission for 7 years and was Chairman for two of those years.
Griffin, Barbara	County Clerk, Douglas County		Barbara was first elected Clerk-Treasurer in 1986 but has worked in the Douglas County Clerk-Treasurer's office since November of 1973. Her key interest and commitment is the election process and the accommodations currently being taken to allow voters easily accessibility to vote.
Apartment: Hahn, Linda	General Counsel for Barone		Judith Hahn joined the Governor's Office as General Counsel in January 1997. He previously served as a Senior Deputy Attorney General in the Nevada Department of Justice, representing the Secretary of State, the Nevada Tax Commission and the Nevada Department of Transportation while at the Nevada Department of Justice. Joint argued cases in front of various Nevada District Courts, the Nevada Supreme Court, The United States District Court of Nevada, the United States Circuit Court of Appeals for the Ninth Circuit, the United States District Court for the District of Nevada, and the United States Court of Appeals for the Tenth Circuit. He has also served as a law clerk to both the Nevada Supreme Court and the United States District Court for the District of Nevada. He has received his Bachelor of Arts degree from Saint Clara University in 1980 and his Juris Doctorate from Santa Clara University in 1988. He has been admitted to practice law in Nevada, California, Oregon, Washington, Idaho, Utah, Arizona, New Mexico and regulatory law, election law, habeas law, jail drilling, state personnel law, court meeting law, constitutional law, and public contracts.
Khuam, Ruben	Auxiliary Clerk District 11		John lives in Reno and is a third-generation native Nevadan. He is married to MC Higa, who works as a registered nurse at the oncology department at Renown Health. Born: 1959 - Guadalajara, Jalisco, Mexico He attended: Bucho High School; Diploma. University of Nevada, Las Vegas Graduated: 1981 Occupation: Executive Director of the Hispanic/Latino Community Center (working) Hispanic/Special Interests: Planning, training, motivating youth, soccer, weight lifting and exercising, movies. Organizations: American Red Cross, ICAEW, National Association of Young Professionals, AFLACTIONS, Board of Directors, Volunteer Center of Southern Nevada, Member, Clark County Community Development Advisory Committee, Mentor, Burn Las Vegas Spanish Youth Council, Volunteer, Professionalism and Youth Building Commitment Program, National Association of Latino Elected and Appointed Officials, CAUCUS Member, National Association of Latino Elected and Appointed Officials. PERSONAL AND PROFESSIONAL ACHIEVEMENTS: Former Regional Vice President of the National Association of Young Professionals, Young Leader, 2004; Inspired Nevada at the Next Generation Democratic Leaders Conference hosted by Senator Hillary Rothern Clinton, 2004; John F. Kennedy Award, Nevada State Democratic Party, 2006; Mexican Legend Award, Julio Cesar Chavez Educational Foundation, 2005; Outstanding Community Activist, City of Las Vegas, 2006; Grand Marshal, Hispanic Day Parade, 2002; Nevada High Schools Soccer Player of the Year, 1997-1998; wonest Field Years, and Football.

State Plan Advisory Committee Member Biographies

NAME	CITY/TITLE/ORGANIZATION	BIOGRAPHY
Latzovich, Jennifer	Attorney, Kummer Associates, P.C. Reno, NV	Jennifer Latzovich has been with the firm since November 2001. She is a member of the firm's Government Affairs department, and has been involved in the firm's efforts to represent clients in the areas of government affairs and government service. She worked in Washington, D.C. in the Election Division of the National Election Systems Commission in public. She also served internships in the Washington, D.C. office of United States Senator Harry Reid, and the Elections Division of the Nevada Secretary of State. Ms. Latzovich was admitted to the Nevada Bar in 1996. She is a member of the American Bar Association, the State Bar of Nevada, and the Clark County Bar Association. She is also a member of the Nevada State Bar, the Nevada State Bar Association, the Nevada State Bar of the North Las Vegas Chapter of the Las Vegas Chapter of Commerce, a member of the North Las Vegas Chapter of Commerce and a member of the North Las Vegas 2020 Visioning Committee. She has presented and published articles on issues covering zoning, land use planning, and the Southern Nevada Public Utility Management Act of 1995.
Lomax, Larry	Register of Voters, Clark County	B.A. in English Literature, Stanford University (1967) and Master of Business Administration from University of North Dakota (1971). He was a Distinguished Graduate from the Air Force's Officer Training School and as a pilot flew over 4,000 hours in a 30 year career. He served on the Joint Staff in Washington D.C. and had the opportunity to work with legislators and staff members on a wide range of issues. He began his career as a Deputy Registrar for Registrations in January of 1988 overseeing the training of 7,500 section board officers, processing of petitions, and section night logistics and was appointed Registrar of Voters with full responsibility for the County's Election Department in March of 1999.
Appelbaum, Robert, Ned	Senior Deputy Attorney General	Edward T. "Ned" Reed is a filipino and life-long resident of Nevada, currently serving as a Senior Deputy Attorney General representing the Nevada Secretary of State. He grew up in Reno, and graduated from Tufts University in 1975 with a B.A. in Philosophy, and after graduation served 4 years active duty military as a U.S. Army officer at Fort Hood, Texas. He attended McGeorge School of Law in Sacramento, California, and was admitted to the Nevada Bar in 1980. He worked for the Nevada Attorney General's Office for 10 years, and was appointed as the Third Judicial District Court in Fallon, Nevada, Deputy District Attorney in Humboldt County, Nevada, from 1987 to 1995, prior to moving to Reno from 1990 to 1992, and since 1992 has been a Deputy Attorney General in Carson City.
Siegel, Dr. Richard	President, ACLU of Nevada	Richard Siegel, Ph.D. is Professor Emeritus of Political Science at the University of Nevada, Reno, President of the American Civil Liberties Union Nevada and Chairman of the Nevada Committee on Foreign Relations. He served on the Board of Directors of the National ACLU from 1978 to 1983. A former consultant for the United Nations in the area of human rights, he continues to teach human rights and social politics.
Simmons, Monica M.	City Clerk, City of Henderson	Monica was appointed City Clerk in 1998 by the City Council following 20 years of service in the City Attorney's Office. During her 25-year tenure at the City, she has experienced unprecedented growth from 23,507 to a current population of 295,000. Monica was previously the City Clerk of the City of Henderson, Nevada from 1994 to 1998. She is a member of the Nevada Municipal Clerks Association, representing 15 counties and a membership of 10,000. She is also a member of the Nevada Municipal Clerks Association in 1994, and she is an active member with the League of Women Voters, Nevada-Washoe County Chapter. She has been involved in the implementation of the Nevada Municipal and County Clerks' accredited educational institute. At the request of the U.S. Department of State, she pursued the implementation of a full-service U.S. Passport Application Program in 2003. Monica continues her commitment to strengthening community relations and has been instrumental in the implementation of "Vote Centers" during Henderson's Municipal Elections.

Page 3 of 3

APPENDIX C

Agenda for July 26, 2007 Advisory Committee Meeting

NEVADA STATE ADVISORY COMMITTEE

AGENDA

Meeting: **Thursday, July 26, 2007 at 2:00 p.m.**

Room 2134 Room 4406
Nevada State Legislature Grant Sawyer Building
401 South Carson Street 555 East Washington Street
Carson City, Nevada Las Vegas, Nevada

- I. Introduction and Welcome
- II. Update on Status of HAVA Compliance and State/Federal Funding
- III. First Review of Proposed HAVA State Plan for 2007-08
- IV. Comments of Committee Members
- V. Public Comment
- VI. Adjournment

Notice of this meeting has been posted at the following locations:

Offices of the 17 County Clerks/Registrar of Voters
The Capitol Building, 101 North Carson Street, Carson City, Nevada
Grant Sawyer State Office Building, 555 East Washington Street, Las Vegas, Nevada
Nevada State Legislature, 401 South Carson Street, Carson City, Nevada
Nevada State Library and Archives, 100 North Stewart Street, Carson City, Nevada

Notice of this meeting was posted on the following website:
<http://www.secretaryofstate.biz>

Posted July 20, 2007

We are pleased to make accommodations for people with disabilities who wish to attend this meeting. Please notify the Elections Division at the Secretary of State's office by calling (775) 684-5705.

APPENDIX D

Agenda for October 8, 2007 Advisory Committee Meeting

NEVADA STATE ADVISORY COMMITTEE**AGENDA**

Meeting: **Monday, October 8, 2007 at 2:00 p.m.**

Room 2134	Room 4412
Nevada State Legislature	Grant Sawyer Building
401 South Carson Street	555 East Washington Street
Carson City, Nevada	Las Vegas, Nevada

- I. Introduction and Welcome
- II. Second Review of Proposed HAVA State Plan for 2007-08
 - A. Inclusion of more detailed budget information
 - B. Other changes made in response to member comments
- III. Comments of Committee Members*
- IV. Committee Vote for Passage of FY 2007-08 State Plan*
- V. Public Comment
- VI. Adjournment*

Items marked with a "*" are items on which action may be taken.

Notice of this meeting has been posted at the following locations:

Offices of the 17 County Clerks/Registrar of Voters
 The Capitol Building, 101 North Carson Street, Carson City, Nevada
 Grant Sawyer State Office Building, 555 East Washington Street, Las Vegas, Nevada
 Nevada State Legislature, 401 South Carson Street, Carson City, Nevada
 Nevada State Library and Archives, 100 North Stewart Street, Carson City, Nevada

Notice of this meeting was posted on the following website:

<http://www.secretaryofstate.biz>

Posted October 3, 2007

We are pleased to make accommodations for people with disabilities who wish to attend this meeting. Please notify the Elections Division at the Secretary of State's office by calling (775) 684-5705.

APPENDIX E

Temporary Statewide Voter Registration Maintenance Regulations
 Effective 5/9/07 -- 11/1/07

PROPOSED TEMPORARY REGULATIONS OF

THE SECRETARY OF STATE

LCB File No. To29-07

Effective: May 9, 2007

EXPLANATION – These regulations pertain to the statewide voter registration list required by NRS 293.675 and 42 U.S.C. 15483. Specifically, these regulations set out the procedures by which the statewide voter registration list is maintained and utilized.

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: NRS 293.124; 293.675.

A REGULATION relating to elections and providing other matters properly relating thereto.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 29, inclusive, of this regulation.

Sec. 2. Purpose.

1. The purpose of these temporary regulations is to codify standards and procedures for the processing, transmittal, and maintenance of voter registration records in a manner that conforms with the statewide voter registration list requirements set forth in the Help America Vote Act of 2002 (HAVA) (Pub. L. No. 107-252 (2002) 116 Stat. 1666, 42 U.S.C. § 15483) and NRS 293.675.

2. These regulations apply to the Secretary of State and all elections officials within the State of Nevada responsible for the processing, transmittal, and maintenance of voter registration records in this state.

Sec. 3. Statewide Voter Registration Database.

1. The statewide voter registration list will be maintained in a single, official, uniform, centralized and interactive computerized database administered and maintained by the Secretary of State. The database shall be known as "NevVoter."

2. NevVoter will contain the official and exclusive voter registration list to be used for the conduct of all state and federal elections in Nevada. NevVoter shall contain the name and pertinent registration information of every registered voter in Nevada.

3. Registration information held solely in a county or local database is not considered part of NevVoter unless and until that information is electronically submitted to NevVoter as prescribed by regulation.

4. Registration information maintained in NevVoter will be deemed official for a particular business day as of 9:00 a.m. each business morning. Mechanical and processing errors in the nightly electronic submitting process to NevVoter may affect the official status of registration information maintained in NevVoter for that particular business day.

5. Each county or local election official must maintain interactive and compatible software and protocols that allow a daily transfer of required registration information from County Election Management Systems to NevVoter.

Sec. 4. Definitions.

As used in this Chapter, the following words have the following definitions:

1. "Eligible voter" means any registered voter that is legally entitled to vote.
2. "Business day" means any calendar day except Saturday and Sunday or a legal holiday pursuant to Nevada law.
3. "Canceled" means the status of a voter whose registration has been canceled pursuant to law and is therefore ineligible to vote, including but not limited to convicted felons who have not had their civil rights restored and persons who have been adjudicated mentally incompetent. A voter on canceled status is deemed not registered to vote.
4. "Critical Eligibility Criteria" means voter information that, if missing, renders a person ineligible to vote. Such information includes: name; residence address; date of birth, signature; Nevada driver's license number, last four digits of social security number, unique identification number or indication that person has signed the affidavit prescribed by NRS 293.507(5).
5. "County Elections Management System" means any computerized application and database that manages voter registration and related election functions for a county, other than NevVoter.
6. "County Elections Official" means a county clerk or registrar of voters who is responsible for collecting, maintaining and processing voter registration data within a jurisdiction in the State of Nevada.
7. "Data Exchange Standards" means the document prepared by the Secretary of State that sets forth the technical rules and requirements of NevVoter.
8. "Deficient registration record" means those records submitted to NevVoter that do not meet the NevVoter data exchange standards set forth in the "Data Exchange Standards Document".

9. "Federal election" means any general, special, primary, or runoff election for any Federal office (President, Vice President, U.S. Senator or U.S. Representative), including presidential preference primaries.

10. "Full load file" means an electronic data file containing all county voter registration records. Such a file must adhere to the format standards and requirements set forth in the "Data Exchange Standards Document".

11. "Inactive voter" means a voter whose mail is returned from the address at which he registered to vote and has not provided a County Elections Official with a new residence address. Inactive voters retain the legal right to vote, but need not be mailed election material.

12. "List maintenance notices" mean any notices mailed to a registered voter for the purpose of verifying registration information about a voter and to determine a voter's ongoing eligibility to vote.

13. "Nevada driver's license" means a voter's Nevada driver's license or state identification number that has been issued by the Nevada Department of Motor Vehicles.

14. "NevValidator" means the computer interface by which an election official can compare a Nevada driver's license number or social security number on a voter's registration record with the voter's Nevada driver's license number or social security number recorded with the Nevada Department of Motor Vehicles and the Social Security Administration.

15. "NevVoter Procedures Manual" means the most recent version of the procedures manual prepared by the Secretary of State for use by County Election Officials in the administration of NevVoter.

16. "Official Identification" means the forms of proof of residency and identity required by NRS 293.517.

17. "P-17" means the status for a voter who was under age 18 at the time his voter registration was submitted, but who will be age 18 or older by election day and who has met all other legal requirements to vote.

18. "Pending" means the status for a voter who has submitted a voter registration application that is missing certain information or has incorrect required information and includes:

(a) "Active Pending" means a voter with certain registration information that needs to be confirmed but who has otherwise provided all critical eligibility criteria, or a voter who is required to provide some type of identification before voting but who is otherwise is still eligible to vote; and

(b) "Fatal Pending" means a voter who is missing critical eligibility criteria and who is ineligible to vote until the missing information is submitted to the appropriate County Elections Official.

19. "Registration record" means electronically stored data associated with an individual registered voter.

20. "Social security number" means the last four digits of a voter's social security number issued by the Social Security Administration.

21. "Voided" means the status of a voter whose registration information has been declared void pursuant to law and is therefore ineligible to vote. A voter on voided status is deemed not registered to vote.

22. "Voting History" means the electronic record of each time a voter participates in a state or Federal election.

23. "Active Voter" means an eligible voter whose residence address is current.

Sec. 5. Official Statewide Voter Registration List.

1. A County Elections Official shall submit the voter registration information required by the Data Exchange Standards Document for his respective county to NevVoter in accordance with Section 12.

2. The official statewide voter registration list for Federal elections shall be maintained in NevVoter. County Elections Officials must use the NevVoter list to determine eligibility to vote, issuance of ballots, whether or not to count a provisional ballot, and for any other election related functions.

3. For the purposes of establishing the official voter registration list for a Federal election and determining voter eligibility to vote in that election, including determining the validity of any provisional ballot cast in that election, the Secretary of State shall archive a copy of all eligible voters in NevVoter on the 19th day prior to an election. No changes may be made to the archived records prior to the upcoming election except under the following circumstances:

(a) New or updated voter registration data received pursuant to the production and filing of a certified copy of a judgment of a court of competent jurisdiction directing registration to be made;

(b) Voter registration data regarding a voter determined by the Secretary of State or a County Elections Official to have been legally registered to vote as of the close of registration; or

(c) Voter registration data submitted pursuant to NRS 293.502.

4. County Election Officials shall continue to submit information to NevVoter after the 19th day prior to an election but any such records shall not be included in the archived list for the upcoming election created pursuant to subsection 3.

5. The Secretary of State shall prepare an official statewide voter registration list for the upcoming election for distribution to each County Election Official from the archived records created pursuant to subsection 3 and which must be consistent with pollbooks, rosters, master lists, and posting logs generated from a County Elections Management System for use in the upcoming election and for all other official election purposes.

6. The Secretary of State shall prepare a final official statewide voter registration list for use in the upcoming election which reflects the archived records created pursuant to subsection 3, along with any permitted changes to those records, for distribution to each County Election Official and which must be consistent with pollbooks, rosters, master lists and posting logs generated from a County Elections Management System for use on the upcoming election day and for all other official election purposes.

7. Within 45 days of the date the election is certified, a County Elections Official must submit a full load file which includes the Voting History for each voter in a County Election Management System. The Secretary of State shall thereafter update the list created pursuant to subsection 6 with the Voter History of all eligible voters, and the list shall then be archived and preserved.

Sec. 6. Status of Voters in NevVoter.

1. Every person in NevVoter shall be assigned a status that will be used to determine eligibility to vote in an election.

2. Persons with "active," or "inactive" status shall be considered eligible to vote.

3. Persons with "p-17" status shall be considered eligible to vote in any election that takes place on or after that person's eighteenth birthday.

4. Persons with "void" or "cancelled" or "pend" status shall be considered ineligible to vote. A person with any such status may be placed on a different status up to the date of the election if a County Election Official determines pursuant to law that the person's status should be changed, and that change is thereafter made to a County Election Management System and submitted to NevVoter.

5. "Active" and "fatal pends", as defined in Section 4(18) are category statuses not appearing in NevVoter, but which may appear in local election management systems.

Sec. 7. Action Required.

1. A County Elections Official who receives a notice from the Secretary of State or another County Elections Official requesting a change to, or cancellation of, or verification of, a voter's registration record shall commence the requested action, including sending any required notices, within five (5) calendar days after receipt of the notice. A County Elections Official shall undertake all reasonable and legally required actions to research and comply with the requested action. A County Elections Official shall follow the procedures set forth in the NevVoter Procedures Manual.

2. In the event that a County Elections Official is required by law to provide a notice to a voter in order to comply with the requested action, a County Elections Official must complete the requested action and submit a fully complete and updated full load file to NevVoter within thirty (30) calendar days of the date the County Elections Official receives the notice set forth in subsection 1 of this section.

3. In the event that a County Elections Official is not required by law to provide a notice to a voter in order to comply with the requested action, including but not limited to data entry errors, a County Elections Official must complete the requested action and submit a fully complete and updated full load file to NevVoter within ten (10) calendar days of the date the County Elections Official receives the notice set forth in subsection 1 of this section.

4. A County Elections Official shall give priority to all notices received from the Secretary of State pursuant to subsection 1 of this section which pertain to voter registration applications submitted on and after January 1, 2006.

5. A County Elections Official who receives a notice pursuant to subsection 1 of this section before the date of an election must expedite and complete the required action by the date of the election.

6. A County Elections Official may, in his discretion, resolve any data entry errors regardless of how or by whom such errors were generated.

Sec. 8. Data Exchange Standards.

1. The Secretary of State shall regularly check and identify records that are not compliant with the Data Exchange Standards Document. County Elections Officials must correct deficient registration records in accordance with Section 7.

2. Except as provided in Section 5, County Elections Officials must submit all registration records listed in the Data Exchange Standards Document to NevVoter. Such records shall adhere to proper format as noted in the Data Exchange Standards Document.

9. For a voter who is listed in an Elections Management System as having a pending registration, the reason for the pending status; and

10. The voter's unique identifier assigned pursuant to Section 29 of these regulations.

Sec. 10. Critically Deficient Registration Records.

A registration record submitted for the purposes of updating NevVoter that does not contain critical eligibility criteria shall be placed on fatal pending status. A County Elections Official shall take all reasonable steps to correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations, and at the latest, by the Wednesday before an election. A voter who is the subject of the critically deficient registration record shall not be deemed eligible to vote until the deficient registration record is corrected, resubmitted to and accepted by NevVoter. This Section shall not preclude the right of an individual to cast a provisional ballot.

Sec. 11. Verification of Nevada Driver's License Numbers on Registration Applications Submitted on or After January 1, 2006.

1. Each business day the Secretary of State shall compare driver's license numbers for each voter in NevVoter with the driver's license data file from the Nevada Department of Motor Vehicles in order to match Nevada driver's license numbers for all registered voters in NevVoter.

2. The Secretary of State shall immediately notify a County Elections Official of any voters who the Secretary of State determines have an unmatched driver's license number as the result of the process in subsection 1 of this section.

3. A County Elections Official noticed pursuant to subsection 2 of this section shall take the necessary steps to correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations and the NevVoter Procedures Manual.

4. If, as a result of the procedure set forth in subsection 3 of this section, a County Elections Official determines that an unmatched driver's license number was the result of a data entry error, the County Elections Official shall correct the error and submit a full load file to NevVoter.

5. If a County Elections Official is unable to obtain a driver's license number as the result of the procedure set forth in subsection 3 of this section, a voter shall not be allowed to cast any ballot except a provisional ballot unless the voter has provided his social security number or has signed the affidavit required by NRS 293.507(5). A voter who provides proof of his correct driver's license number at a polling place shall be considered to have provided the correct number as of the last day to register for that election. A County Elections Official shall enter the correct number into a County

3. The Secretary of State shall transmit registration records, notices, and other information regarding NevVoter to County Elections Officials each night.

4. Each County Elections Official must access NevVoter each business day to obtain the most current voter registration information.

5. The Data Exchange Standards Document may be accessed by elections officials by contacting the Secretary of State's Office.

Sec. 9. County Elections Management System Requirements.

Each elections official shall maintain a County Elections Management System that is able to submit information required by the Data Exchange Standards Document to NevVoter in accordance with Section 5 and Section 12. The Elections Management Systems shall also maintain and process all of the following information:

1. The voter's Nevada driver's license number, or for voters without a Nevada driver's license number, the last four digits of the voter's social security number, or for voters without a Nevada driver's license or a social security number, a record of whether the voter signed the affidavit required by NRS 293.507(5);

2. Whether the voter is an Active voter or whether critical eligibility criteria are missing;

3. Voting history of each registered voter in the county in which the elections official conducts and administers the elections;

4. Whether any voter failed to provide the requisite identification at the time his voter registration application was submitted;

5. Whether any voter registered by mail after January 1, 2006 and has not previously voted in a federal election;

6. The date and type for each mailing list maintenance notice sent to a voter, whether the voter to whom the list maintenance notice was directed responded to the notice, and any resulting updates to voter registration records;

7. For a voter who is listed in an Elections Management System as an inactive voter, the reason for the change in status to inactive voter and the date of the change;

8. For a voter who is listed in an Elections Management System as having a cancelled or void registration, the reason for the change in status to cancelled or void and the date of the change.

Elections System and submit a full load file to NevVoter at the next time a full load file is required by these regulations.

6. The provisions of this section apply only to voter registration applications submitted on and after January 1, 2006.

7. The provisions of this section do not apply if a voter has provided a social security number that has been verified pursuant to Section 17 or if a voter has signed the affidavit required by NRS 293.507(5).

8. All voter registration applications submitted on and after January 1, 2006 and before an election must be processed by the date of the close of registration for that election.

Sec. 12. Full Load Files.

Except as provided in Section 5, or otherwise requested by the Secretary of State, County Elections Officials shall submit a full load file to NevVoter at least once every twenty-four hours, each business day.

Sec. 13. Updating NevVoter with New Registration Records and Changes to Existing Registration Records.

Except as provided in Section 5, whenever a County Elections Official receives a new registration record or a change to an existing registration record or makes a change to an existing registration record, whether in response to a notice from the Secretary of State or otherwise, the County Elections Official shall process such information and transmit a full load file to NevVoter in accordance with Section 12 on the same business day in which the changes are made to the County Elections Management System. Additionally, the County Elections Official shall keep a record of all changes made.

Sec. 14. State Death Records.

1. The Secretary of State shall compare all voter registration records with records of deceased persons from the Department of Health and Human Services each time the Department of Health and Human Services updates its records of deceased persons.

2. Whenever the Secretary of State receives new records of deceased persons from the Department of Health and Human Services the records shall be compared to the voter registration records in NevVoter to identify potential matches.

3. Upon identifying potential matches, the Secretary of State shall transmit notices of the potential matches to the appropriate County Elections Officials.

4. A County Elections Official shall correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations and the NevVoter Procedures Manual.

5. If a match is confirmed by the County Elections Official, the County Elections Management System shall be updated accordingly and a full load file shall be submitted to NevVoter in accordance with Section 7 and Section 12. If a match is confirmed, a County Elections Official may consider the notice sent by the Secretary of State pursuant to subsection 3 of this section to be a sufficient notice to cancel a registration pursuant to NRS 293.540(1).

6. If a match is not confirmed by the County Elections Official, the County Elections Official shall notify the Secretary of State and shall not list the voter as deceased in a County Elections Management System.

Sec. 15. Felony Records.

1. Each County Elections Official shall compare all voter registration records with records of convicted felons received from any law enforcement agency or from the Secretary of State whenever the County Elections Official receives updated felony records.

2. Whenever the County Elections Official receives new records of convicted felons the records shall be compared to the voter registration records in County Elections Management System to identify potential matches.

3. Upon identifying potential matches, the County Elections Official shall determine whether the convicted felon has had his right to vote restored pursuant to NRS 213.090, 213.155, 213.157 or 293.540.

4. If a County Elections Official determines that a convicted felon has had his right to vote restored, the County Elections Management System shall be updated accordingly and a full load file shall be submitted to NevVoter in accordance with Section 7 and Section 12.

5. If a County Elections Official determines that a convicted felon has not had his right to vote restored, the County Elections Official shall cancel the registration of that person in a County Elections Management System and a full load file shall be submitted to NevVoter in accordance with Section 7 and Section 12.

Sec. 16. Duplicate Registration Records.

1. Each business day, the Secretary of State shall conduct checks within the NevVoter statewide registration list to identify potential duplicate registrations for the same voter within that list, based on established rotating criteria. Upon identification of potential duplicate registration records, the Secretary of State shall automatically send an electronic notice to the county or counties with the record or records created prior to the latest date.

2. A County Elections Official noticed pursuant to subsection 1 of this section shall correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations and the NevVoter Procedures Manual.

3. If a County Election Official confirms that duplicate registrations exist, all but the most current registration shall be cancelled in a County Election Management System and a full load file shall be submitted to NevVoter in accordance with Section 7 and Section 12. If a duplicate registration is confirmed, a notice sent pursuant to subsection 1 of this section shall operate as a cancellation notice for purposes of NRS 293.527.

Sec. 17. Verification of Social Security Numbers Listed on Registration Applications Submitted on or After January 1, 2006.

1. Each business day, the Secretary of State shall compare social security numbers for each voter in NevVoter with the social security number data file from the Social Security Administration in order to match social security numbers for all registered voters in NevVoter.

2. The Secretary of State shall immediately notify a County Elections Official of any voters who the Secretary of State determines have an unmatched social security number as the result of the process in subsection 1 of this section.

3. A County Elections Official noticed pursuant to subsection 2 of this section shall take the necessary steps to correct and resubmit the voter's registration record to NevVoter in accordance with the time periods and procedures set forth in Section 7 of these regulations and the NevVoter Procedures Manual.

4. If, as a result of the procedure set forth in subsection 3 of this section, a County Elections Official determines that an unmatched social security number was the result of a data entry error, the County Elections Official shall correct the error and submit a full load file to NevVoter.

5. If a County Elections Official is unable to obtain a social security number as the result of the procedure set forth in subsection 3 of this section, a voter shall not be allowed to cast any ballot except a provisional ballot unless the voter has provided a Nevada driver's license number or has signed the affidavit required by NRS 293.507(5). A voter who provides proof of the correct social security number at a polling place shall be considered to have provided the correct number as of the last day to register for that election. A County Elections Official shall enter the correct number into a County Elections System and submit a full load file to NevVoter at the next time a full load file is required by these regulations.

6. The provisions of this section apply only to voter registration applications submitted on or after January 1, 2006.

7. The provisions of this section do not apply if a voter has provided a Nevada driver's license number that has been verified pursuant to Section 11 or if a voter has signed the affidavit required by NRS 293.507(5).

8. All voter registration applications submitted on and after January 1, 2006 and before an election must be processed by the date of the close of registration for that election.

Sec. 18. Voting History.

A County Elections Official shall submit to the Secretary of State the Voter History of all voters who cast a ballot in each statewide and Federal election by the 45th day after each election.

Sec. 19. Certification of Elections Official.

By submitting a full load file to NevVoter, a County Election Official certifies that the information contained therein is accurate, is in compliance with State and Federal law, and was submitted to NevVoter via secure file transfer protocols and in accordance with applicable law.

Sec. 20. Obligations of State and Local Election Officials.

Any voter registration information obtained by a County Elections Official shall be electronically entered into the County Elections Management System and into NevVoter on an expedited basis at the time the information is provided. The Secretary of State shall provide such support as may be required so County Election Officials are able to submit any voter registration information into NevVoter.

Sec. 21. Computerized List Maintenance and Conduct.

1. A County Election Official is responsible for daily and routine upkeep and maintenance of all voter registration information in an Election Management System and any information that is submitted to NevVoter. Daily and routine upkeep must include efforts to identify and remove ineligible voters from the active voter rolls.

2. Routine upkeep and maintenance must be done in a manner that ensures that the name of each eligible and registered voter appears in NevVoter.

Sec. 22. Pollbooks, Rosters, Master Lists and Posting Logs.

A County Elections Official may print pollbooks, rosters, master lists and posting logs for use at a polling place from an Election Management System so long as the voter information on the Election Management System is identical to the voter information maintained in NevVoter as of the date on which the roster will be used and so long as the County Elections Official has made all certifications required by these regulations.

Sec. 23. Reports.

A County Election Official shall submit to the Secretary of State all reports generated by a County Election Official pursuant to the Data Exchange Standards Document.

Sec. 24. Security.

1. *All transmissions of data to and from a County Elections Management System and NevVoter must be secured pursuant to the standards set forth in the Data Exchange Standards Document.*
2. *A County Elections Official shall ensure that any voter registration information that is deemed confidential by law is not disclosed to unauthorized personnel in any transmissions to and from NevVoter or NevValidator.*
3. *NevVoter and NevValidator may only be utilized by authorized personnel for election purposes. The Secretary of State may establish minimum criteria, including but not limited to background checks, for any such authorized personnel.*

Sec. 25. Confidential Address Program.

All voter records that are confidential pursuant to NRS 293.5002 shall be maintained in a manner ensuring these records are accessible only to authorized personnel and shall not be accessible to the public. Confidential voter records under this section shall be maintained by County Election officials and the Secretary of State will periodically verify status of confidential address program participants as requested by the Secretary of State.

Sec. 26. Confidential Voter Addresses and Telephone Numbers.

A County Elections Management System shall note any voter who has requested that his address and telephone number be kept confidential pursuant to NRS 293.558. Such a notation shall be submitted to NevVoter as part of a full load file.

Sec. 27. County Elections Official Override.

A County Elections Official may override a notice from the Secretary of State or another County Elections Official sent pursuant to Sections 11, 14, 15, 16 or 17 if both the County Elections Official and the Secretary of State agree that the notice was sent in error. In the event of an override, the County Elections Official must maintain a detailed description of the reason for the override.

Sec. 28. Voters Who Are Exempt From Identification Requirements.

If a voter is exempt by law from a requirement to show identification at a polling place, such an exemption shall be noted in a County Elections Management System and shall be included in a submission of any full load file.

Sec. 29. Unique Identifier.

Each voter in NevVoter shall be assigned a unique identification number. The unique identification number shall be assigned pursuant to the procedures set forth in the Nevada Procedures Manual and the Data Exchange Standards.

Office of the Secretary of State
 Bill Bradbury
 Secretary of State
 Jean Straight
 Deputy Secretary of State



State of Oregon
 136 State Capitol
 Salem, Oregon 97310-0722
 (503) 986-1523
 fax (503) 986-1616

February 14, 2008

The Honorable Rosemary Rodriguez, Chair
 U.S. Elections Assistance Commission
 1225 New York Ave, N.W., Suite 1100
 Washington, DC 20005

Dear Chair Rodriguez:

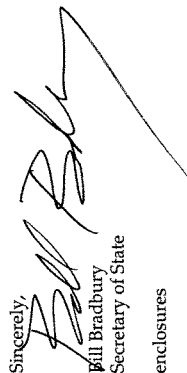
In accordance with section 255 of the Help America Vote Act of 2002, I am pleased to file with the U.S. Election Assistance Commission this letter and the recently revised Sections 1, 6, 12 and 13 of the Oregon State Plan. These revised sections and the remaining unchanged sections constitute the Oregon State Plan.

As required by section 254(a)(12) of the Act, the revised sections include a description of how Oregon succeeded in carrying out elements of the State Plan and the material changes to the State Plan originally filed with the Federal Election Commission in April of 2003. Section 12 describes the State's success in complying with the State Plan and the Act, and Section 1 includes a description of the material changes during this revision process.

Pursuant to Sections 255 and 256 of the Act, these revisions to the Oregon State Plan were developed by the HAVA State Planning Committee and notice of the revisions were published in statewide newspapers. The public comment period ended January 31, 2008 with a public hearing held that day. After reviewing the public comments received it was determined that no changes to the revised sections were necessary.

Thank you for accepting these revisions and for facilitating the publication of the revised sections of the Oregon State Plan in the Federal Register. I look forward to our continued collaboration to improve the administration of elections in Oregon.

Sincerely,


 Bill Bradbury
 Secretary of State

enclosures

Section 1. 301. VOTING SYSTEMS STANDARDS.

Voting System Standards

Section 301 of the Help America Vote Act requires that voters have the opportunity in a private and independent manner to verify the votes they have selected, to change their ballot or correct any errors, and to be notified of the effect of selecting more than one candidate for a single office before a ballot is cast and counted. HAVA also directs states to adopt uniform and nondiscriminatory standards that define what constitutes a vote, requires manual audit capacity and error rates standards of voting systems, and mandates increased access to the elections process by people with disabilities.

Privacy and Independence—Oregon Statutes require that all voting systems approved by the Secretary of State secure the secrecy of voting to each voter. Vote by mail allows voters to easily mark their ballots in a private location, most often within their homes. Voters may also use privacy booths at their county elections office. These booths are available the entire time that ballots are issued and are especially useful to voters visiting the county election office to request a replacement ballot on the day of or near the election. To enhance voter independence and make the process of voting and correcting a ballot more convenient, Oregon has replaced its punchcard voting systems through upgrades to optical scan systems to allow voters to use a pencil or a pen in completing their ballots.

In compliance with HAVA, Oregon intends to develop and implement an Alternate Format Ballot (AFB). The AFB will enable a person that, for whatever reason, is unable to access or mark a regular printed ballot, to mark, print, verify, and cast a ballot using a personal computer, scanner, and printer. The AFB will be designed to easily function across a wide breadth of computer hardware and software, including assistive technologies. This will allow voters with disabilities that have (or have access to) assistive technology in their home to vote from home, which is the cornerstone of vote by mail. To provide services to voters with disabilities that do not have (or have access to) the required technology the State will purchase at least two Accessible Computer Stations (ACS), one permanent and one portable, for each county. The ACS will, with the addition of assistive technology, provide an accessible workstation where voters with disabilities can mark, print, verify, and cast their ballot independently and privately. The voter can vote at the county elections office using the permanent ACS or at a remote location using the portable ACS. County elections staff can transport the portable ACS to a location that will best accommodate the voter.

Access to the Voting Process for People with Disabilities—HAVA requires voting systems to be accessible for voters with disabilities and seniors in a manner that provides the same opportunity for access, participation, privacy, and independence as other voters. This requirement will be met by providing an Alternate Format Ballot (AFB) directly to voters requesting them. Voters with disabilities that have, or have access to a personal computer and printer will be able to vote privately and independently from home just as other voters receiving mail-in ballots do. The AFB will be designed to easily function across a wide range of computer systems, including assistive software and hardware technologies to ensure accessibility of the AFB across a wide range of people with disabilities that use assistive technology to access information. The State will provide each county election office with at least two Accessible Computer Stations (ACS) (one permanent and one portable). The ACS will serve as accessible workstations where voters with disabilities that do not have, or have access to, an accessible computer can vote using the AFB.

1. **Alternate Format Ballot and Accessible Computer Station**—Under Oregon's vote by mail system, elections are not conducted at polling places. The state plans to provide each county with at least two accessible computer stations that will provide access to voting for people with disabilities using the AFB. Each county elections office will also have the ability to create and distribute the

Section 6. The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.—

HAVA §254 (a) (6)

Anticipated Budget for HAVA Implementation

HAVA Requirements	Section 101 Funds	Section 102 Funds	Section 252 & 257 Funds	Section 261 Funds	% State March	Estimated Costs
Voting Systems (S-301)	\$1,250,000	\$1,822,758	\$3,040,000	\$194,140	\$160,000	\$6,466,800
Provisional Voting and Voting Information Requirements (S-302)			\$1,400,000	\$194,140	\$70,000	\$1,664,140
Centralized Voter Registration (S-303)*	\$2,200,000		\$10,500,000		\$1,077,560	\$13,777,560
Voter Outreach and Election Worker Training (S-254)	\$650,000		\$1,500,000	194,142	\$107,500	\$2,451,642
State Plan Creation and Management (S-402)	\$100,000		\$500,000		\$30,000	\$630,000
Other HAVA/State Plan Activities & Administration**			\$10,823,941			\$10,823,941
TOTAL	\$4,200,000	\$1,822,758	\$27,763,941	\$582,422	\$1,445,060	\$35,814,181

* Voter Registration costs estimated through state fiscal year (2009)

** Some unspent federal funds may be set aside in the state Election Fund for payment of long-term costs of complying with HAVA (Sustainability Funds).

AFB's in order to meet the HAVA Title III requirements for access to voting, including privacy and independence, for people with disabilities. The ACS, in conjunction with the AFB, will serve as important tools to enable voters with disabilities to cast a ballot privately and independently. The state will purchase a minimum of two ACS's per county—one for placement in county elections offices and one portable system that can be strategically deployed in a variety of locations for use by voters with disabilities or can, by request, be taken to the voter that is unable to leave home. The purchase will include training for county elections staff on how to set up, use, and troubleshoot the ACS and provide for ongoing maintenance and support of the ACS. The state will also purchase additional ACS's to be distributed within counties that have needs beyond the minimum requirement. County elections officials will make decisions about the placement of additional systems. The state will require that any ACS's set up for use in public locations outside the county elections office be set up only in those locations that are fully accessible to people with disabilities.

Development of the AFB and purchase of the ACS's will be one of the highest priority projects in Oregon's HAVA plan. The proposed timeline is to have the AFB's and the ACS's ready for beta testing in March of 2008 and implemented statewide no later than the May 2008 Primary Election. Placement of the ACS's will be reevaluated after each election and county elections officials will recommend changes based upon experience.

(Replace DRE with AFB in all other sections of the Plan)

Section 12. In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year. **HAVA §254 (a) (12)**

Since the submission of the inaugural State Plan, the State of Oregon HAVA accomplishments include:

Elimination of Punch Card Systems

HAVA Administrative Complaint Procedure implemented

Centralized Voter Registration System implemented

Provisional Voting

Implemented Elections Call Center to ensure all voters have a way to check whether or not a provisional ballot has been counted.

The Elections Call Center implemented as a full service call center to provide customer service to voters in Oregon.

Handled 28,607 calls in October and November 2004 (General Election)

Provided training for 8 new service representatives for 2006 election cycle

Updated ballot drop site application for Primary and General Election

Call Statistics for General Election:

The Call Center answered approximately 13,592 calls from October 1 through

November 15, 2006

Approximately 5500 of these calls occurred over the last six business days leading up to and including Election Day

Approximately 75% (10,194) of the calls were served by the call center

The Call Center received and served approximately 70 Spanish calls

New HAVA Voter ID Requirements implemented

Education/Outreach

Voting Your Ballot Instructions (Overvotes)

Ballot Correction Instruction

Replacement Ballot Instruction

Easy to Read Voting Guides and Audio Guides

Professional Certification for County Clerks and Staff

Since 2003, approximately \$65,000 has been spent on CERA Professional Certification

Approximately 40 elections professionals from Oregon have participated

In 2006, of the 51 graduates across the country, 13 were from Oregon

Media:

Reach general voting population and target audiences (younger, disenfranchised or apathetic voters) through television, radio, and web to increase voter education, registration and voter turnout in the 2006 General Election. Reach Oregonians with disabilities and make them aware of new systems that now allow them to vote privately and independently.

Media Purchases Focus:

Get out the vote (some spots with minority emphasis)

Voter Assistance availability

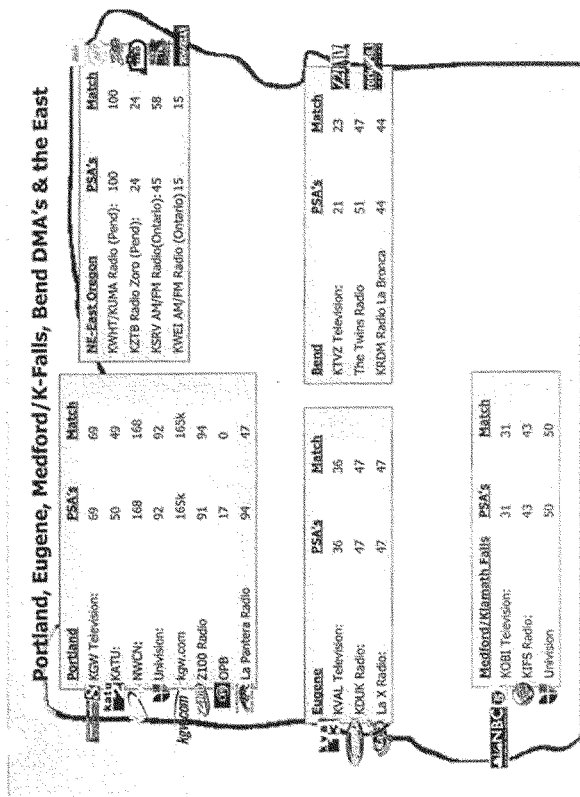
Registration Drive

\$98,000 Statewide Media Buy (English & Spanish)

21 Media Outlets Partnered in the Campaign Statewide

98% of Oregon Reached

Included Text Messaging Campaign w/Portland Radio Station Z100



Access for People with Disabilities (HHS Grants/Alternate Formats)

Accessible Voting System

Accessible Ballot Marking System

Alternate Format Ballot/Accessible Voting Station

ADA Projects included:

Installation of elevators

Paving of a parking lot

Widening of doorways & installation of lever set doorknobs

Updating of Ramps & additional ADA Signage

Installation of ADA Accessible Service Counters

Installation of Emergency Egress Door w/ Wheel Chair Ramp

Installation of Hand Rails & Grab Bars

Purchase of Wheelchair accessible voting booths

Purchase and Installation of Drive-Up Drop Box/Boxes

Audio Voters Pamphlet

Large Print Voter Registration Cards

Tactile VBM Envelope

Disability Community Public Meetings

Vendor Fair

Improving the Overall Administration of Elections

Elections Business System

Section 13. A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256 - HAVA §254(a) (13)

Oregon HAVA Steering Committee

John Kauffman
Multnomah County Elections Director
(503) 988-3720
john.kauffman@co.multnomah.or.us

Terri Turi
Coos County Clerk
(541) 396-3121
coosclerk@co.coos.or.us

Jim Barrow
Umatilla County Elections Director
(541) 278-6206
jimb@co.umatilla.or.us

Jan Coleman
Yamhill County Clerk
(503) 434-7518
colemanj@co.yamhill.or.us

Mickie Kawai
Washington County Elections Manager
(503) 846-5822
mickie_kawai@co.washington.or.us

Steve Druckenmiller
Linn County Clerk
(541) 967-3831
sdruckenmiller@co.linn.or.us

Jean Straight
Deputy Secretary of State
(503) 989-0073
jean.straight@state.or.us

John Lindback
State Elections Director
(503) 986-2339
john.w.lindback@state.or.us

Julie Pearson
Information Systems Director
(503) 428-7316
julie.pearson@state.or.us

Kappy Eaton
League of Women Voters
(503) 581-5722
(541) 344-2027
lardonie@msn.com

Julie Anderson
Oregon Advocacy Center
(541) 664-3024
jcaoac@yahoo.com

Tina Treasure
State Independent Living Center
(503) 945-6621
tina.m.treasure@state.or.us

Rep. Dave Hunt (D)
State Legislator
(503) 986-1440
rep.davehunt@state.or.us

Rep. Vicki Berger (R)
State Legislator
(503) 986-1420
rep.vickiberger@state.or.us

Sen. Margaret Carter (D)
State Legislator
(503) 986-1722
sen.margaretcarter@state.or.us

Ramon Ramirez
Northwest Treeplanters & Farmworkers
United (PCUN)
(503) 989-0073
ramonramirez@pcun.org

Tamara Henderson
Oregon Student Association
(503) 286-0477
tamara@orstudents.org

David Buchanan
Oregon Common Cause
(503) 588-1341
ioptop@webtv.net

SECRETARY OF STATE



State Capitol, Suite 204
500 East Capitol Avenue
Pierce, South Dakota
57501-5070
edson@state.sd.us
www.edson.gov

Chris Nelson
Secretary of State
Chad Heunrich
Deputy

December 3, 2007

Commissioner Doretta Davidson
Chair
U.S. Election Assistance Commission
1225 New York Avenue, NW - Suite 1100
Washington, D.C. 20005

Dear Commissioner Davidson:

The State of South Dakota has revised its Help America Vote Act state plan.

In March of this year, South Dakota certified to the EAC South Dakota's implementing of the requirements of HAVA's title III for the purpose of making possible the use of \$251 funds for carrying out other activities to improve the administration of elections for federal office as permitted by HAVA §251(b)(2). The State received the EAC's confirmation of South Dakota's certification in July.

In May South Dakota submitted to the EAC an amendment to South Dakota's state plan approved by the State Board of Elections to accommodate our intended enlarged use of \$251 funds, expressly permitted by HAVA. In July, South Dakota was informed by the EAC that the amendment to the plan was not sufficient to fulfill HAVA's requirements for state plan revisions.

South Dakota has therefore followed the formal process described in §§254-257 and taken this opportunity to fully update its plan. The details of that process are included in the enclosed state plan.

Thank you in advance for publishing our current plan in the Federal Register as required by HAVA §255(b).

Sincerely,

Chris Nelson
South Dakota Secretary of State

Administration
(605) 773-3537
Fax (605) 773-6580

Corporations
(605) 773-4845
Fax (605) 773-4550

Uniform Commercial Code
(605) 773-4422
Fax (605) 773-4550

HAVA State Plan for South Dakota Updated Oct/Nov 2007 Page 1 of 8

HAVA State Plan for South Dakota
As required by Public Law 107-252 Section 253(b)
Help America Vote Act of 2002

Chris Nelson
Secretary of State
State Capitol, Suite 204
500 East Capitol
Pierre, SD 57501-5070

Updated October 17, 2007 and November 28, 2007

In October of 2002, the 107th Congress passed and President George W. Bush signed into law the Help America Vote Act of 2002. HAVA was designed to strengthen the integrity of elections in America. HAVA created many new requirements of states and counties regarding federal elections -- including mandates for voter registration, provisional voting, accessible voting, and voter education. HAVA also created a new federal agency, the Election Assistance Commission (EAC), to guide the management of federal elections and administer grants to states for fulfilling the requirements of HAVA's title III.

HAVA requires each state to describe its use of title II section 251 payments from the federal government by writing a "State plan." A 17-member HAVA task force developed South Dakota's first state plan in the Spring of 2003. The state plan was updated in December of 2004 as HAVA projects matured. Federal elections in 2006 demonstrated the completion of all phases of the state plan.

In March of 2007 the Secretary of State certified to the EAC that South Dakota had fulfilled all of title III's requirements. The State also notified the EAC that it intended to expand its use of title II section 251 funds for other improvements to the administration of federal elections as allowed by HAVA §251(b)(2). The EAC notified the State that it must also revise its state plan to describe such use. That is the purpose for this third version of South Dakota's HAVA state plan, which also updates the State's status with respect to HAVA according to the 13 required points of HAVA §254(a):

(1) How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

(1.1) Programs to educate, provide required information, eliminate overvotes, and provide replacement ballots

Two posters in 48-point font posted in each polling place and instructions posted in each voting booth inform voters when to vote, how to vote, how not to overvote, how to obtain a replacement ballot, how to obtain assistance, the right to a provisional ballot, how to contact an election official if rights are violated, and how to avoid

HAVA State Plan for South Dakota

Updated Oct/Nov 2007

Page 2 of 8

election crimes. Facsimile ballots are available in county auditor offices prior to elections, posted at each polling place, and published in newspapers. Instructions are printed on all official ballots. AutoMARK ballot marking devices do not mark overvotes. In 2006 the State published full-page newspaper advertisements describing the AutoMARK. The State educates voters through its website at www.sdsos.gov and provides booklets entitled "General Information on South Dakota Elections." In 2004, the Secretary of State prepared a booklet describing election procedure changes, which was also provided in accessible formats including 18-point font, Braille, and audio. The Secretary of State prepares a ballot question pamphlet, also made available in alternate formats. In 2008, the State will provide a voter information portal (VIP) through its website tied to the statewide voter database. VIP will include a polling place locator and sample ballot generated specific to each registered voter.

(1.2) Accessible voting device in each polling place

South Dakota counties currently provide the AutoMARK ballot assistant in every polling place for any federal election. The AutoMARK is available for any voter. It assists a broad range of voters in accessing and marking ballots independently and privately. Counties may select other accessible voting devices approved by the State Board of Elections.

(1.3) Provisional voting

South Dakota Senate Bill 13 became law on July 1, 2003, providing for provisional voting. The processing and counting of provisional ballots is described in SDCL 12-20-5.1 and 12-20-13.1 through 13.4.

(1.4) Computerized statewide voter registration list

Beginning in January of 2004, the State has maintained an electronic statewide voter database of every registered voter updated daily. The statewide file links to the state Unified Judicial System for updates on convicted felons and links to the state Department of Health for updates on deceased persons. Each new voter registration is verified by driver license number or last four digits of social security number. Although the statewide file incorporates many processes to remove duplicate or ineligible registrations, the statewide file relies on local county knowledge for verification. The State continues to seek methods to improve the reliability of the list, including cooperative cross checks with other states.

(1.5) Voter registration cards

The South Dakota voter registration form, prescribed in administrative rule as adopted by the State Board of Elections, has been amended to include the HAVA-required language and check boxes, including: "Are you a citizen of the United

States? Will you be 18 years of age on or before election day? If you checked 'no' in response to either of these questions, do not complete this form."

(1.6) Other activities to improve the administration of federal elections

The State has developed a computerized link between driver license offices and county auditor offices to transmit voter registration data. A voter is able to obtain a driver license and register to vote using one form. An electronic voter registration card is generated complete with digital signature image and sent to the county for validation and then sent to the State.

The State is currently developing project ST25, which will make improvements to election night reporting, canvassing, and voter education and access.

The State may use title II section 251 funds for additional projects to improve federal elections as determined by the Secretary of State. Counties may use title II funds for specific projects to improve federal elections with the approval of the Secretary of State.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

County auditors administer federal elections in South Dakota counties. In order to receive the title II section 251 grant, South Dakota was required to contribute 5% toward a total amount including the federal grant of \$11,596,803. The State and counties cooperatively met the match requirement. The state legislature appropriated \$198,405.80, which was spent on the statewide electronic voter file. Each county established a reserved account determined by the county's portion of all statewide registered voters. The match contributions from the 66 counties totaled \$411,952.20. The amount of federal grant funds reserved by the State for the counties was based on the portion of the total 5% match that the counties contributed. This total was reduced by the cost of the HAVA-required voting system, purchased from Election Systems and Software in December of 2005. The remaining title II amount of \$3,235,652.80 was reserved in the state election fund, designated to each county based on its match contribution. The Secretary of State monitors and tracks county expenditures of title II funds for ongoing title III-acceptable expenses via reports sent to the State. Additional documentation is systematically requested to ensure the acceptability of funds use. Counties are required to expend county-held accounts on title III requirements before requesting state-held funds. Counties are reimbursed

semi-annually from the state election fund. Any title II amount in the state election fund not reserved, may be used for title III requirements or for improving the administration of federal elections. The state may determine to increase the amount of the election fund reserved for individual counties.

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

In addition to the ongoing programs described above in (1.1), the State made special efforts to educate the public on the new voting system used for the first time in 2006. The State and counties demonstrated the AutoMARK to voters throughout the State through a variety of venues. Additional efforts may be made in future years. County auditors are trained by the State on HAVA procedures at election workshops and conventions and through publications and e-mails. Advocates for persons with disabilities assist the State in training. Special regional trainings were given in 2006 for the new voting system. County auditors in turn train precinct officials at county election schools. In 2006, the Secretary of State also gave special trainings to precinct workers at regional sessions explaining the new voting system and proper procedures for meeting the needs of voters with disabilities. Similar trainings may be given in future years.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301

The HAVA task force guided the State on the voting system that would be selected. South Dakota laws and administrative rules have been passed to provide for all section 301 requirements. The Secretary of State and county auditors manage the processes needed to comply with section 301.

(5) How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

An election fund has been established in the South Dakota state treasury containing title II section 251 funds. Expenditures are made as needed by the Secretary of State with oversight by the State Auditor through spending authority granted by the State Legislature. Interest is earned and credited to the fund annually. All expenditures from the fund are subject to state government accounting and audit procedures.

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

HAVA State Plan for South Dakota	Updated Oct/Nov 2007	Page 5 of 8	HAVA State Plan for South Dakota	Updated Oct/Nov 2007	Page 6 of 8
(C) the portion of the requirements payment which will be used to carry out other activities. In previous HAVA state plans the State described a budget for projected amounts to fund title III-required programs. All programs were fulfilled within that budget and significant funds remain available to the State and its counties for ongoing HAVA expenses, future voting system purchases, and other improvements to the administration of federal elections. South Dakota received a title II section 251 payment in April of 2005 in the amount of \$11,596,803. Through June 30, 2007: \$6,499,467.23 were total state-held title II funds remaining available, of which \$2,877,600.00 were state-held, county-reserved title II funds remaining available. As of June 30, 2007, counties reported that \$33,791.36 remained in reserved county-held match money accounts. The State expects that costs to the State to continue HAVA programs will likely be reduced for some time. As current programs mature and become a part of the regular fabric of federal elections, time and effort to the HAVA task should diminish. In the near future, a dedicated state HAVA coordinator may no longer be needed. In the case of the electronic voter file, initial development costs were substantial. Annual costs have been reduced. However, costs will continue and may increase for maintenance, technical support, network connections, and specific design updates. At some future time, the State may need to develop a new computerized voter registration database system. When that might be and what that might cost are imprudent to predict. Potential amendments to HAVA of 2002 may also increase the cost of state compliance with enlarged federal requirements. The State expects that costs to counties will continue and increase at least at the rate of inflation to prepare and implement individual federal elections within the framework of the current voting system. When new voting systems are required, counties will face significant additional costs in acquiring the new equipment. The State and counties will work to maintain the current voting system for as long as practicable. Since the State has fulfilled HAVA's requirements and will continue to do so, the State wishes not to restrict itself unnecessarily through this state plan. New programs to improve the administration of federal elections may develop that have not yet been contemplated. The State determines not to narrowly predict what those might be in hopes that this state plan may stand indefinitely without further revision. The State will continue to submit annual financial status and narrative reports to the EAC concerning HAVA grants as required. With continued conservative management of the HAVA grant funds and the benefit of accumulating interest, the State may be able to indefinitely continue to meet			HAVA obligations and continue to improve the administration of federal elections in South Dakota without needing further state resources or additional federal grants. The estimate for the development of ST25 is \$200,000; support costs will continue. For ST25, South Dakota may use either title I section 101 or title II section 251 funds. South Dakota may effect additional programs as determined useful by the State. (7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. In previous HAVA state plans, the State described the expense to the State for the State Election Supervisor. However, in 2007 the EAC advised that maintenance of effort applies specifically to prior expenses that became title III requirements. HAVA's maintenance of effort requirement is designed to ensure that federal grant funds do not replace already occurring state or county expenses. With this new understanding, the State clarifies that it had no such spending prior to HAVA and, therefore, has no level of spending to maintain. Some counties, however, did have expenses consistent with title III requirements prior to HAVA. The EAC has allowed that South Dakota counties will be responsible for maintenance of effort according to the county fiscal year 1999. Counties have been advised to determine if there existed any spending for title III-type activities in 1999. If any existed in the county, the county will be responsible for maintaining that level every year according to the first year that the county used any federal or county funds dedicated to HAVA title III requirements. (8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met. South Dakota has fulfilled the goals described in earlier state plans -- including reducing the percentage of overvotes, educating voters on how to avoid and correct ballot errors, providing at least one §301(a)(3)(B) voting device in every polling place for any federal election, providing provisional voting, posting required notices at polling places as described above in (1.1), removing every person convicted of a felony and sentenced to the adult state penitentiary system from the statewide voter registration list, verifying every new voter registration against either the person's driver license or last four digits of social security number, providing voter registration cards as described above in (1.5), and providing quicker, easier one-form voter registration and updating at driver licensing stations as described above in (1.6).		

HAVA State Plan for South Dakota

Updated Oct/Nov 2007

Page 7 of 8

The Secretary of State and county auditors will continue to monitor these processes. South Dakota is in compliance with federal election law and will continue to meet HAVA requirements.

(9) A description of the uniform, nondiscriminatory state-based administrative complaint procedures in effect under section 402.

South Dakota law was written, effective July 1, 2003, to comply with HAVA section 402. Initial complaints are resolved by the State Board of Elections using an existing administrative complaint process. The alternative dispute process involves judicial appointment of an arbitrator to resolve the complaint.

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

South Dakota received a title I section 101 payment in the amount of \$5,000,000 in April of 2003. Title I funds have been used for payments to counties for punchcard voting system buyouts; voter education; statewide voter registration system programming, hardware, and connection costs; training and materials for election personnel; travel for election personnel; salary and expenses for a dedicated state HAVA coordinator; and state plan development. The State may continue to use title I funds on these programs and for other programs permitted by HAVA §101(b).

Through June 30, 2007:

Total title I section 101 funds remaining available were \$4,652,191.59.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The Secretary of State and county auditors will administer this state plan at the direction of the Secretary of State and the State Board of Elections.

(12) In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The methods by which the State fulfilled its previous state plans have already been described in this plan. The State anticipates no major changes to its implementation

HAVA State Plan for South Dakota

Updated Oct/Nov 2007

Page 8 of 8

of HAVA, except that title II section 251 funds may now be used for additional improvements to the administration of federal elections.

The State has also determined that providing voters with the option of an audio interpretation in the Lakota language integrated on the device equipped for individuals with disabilities provided pursuant to HAVA §301(a)(3)(B), an element of South Dakota's voting system, as was done on the AutoMARK ballot marking devices in 11 counties for the Primary and General elections in 2006, is impractical given the amount of effort necessary, the cost to the State and counties, and the extremely limited number of users. The State expects to continue to provide a Lakota translation of the ballot question pamphlet for the General Election to the American Indian radio stations. South Dakota counties required to do so by federal law will continue to provide translations of election announcements on Indian radio stations and continue to provide live interpreters at polling places to assist American Indian voters.

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The state plans of 2003 and 2004 were developed with guidance from a HAVA task force comprised of advocates for persons with disabilities and voter participation, representatives of the recognized political parties, state legislators, county auditors including the county auditors of South Dakota's two most populous counties, the State Board of Elections, the State Election Director, and the Secretary of State.

Task force members and other stake holders were notified of the 2007 proposed plan and offered the opportunity to comment. The proposed plan was available for inspection and comment by the public for 30 days. The plan was posted at www.sdsos.gov and was available by request. The State notified the public of the opportunity to also comment on the proposed plan at an open hearing, which was the meeting of the State Board of Elections held in Sioux Falls on November 28, 2007, where the plan and submitted comments were presented and discussed. The State has considered all comments. The State Board of Elections has approved this state plan. This plan is now being sent to the Election Assistance Commission for publication in the Federal Register.



Federal Register

**Friday,
April 25, 2008**

Part III

Department of Housing and Urban Development

**Federal Property Suitable as Facilities To
Assist the Homeless; Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR-5186-N-17]****Federal Property Suitable as Facilities To Assist the Homeless**

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COE: Mr. Walter Hylton, Army Corps of Engineers, Office of Counsel, CECC-R, 441 G Street, NW., Washington, DC 20314-1000; (202) 761-7701; *COAST GUARD*: Commandant, United States Coast Guard, Attn: Teresa

Sheinberg, 2100 Second St., SW., Rm. 6109, Washington, DC 20593-0001; (202) 267-6142; *ENERGY*: Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA-50, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586-0072; *GSA*: Mr. John Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501-0084; *NAVY*: Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9305; (These are not toll-free numbers).

Dated: April 17, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

**Title V, Federal Surplus Property Program
Federal Register Report for 04/25/2008**

Suitable/Available Properties

Building

Colorado

Federal Building
1520 E. Willamette St.
Colorado Springs Co: El Paso CO 80909
Landholding Agency: GSA
Property Number: 54200640004
Status: Excess
GSA Number: 7-G-CO-0660
Comments: 50,363 sq. ft., needs major rehab, available in approx. 24 months, legal constraints

Kentucky

Green River Lock #3
Rochester Co: Butler KY 42273
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Directions: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Comments: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Montana

Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040010
Status: Unutilized
Comments: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only.

Bldg. 2

Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040011
Status: Unutilized
Comments: 3292 sq. ft., most recent use—cold storage, off-site use only.

Bldg. 3

Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040012
Status: Unutilized
Comments: 964 sq. ft., most recent use—cold storage, off-site use only.

Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040013
Status: Unutilized
Comments: 72 sq. ft., most recent use—cold storage, off-site use only.

Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701
Landholding Agency: COE
Property Number: 31200040014
Status: Unutilized
Comments: 1286 sq. ft., most recent use—cold storage, off-site use only.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Directions: Located at lock site, downstream of lock and dam structure
Comments: 1600 sq. ft. bldg. with 1/2 acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Structure

21897 Deer Creek Road
Mt. Sterling Co: Pickaway OH 43143
Landholding Agency: COE
Property Number: 31200540009
Status: Unutilized
Comments: 1321 sq. ft., brick, off-site use only.

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comments: 1015 sq. ft., 2 story brick residence, off-site use only.

Dwelling

Lock 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199620008
Status: Unutilized
Comments: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes.

Dwelling

Lock 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE
Property Number: 31199710009
Status: Unutilized
Comments: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only.

Dwelling #1

Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815

Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comments: 2030 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2

Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comments: 3045 sq. ft., most recent use—residential, good condition, off-site use only.

Govt Dwelling

East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comments: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only.

Dwelling #1

Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2

Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #1

Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comments: 2106 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2

Lock 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comments: 2652 sq. ft., most recent use—residential, good condition, off-site use only.

Residence A

2045 Pohopoco Drive
Lehigh Co: Carbon PA 18235
Landholding Agency: COE
Property Number: 31200410007
Status: Unutilized
Comments: 1200 sq. ft., presence of asbestos, off-site use only.

Utah

ILS Middle Marker Annex
NE of Hill AFB
Tooele UT 84056
Landholding Agency: GSA
Property Number: 54200820004
Status: Excess

GSA Number: 7–D–UT–0421–AD
Comments: 320 sq. ft. metal bldg., 0.872 acres and 3.5 acres perpetual easements.

Land

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010025
Status: Excess
Directions: Adjoining the village of Rockcastle.
Comments: 2.57 acres; rolling and wooded.
Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010026
Status: Excess
Directions: 2½ miles in a southerly direction from the village of Rockcastle.
Comments: 2.00 acres; steep and wooded.
Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010027
Status: Excess
Directions: 2½ miles in a southerly direction from the village of Rockcastle.
Comments: 3.59 acres; rolling and wooded; no utilities.
Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010028
Status: Excess
Directions: 4½ miles in a southeasterly direction from the village of Rockcastle.
Comments: 5.44 acres; steep and wooded.
Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010029
Status: Excess
Directions: 6½ miles west of Cadiz.
Comments: 5.76 acres; steep and wooded; no utilities.
Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Landholding Agency: COE
Property Number: 31199010031
Status: Excess
Directions: 1 mile in a southerly direction from the village of Rockcastle.
Comments: 4.90 acres; wooded; no utilities.
Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Directions: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Comments: 8.24 acres; steep and wooded.
Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212

Landholding Agency: COE
 Property Number: 31199010033
 Status: Excess
 Directions: 3½ miles in a southerly direction from Canton, KY.
 Comments: 4.26 acres; steep and wooded.

Tract 4611
 Barkley Lake, Kentucky and Tennessee
 Canton Co: Trigg KY 42212
 Landholding Agency: COE
 Property Number: 31199010034
 Status: Excess
 Directions: 5 miles south of Canton, KY.
 Comments: 10.51 acres; steep and wooded; no utilities.

Tract 4619
 Barkley Lake, Kentucky and Tennessee
 Canton Co: Trigg KY 42212
 Landholding Agency: COE
 Property Number: 31199010035
 Status: Excess
 Directions: 4½ miles south from Canton, KY.
 Comments: 2.02 acres; steep and wooded; no utilities.

Tract 4817
 Barkley Lake, Kentucky and Tennessee
 Canton Co: Trigg KY 42212
 Landholding Agency: COE
 Property Number: 31199010036
 Status: Excess
 Directions: 6½ miles south of Canton, KY.
 Comments: 1.75 acres; wooded.

Tract 1217
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030
 Landholding Agency: COE
 Property Number: 31199010042
 Status: Excess
 Directions: On the north side of the Illinois Central Railroad.
 Comments: 5.80 acres; steep and wooded.

Tract 1906
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030
 Landholding Agency: COE
 Property Number: 31199010044
 Status: Excess
 Directions: Approximately 4 miles east of Eddyville, KY.
 Comments: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42038
 Landholding Agency: COE
 Property Number: 31199010045
 Status: Excess
 Directions: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
 Comments: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030
 Landholding Agency: COE
 Property Number: 31199010046
 Status: Excess
 Directions: Approximately 4½ miles east of Eddyville, KY.
 Comments: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030

Landholding Agency: COE
 Property Number: 31199010047
 Status: Excess
 Directions: Approximately 4½ miles east of Eddyville, KY.
 Comments: 8.64 acres; steep and wooded; no utilities.

Tract 2005
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030
 Landholding Agency: COE
 Property Number: 31199010048
 Status: Excess
 Directions: Approximately 5½ miles east of Eddyville, KY.
 Comments: 4.62 acres; steep and wooded; no utilities.

Tract 2307
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030
 Landholding Agency: COE
 Property Number: 31199010049
 Status: Excess
 Directions: Approximately 7½ miles southeasterly of Eddyville, KY.
 Comments: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030
 Landholding Agency: COE
 Property Number: 31199010050
 Status: Excess
 Directions: 7 miles southeasterly of Eddyville, KY.
 Comments: 1.56 acres; steep and wooded; no utilities.

Tract 2504
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030
 Landholding Agency: COE
 Property Number: 31199010051
 Status: Excess
 Directions: 9 miles southeasterly of Eddyville, KY.
 Comments: 24.46 acres; steep and wooded; no utilities.

Tract 214
 Barkley Lake, Kentucky and Tennessee
 Grand Rivers Co: Lyon KY 42045
 Landholding Agency: COE
 Property Number: 31199010052
 Status: Excess
 Directions: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
 Comments: 5.5 acres; wooded; no utilities.

Tract 215
 Barkley Lake, Kentucky and Tennessee
 Grand Rivers Co: Lyon KY 42045
 Landholding Agency: COE
 Property Number: 31199010053
 Status: Excess
 Directions: 5 miles southwest of Kuttawa
 Comments: 1.40 acres; wooded; no utilities.

Tract 241
 Barkley Lake, Kentucky and Tennessee
 Grand Rivers Co: Lyon KY 42045
 Landholding Agency: COE
 Property Number: 31199010054
 Status: Excess
 Directions: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
 Comments: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
 Barkley Lake, Kentucky and Tennessee
 Grand Rivers Co: Lyon KY 42045
 Landholding Agency: COE
 Property Number: 31199010055
 Status: Excess
 Directions: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
 Comments: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42030
 Landholding Agency: COE
 Property Number: 31199010056
 Status: Excess
 Directions: 6½ miles southeasterly of Eddyville, KY.
 Comments: 97.66 acres; steep rolling and wooded; no utilities.

Tracts 5203 and 5204
 Barkley Lake, Kentucky and Tennessee
 Linton Co: Trigg KY 42212
 Landholding Agency: COE
 Property Number: 31199010058
 Status: Excess
 Directions: Village of Linton, KY state highway 1254.
 Comments: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
 Barkley Lake, Kentucky and Tennessee
 Linton Co: Trigg KY 42212
 Landholding Agency: COE
 Property Number: 31199010059
 Status: Excess
 Directions: 1 mile northwest of Linton, KY.
 Comments: 2.26 acres; steep and wooded; no utilities.

Tract 4628
 Barkley Lake, Kentucky and Tennessee
 Canton Co: Trigg KY 42212
 Landholding Agency: COE
 Property Number: 31199011621
 Status: Excess
 Directions: 4½ miles south from Canton, KY.
 Comments: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
 Barkley Lake, Kentucky and Tennessee
 Canton Co: Trigg KY 42212
 Landholding Agency: COE
 Property Number: 31199011622
 Status: Excess
 Directions: 4½ miles south from Canton, KY.
 Comments: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
 Barkley Lake, Kentucky and Tennessee
 Eddyville Co: Lyon KY 42038
 Landholding Agency: COE
 Property Number: 31199011623
 Status: Unutilized
 Directions: 7 miles southeasterly from Eddyville, KY.
 Comments: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
 Barkley Lake, Kentucky and Tennessee
 Grand Rivers Co: Lyon KY 42045
 Landholding Agency: COE
 Property Number: 31199011624
 Status: Excess
 Directions: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.

Comments: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045

Landholding Agency: COE

Property Number: 31199011625

Status: Excess

Directions: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.

Comments: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215-B

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045

Landholding Agency: COE

Property Number: 31199011626

Status: Excess

Directions: 5 miles southwest of Kuttawa

Comments: 1.00 acres; wooded; subject to utility easements.

Tract 233

Barkley Lake, Kentucky and Tennessee

Grand Rivers Co: Lyon KY 42045

Landholding Agency: COE

Property Number: 31199011627

Status: Excess

Directions: 5 miles southwest of Kuttawa

Comments: 1.00 acres; wooded; subject to utility easements.

Tract N-819

Dale Hollow Lake Project

Illwill Creek, Hwy 90

Hobart Co: Clinton KY 42601

Landholding Agency: COE

Property Number: 31199140009

Status: Underutilized

Comments: 91 acres, most recent use—hunting, subject to existing easements.

Oklahoma

Pine Creek Lake

Section 27

(See County) Co: McCurtain OK

Landholding Agency: COE

Property Number: 31199010923

Status: Unutilized

Comments: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Mahoning Creek Lake

New Bethlehem Co: Armstrong PA 16242-9603

Landholding Agency: COE

Property Number: 31199010018

Status: Excess

Directions: Route 28 north to Belknap, Road #4

Comments: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612

Shenango River Lake

Sharpsville Co: Mercer PA 16150

Landholding Agency: COE

Property Number: 31199011001

Status: Excess

Directions: I-79 North, I-80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.

Comments: 24.09 acres; subject to flowage easement.

Tracts L24, L26

Crooked Creek Lake

null Co: Armstrong PA 03051

Landholding Agency: COE

Property Number: 31199011011

Status: Unutilized

Directions: Left bank—55 miles downstream of dam.

Comments: 7.59 acres; potential for utilities.

Portion of Tract L-21A

Crooked Creek Lake, LR 03051

Ford City Co: Armstrong PA 16226

Landholding Agency: COE

Property Number: 31199430012

Status: Unutilized

Comments: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Tennessee

Tract 6827

Barkley Lake

Dover Co: Stewart TN 37058

Landholding Agency: COE

Property Number: 31199010927

Status: Excess

Directions: 2 ½ miles west of Dover, TN.

Comments: .57 acres; subject to existing easements.

Tracts 6002-2 and 6010

Barkley Lake

Dover Co: Stewart TN 37058

Landholding Agency: COE

Property Number: 31199010928

Status: Excess

Directions: 3 ½ miles south of village of Tabaccoport.

Comments: 100.86 acres; subject to existing easements.

Tract 11516

Barkley Lake

Ashland City Co: Dickson TN 37015

Landholding Agency: COE

Property Number: 31199010929

Status: Excess

Directions: ½ mile downstream from Cheatham Dam

Comments: 26.25 acres; subject to existing easements.

Tract 2319

J. Percy Priest Dam and Reservoir

Murfreesboro Co: Rutherford TN 37130

Landholding Agency: COE

Property Number: 31199010930

Status: Excess

Directions: West of Buckeye Bottom Road

Comments: 14.48 acres; subject to existing easements.

Tract 2227

J. Percy Priest Dam and Reservoir

Murfreesboro Co: Rutherford TN 37130

Landholding Agency: COE

Property Number: 31199010931

Status: Excess

Directions: Old Jefferson Pike

Comments: 2.27 acres; subject to existing easements.

Tract 2107

J. Percy Priest Dam and Reservoir

Murfreesboro Co: Rutherford TN 37130

Landholding Agency: COE

Property Number: 31199010932

Status: Excess

Directions: Across Fall Creek near Fall Creek camping area.

Comments: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604

Cordell Hull Lake and Dam Project

Doe Row Creek

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199010933

Status: Unutilized

Directions: TN Highway 56

Comments: 11 acres; subject to existing easements.

Tract 1911

J. Percy Priest Dam and Reservoir

Murfreesboro Co: Rutherford TN 37130

Landholding Agency: COE

Property Number: 31199010934

Status: Excess

Directions: East of Lamar Road

Comments: 6.92 acres; subject to existing easements.

Tract 7206

Barkley Lake

Dover Co: Stewart TN 37058

Landholding Agency: COE

Property Number: 31199010936

Status: Excess

Directions: 2 ½ miles SE of Dover, TN.

Comments: 10.15 acres; subject to existing easements.

Tracts 8813, 8814

Barkley Lake

Cumberland Co: Stewart TN 37050

Landholding Agency: COE

Property Number: 31199010937

Status: Excess

Directions: 1 ½ miles East of Cumberland City.

Comments: 96 acres; subject to existing easements.

Tract 8911

Barkley Lake

Cumberland City Co: Montgomery TN 37050

Landholding Agency: COE

Property Number: 31199010938

Status: Excess

Directions: 4 miles east of Cumberland City.

Comments: 7.7 acres; subject to existing easements.

Tract 11503

Barkley Lake

Ashland City Co: Cheatham TN 37015

Landholding Agency: COE

Property Number: 31199010939

Status: Excess

Directions: 2 miles downstream from

Cheatham Dam.

Comments: 1.1 acres; subject to existing easements.

Tracts 11523, 11524

Barkley Lake

Ashland City Co: Cheatham TN 37015

Landholding Agency: COE

Property Number: 31199010940

Status: Excess

Directions: 2 ½ miles downstream from

Cheatham Dam.

Comments: 19.5 acres; subject to existing easements.

Tract 6410

Barkley Lake

Bumpus Mills Co: Stewart TN 37028

Landholding Agency: COE

Property Number: 31199010941

Status: Excess

Directions: 4 ½ miles SW. of Bumpus Mills.

Comments: 17 acres; subject to existing easements.

Tract 9707

Barkley Lake
 Palmyer Co: Montgomery TN 37142
 Landholding Agency: COE
 Property Number: 31199010943
 Status: Excess
 Directions: 3 miles NE of Palmyer, TN.
 Highway 149
 Comments: 6.6 acres; subject to existing easements.

Tract 6949
 Barkley Lake
 Dover Co: Stewart TN 37058
 Landholding Agency: COE
 Property Number: 31199010944
 Status: Excess
 Directions: 1 1/2 miles SE of Dover, TN.
 Comments: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
 Barkley Lake
 Dover Co: Stewart TN 37058
 Landholding Agency: COE
 Property Number: 31199011173
 Status: Excess
 Directions: 3 miles south of Village of Tobaccoport.
 Comments: 5 acres; subject to existing easements.

Tracts K-1191, K-1135
 Old Hickory Lock and Dam
 Hartsville Co: Trousdale TN 37074
 Landholding Agency: COE
 Property Number: 31199130007
 Status: Underutilized
 Comments: 54 acres, (portion in floodway), most recent use—recreation.

Tract A-102
 Dale Hollow Lake Project
 Canoe Ridge, State Hwy 52
 Celina Co: Clay TN 38551
 Landholding Agency: COE
 Property Number: 31199140006
 Status: Underutilized
 Comments: 351 acres, most recent use—hunting, subject to existing easements.

Tract A-120
 Dale Hollow Lake Project
 Swan Ridge, State Hwy No. 53
 Celina Co: Clay TN 38551
 Landholding Agency: COE
 Property Number: 31199140007
 Status: Underutilized
 Comments: 883 acres, most recent use—hunting, subject to existing easements.

Tract D-185
 Dale Hollow Lake Project
 Ashburn Creek, Hwy No. 53
 Livingston Co: Clay TN 38570
 Landholding Agency: COE
 Property Number: 31199140010
 Status: Underutilized
 Comments: 97 acres, most recent use—hunting, subject to existing easements.

Building

Illinois
 Bldg. 7
 Ohio River Locks No. 53
 Grand Chain Co: Pulaski IL 62941-9801
 Landholding Agency: COE
 Property Number: 31199010001
 Status: Unutilized
 Directions: Ohio River Locks and Dam No. 53 at Grand Chain

Comments: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
 Ohio River Locks No. 53
 Grand Chain Co: Pulaski IL 62941-9801
 Landholding Agency: COE
 Property Number: 31199010002
 Status: Unutilized
 Directions: Ohio River Locks and Dam No. 53 at Grand Chain
 Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5
 Ohio River Locks No. 53
 Grand Chain Co: Pulaski IL 62941-9801
 Landholding Agency: COE
 Property Number: 31199010003
 Status: Unutilized
 Directions: Ohio River Locks and Dam No. 53 at Grand Chain
 Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 4
 Ohio River Locks No. 53
 Grand Chain Co: Pulaski IL 62941-9801
 Landholding Agency: COE
 Property Number: 31199010004
 Status: Unutilized
 Directions: Ohio River Locks and Dam No. 53 at Grand Chain
 Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
 Ohio River Locks No. 53
 Grand Chain Co: Pulaski IL 62941-9801
 Landholding Agency: COE
 Property Number: 31199010005
 Status: Unutilized
 Directions: Ohio River Locks and Dam No. 53 at Grand Chain
 Comments: 900 sq. ft.; one floor wood frame.

Bldg. 2
 Ohio River Locks No. 53
 Grand Chain Co: Pulaski IL 62941-9801
 Landholding Agency: COE
 Property Number: 31199010006
 Status: Unutilized
 Directions: Ohio River Locks and Dam No. 53 at Grand Chain
 Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
 Ohio River Locks No. 53
 Grand Chain Co: Pulaski IL 62941-9801
 Landholding Agency: COE
 Property Number: 31199010007
 Status: Unutilized
 Directions: Ohio River Locks and Dam No. 53 at Grand Chain
 Comments: 900 sq. ft.; one floor wood frame; most recent use—residence.

Ohio

Bldg.—Berlin Lake 7400 Bedell Road
 7400 Bedell Road
 Berlin Center Co: Mahoning OH 44401-9797
 Landholding Agency: COE
 Property Number: 31199640001
 Status: Unutilized
 Comments: 1420 sq. ft., 2-story brick w/ garage and basement, most recent use—residential, secured w/alternate access.

Pennsylvania
 Tract 403A

Grays Landing Lock Project
 Greensboro Co: Greene PA 15338
 Landholding Agency: COE
 Property Number: 31199430021
 Status: Unutilized
 Comments: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403B
 Grays Landing Lock Project
 Greensboro Co: Greene PA 15338
 Landholding Agency: COE
 Property Number: 31199430022
 Status: Unutilized
 Comments: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403C
 Grays Landing Lock Project
 Greensboro Co: Greene PA 15338
 Landholding Agency: COE
 Property Number: 31199430023
 Status: Unutilized
 Comments: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed.

Land

Illinois
 Lake Shelbyville
 Shelbyville Co: Shelby IL 62565-9804
 Landholding Agency: COE
 Property Number: 31199240004
 Status: Unutilized
 Comments: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Pennsylvania

East Branch Clarion River Lake
 Wilcox Co: Elk PA
 Landholding Agency: COE
 Property Number: 31199011012
 Status: Underutilized
 Directions: Free camping area on the right bank off entrance roadway.
 Comments: 1 acre; most recent use—free campground.

Dashields Locks and Dam
 (Glenwillard, PA)
 Crescent Twp. Co: Allegheny PA 15046-0475
 Landholding Agency: COE
 Property Number: 31199210009
 Status: Unutilized
 Comments: 0.58 acres, most recent use—baseball field.

Suitable/To Be Excessed

Land

Georgia
 Lake Sidney Lanier
 null Co: Forsyth GA 30130
 Landholding Agency: COE
 Property Number: 31199440010
 Status: Unutilized
 Directions: Located on Two Mile Creek adj. to State Route 369
 Comments: 0.25 acres, endangered plant species.

Lake Sidney Lanier—3 parcels

Gainesville Co: Hall GA 30503
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Directions: Between Gainesville H.S. and
State Route 53 By-Pass
Comments: 3 parcels totalling 5.17 acres,
most recent use—buffer zone, endangered
plant species.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Directions: Portion of tracts B–200, B–248, B–
251, B–204, B–247, B–200 and B–256
Comments: 1.45 acres.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Directions: Right downstream bank of
Sycamore Creek
Comments: 8.93 acres; subject to existing
easements.

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Directions: East side of Carbon Plant Road,
approx. 14 miles NW of downtown Corpus
Christi
Comments: 4.4 acres, most recent use—farm
land.

Unsuitable Properties

Building

Alabama

Comfort Station
Clailborne Lake
Camden AL 36726
Landholding Agency: COE
Property Number: 31200540001
Status: Unutilized
Reasons: Extensive deterioration

Pumphouse

Dannelly Reservoir
Camden AL 36726
Landholding Agency: COE
Property Number: 31200540002
Status: Unutilized
Reasons: Extensive deterioration

Alaska

Bldg. B02
USCG DGPS
Annette Island AK 99926
Landholding Agency: Coast Guard
Property Number: 88200820001
Status: Excess
Reasons: Secured Area
Bldg. B02
USCG DGPS
Gustavus AK 99826
Landholding Agency: Coast Guard

Property Number: 88200820002
Status: Excess
Reasons: Secured Area

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Oakland Co: Marion AR 72661
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reasons: Extensive deterioration
Helena Casting Plant
Helena Co: Phillips AR 72342
Landholding Agency: COE
Property Number: 31200220001
Status: Unutilized
Reasons: Extensive deterioration
BSHOAL–43560

Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200630001
Status: Unutilized
Reasons: Extensive deterioration
BSHOAL–43561
Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200630002
Status: Unutilized
Reasons: Extensive deterioration

Arkansas

BSHOAL–43652
Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200630003
Status: Unutilized
Reasons: Extensive deterioration
NRFORK–48769
Mountain Home Project
Mountain Home AR 72653
Landholding Agency: COE
Property Number: 31200630004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 43336, 44910, 44949
Nimrod-Blue Mountain Project
Plainview AR 72858
Landholding Agency: COE
Property Number: 31200630005
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 44913, 44925
Nimrod-Blue Mountain Project
Plainview AR 72857
Landholding Agency: COE
Property Number: 31200630006
Status: Unutilized
Reasons: Extensive deterioration

California

Soil Testing Lab
Sausalito CA 00000
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reasons: Other—contamination
Bldg. 71G
Lawrence Berkeley Natl Lab
Berkeley CA 94720
Landholding Agency: Energy
Property Number: 41200820001
Status: Excess

Reasons: Extensive deterioration, Secured
Area

Bldgs. 25261, 41342, 41344
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200810026
Status: Excess

Reasons: Extensive deterioration, Secured
Area

California

Bldg. 105
Naval Base
Point Loma Co: San Diego CA
Landholding Agency: Navy
Property Number: 77200820005
Status: Unutilized
Reasons: Secured Area, Extensive
deterioration

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT
06255–9801
Landholding Agency: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Floodway, Extensive deterioration

Florida

Bldg. SF–17
Sub-Office Operations
Clewiston Co: Hendry FL 33440
Landholding Agency: COE
Property Number: 31200430005
Status: Unutilized
Reasons: Extensive deterioration, Secured
Area

Bldg. SF–33
Franklin Lock
Alva Co: Lee FL 33920
Landholding Agency: COE
Property Number: 31200620008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 25
(f) Richmond Naval Air Station
15810 SW 129th Ave.
Miami Co: Dade FL 33177
Landholding Agency: COE
Property Number: 31200620031
Status: Excess
Reasons: Extensive deterioration

Bldg. SF–14
S. Florida Operations Ofc. Reservation
Clewiston Co: Hendry FL 33440
Landholding Agency: COE
Property Number: 31200710001
Status: Unutilized
Reasons: Secured Area

Army Rsv Aviation Support
Facility 49
8601 Avenue B
Orlando, FL 32827
Landholding Agency: GSA
Property Number: 54200820002
Status: Excess
GSA Number: 4–D–FL–705–6EO
Reasons: Within airport runway clear zone

Bldgs. 2, 5, 24, 26
Naval Air Station
Jacksonville Co: Duval FL
Landholding Agency: Navy
Property Number: 77200820006

Status: Unutilized
 Reasons: Secured Area, Extensive deterioration
 Bldgs. 104A, 136, 159
 Naval Air Station
 Jacksonville Co: Duval FL 32212
 Landholding Agency: Navy
 Property Number: 77200820007
 Status: Unutilized
 Reasons: Extensive deterioration, Secured Area
 6 Bldgs.
 Naval Air Station
 Jacksonville Co: Duval FL 32212
 Landholding Agency: Navy
 Property Number: 77200820008
 Status: Unutilized
 Directions: 323, 324, 338, 339, 347, 348
 Reasons: Secured Area, Extensive deterioration
 5 Bldgs.
 Naval Air Station
 Jacksonville Co: Duval FL 32212
 Landholding Agency: Navy
 Property Number: 77200820009
 Status: Unutilized
 Directions: 607, 612, 614B, 674, 675
 Reasons: Extensive deterioration, Secured Area
 Bldgs. 820, 890
 Naval Air Station
 Jacksonville Co: Duval FL 32212
 Landholding Agency: Navy
 Property Number: 77200820010
 Status: Unutilized
 Reasons: Secured Area, Extensive deterioration
 Bldgs. 1756, 1937
 Naval Air Station
 Jacksonville Co: Duval FL 32212
 Landholding Agency: Navy
 Property Number: 77200820011
 Status: Unutilized
 Reasons: Extensive deterioration, Secured Area
 Georgia
 Bldg. #WRSH18
 West Point Lake
 West Point GA 31833
 Landholding Agency: COE
 Property Number: 31200430006
 Status: Unutilized
 Reasons: Secured Area
 Bldg. W03
 West Point Lake
 West Point GA 31833
 Landholding Agency: COE
 Property Number: 31200430007
 Status: Unutilized
 Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
 Gatehouse #W03
 West Point Lake
 West Point GA 31833-9517
 Landholding Agency: COE
 Property Number: 31200510001
 Status: Unutilized
 Reasons: Extensive deterioration
 WRSH14, WRSH15, WRSH18
 West Point Lake
 West Point GA 31833-9517
 Landholding Agency: COE
 Property Number: 31200510002

Status: Unutilized
 Reasons: Extensive deterioration
 Pumphouse
 Carters Lake
 Oakman GA 30732
 Landholding Agency: COE
 Property Number: 31200520002
 Status: Unutilized
 Reasons: Extensive deterioration
 Vault Toilet
 Lake Sidney Lanier
 Buford GA 30518
 Landholding Agency: COE
 Property Number: 31200540003
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. RBR-19689
 Di-Lane Plantation
 Elberton GA 30635
 Landholding Agency: COE
 Property Number: 31200620001
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. RBR-19690
 Di-Lane Plantation
 Elberton GA 30635
 Landholding Agency: COE
 Property Number: 31200620002
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. RBR-19696
 Di-Lane Plantation
 Elberton GA 30635
 Landholding Agency: COE
 Property Number: 31200620003
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. RBR-19697
 Di-Lane Plantation
 Elberton GA 30635
 Landholding Agency: COE
 Property Number: 31200620004
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. RBR-19705
 Di-Lane Plantation
 Elberton GA 30635
 Landholding Agency: COE
 Property Number: 31200620005
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. RBR-19706
 Di-Lane Plantation
 Elberton GA 30635
 Landholding Agency: COE
 Property Number: 31200620006
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. RBR-19721
 Di-Lane Plantation
 Elberton GA 30635
 Landholding Agency: COE
 Property Number: 31200620007
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. WC-19
 Walter F. George Lake
 Fort Gaines GA 39851
 Landholding Agency: COE
 Property Number: 31200630007
 Status: Unutilized
 Reasons: Extensive deterioration
 Radio Room
 Walter F. George Lake

Ft. Gaines GA 39851
 Landholding Agency: COE
 Property Number: 31200640004
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. JST-16711
 Hesters Ferry Campground
 Lincoln GA
 Landholding Agency: COE
 Property Number: 31200710002
 Status: Unutilized
 Reasons: Extensive deterioration
 Idaho
 Bldg. AFD0070
 Albeni Falls Dam
 Oldtown Co: Bonner ID 83822
 Landholding Agency: COE
 Property Number: 31199910001
 Status: Unutilized
 Reasons: Extensive deterioration
 Illinois
 Bldg. CB562-7141
 Wilborn Creek
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620009
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7153
 Wilborn Creek
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620010
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7162
 Bo Wood
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620011
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7163
 Bo Wood
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620012
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7164
 Bo Wood
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620013
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7165
 Bo Wood
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620014
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7196
 Whitley Creek
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620015
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7197
 Whitley Creek
 Shelbyville IL 62565

Landholding Agency: COE
 Property Number: 31200620016
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7199
 Whitley Creek
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620017
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-7200
 Whitley Creek
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620018
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB562-9042
 Whitley Creek
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200620019
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. CB639-7876
 Rend Lake
 Benton IL 62812
 Landholding Agency: COE
 Property Number: 31200620020
 Status: Excess
 Reasons: Extensive deterioration
 Fee Booth
 Bo Wood Recreation Area
 Shelbyville IL 62565
 Landholding Agency: COE
 Property Number: 31200630008
 Status: Unutilized
 Reasons: Extensive deterioration
 Comfort Station
 Rend Lake
 Benton IL 62812
 Landholding Agency: COE
 Property Number: 31200710004
 Status: Excess
 Reasons: Extensive deterioration
 Comfort Station
 Rend Lake Project
 Benton IL 62812
 Landholding Agency: COE
 Property Number: 31200740001
 Status: Excess
 Reasons: Extensive deterioration
 Iowa
 Treatment Plant
 South Fork Park
 Mystic Co: Appanoose IA 52574
 Landholding Agency: COE
 Property Number: 31200220002
 Status: Excess
 Reasons: Extensive deterioration
 Storage Bldg.
 Rathbun Project
 Moravia Co: Appanoose IA 52571
 Landholding Agency: COE
 Property Number: 31200330001
 Status: Excess
 Reasons:
 Extensive deterioration
 Bldg.
 Island View Park
 Rathbun Project
 Centerville Co: Appanoose IA 52544

Landholding Agency: COE
 Property Number: 31200330002
 Status: Excess
 Reasons: Extensive deterioration
 Tract 137
 Camp Dodge
 Johnston Co: Polk IA 50131-1902
 Landholding Agency: COE
 Property Number: 31200410001
 Status: Excess
 Reasons: Extensive deterioration
 Rathbun 29369, 29368
 Island View Park
 Centerville Co: Appanoose IA 52544
 Landholding Agency: COE
 Property Number: 31200510003
 Status: Excess
 Reasons: Extensive deterioration
 RTHBUN-79326
 Buck Creek Park
 Centerville Co: Appanoose IA 52544
 Landholding Agency: COE
 Property Number: 31200520004
 Status: Excess
 Reasons: Extensive deterioration
 Bldg.
 Buck Creek Park
 Centerville Co: Appanoose IA 52544
 Landholding Agency: COE
 Property Number: 31200610001
 Status: Excess
 Reasons: Extensive deterioration
 Kansas
 No. 01017
 Kanopolis Project
 Marquette Co: Ellsworth KS 67456
 Landholding Agency: COE
 Property Number: 31200210001
 Status: Unutilized
 Reasons: Extensive deterioration
 No. 01020
 Kanopolis Project
 Marquette Co: Ellsworth KS 67456
 Landholding Agency: COE
 Property Number: 31200210002
 Status: Unutilized
 Reasons: Extensive deterioration
 No. 61001
 Kanopolis Project
 Marquette Co: Ellsworth KS 67456
 Landholding Agency: COE
 Property Number: 31200210003
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. #1
 Kanopolis Project
 Marquette Co: Ellsworth KS 67456
 Landholding Agency: COE
 Property Number: 31200220003
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. #2
 Kanopolis Project
 Marquette Co: Ellsworth KS 67456
 Landholding Agency: COE
 Property Number: 31200220004
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. #4
 Kanopolis Project
 Marquette Co: Ellsworth KS 67456
 Landholding Agency: COE
 Property Number: 31200220005

Status: Excess
 Reasons: Extensive deterioration
 Comfort Station
 Clinton Lake Project
 Lawrence Co: Douglas KS 66049
 Landholding Agency: COE
 Property Number: 31200220006
 Status: Excess
 Reasons: Extensive deterioration
 Privie
 Perry Lake
 Perry Co: Jefferson KS 66074
 Landholding Agency: COE
 Property Number: 31200310004
 Status: Unutilized
 Reasons: Extensive deterioration
 Shower
 Perry Lake
 Perry Co: Jefferson KS 66073
 Landholding Agency: COE
 Property Number: 31200310005
 Status: Unutilized
 Reasons: Extensive deterioration
 Tool Shed
 Perry Lake
 Perry Co: Jefferson KS 66073
 Landholding Agency: COE
 Property Number: 31200310006
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. M37
 Minooka Park
 Sylvan Grove Co: Russell KS 67481
 Landholding Agency: COE
 Property Number: 31200320002
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. M38
 Minooka Park
 Sylvan Grove Co: Russell KS 67481
 Landholding Agency: COE
 Property Number: 31200320003
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. L19
 Lucas Park
 Sylvan Grove Co: Russell KS 67481
 Landholding Agency: COE
 Property Number: 31200320004
 Status: Unutilized
 Reasons: Extensive deterioration
 2 Bldgs.
 Tuttle Creek Lake
 Near Shelters #3 & #4
 Riley KS 66502
 Landholding Agency: COE
 Property Number: 31200330003
 Status: Excess
 Reasons: Extensive deterioration
 6 Bldgs.
 Cottonwood Point/Hillsboro Cove
 Marion Co: Coffey KS 66861
 Landholding Agency: COE
 Property Number: 31200340001
 Status: Excess
 Reasons: Extensive deterioration
 20 Bldgs.
 Riverside
 Burlington Co: Coffey KS 66839-8911
 Landholding Agency: COE
 Property Number: 31200340002
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.

Canning Creek/Richey Cove
Council Grove Co: Morris KS 66846-9322
Landholding Agency: COE
Property Number: 31200340003
Status: Excess
Reasons: Extensive deterioration
6 Bldgs.
Santa Fe Trail/Outlet Channel
Council Grove Co: Morris KS 66846
Landholding Agency: COE
Property Number: 31200340004
Status: Excess
Reasons: Extensive deterioration
Residence
Melvern Lake Project
Melvern Co: Osage KS 66510
Landholding Agency: COE
Property Number: 31200340005
Status: Excess
Reasons: Extensive deterioration
2 Bldgs.
Management Park
Vassar KS 66543
Landholding Agency: COE
Property Number: 31200340006
Status: Excess
Reasons: Extensive deterioration
Bldg.
Hickory Campground
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340007
Status: Excess
Reasons: Extensive deterioration
Bldg.
Rockhaven Park Area
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340008
Status: Excess
Reasons: Extensive deterioration
Bldg.
Overlook Park Area
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340009
Status: Excess
Reasons: Extensive deterioration
Bldg.
Walnut Campground
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340010
Status: Excess
Reasons: Extensive deterioration
Bldg.
Cedar Ridge Campground
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340011
Status: Excess
Reasons: Extensive deterioration
Bldg.
Woodridge Park Area
Lawrence KS 66049
Landholding Agency: COE
Property Number: 31200340012
Status: Excess
Reasons: Extensive deterioration
8 Bldgs.
Tuttle Cove Park
Manhattan Co: Riley KS 66502
Landholding Agency: COE
Property Number: 31200410002

Status: Unutilized
Reasons: Extensive deterioration
2 Bldgs.
Old Garrison Campground
Pottawatomie KS
Landholding Agency: COE
Property Number: 31200410003
Status: Unutilized
Reasons: Extensive deterioration
2 Bldgs.
School Creek ORV Area
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200410004
Status: Excess
Reasons: Extensive deterioration
Bldg.
Slough Creek Park
Perry Co: Jefferson KS 66073
Landholding Agency: COE
Property Number: 31200410005
Status: Excess
Reasons: Extensive deterioration
Bldg.
Spillway Boat Ramp
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200430008
Status: Excess
Reasons: Extensive deterioration
Bldg.
Minooka Park Area
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200430009
Status: Excess
Reasons: Extensive deterioration
Bldg.
Lucas Park Area
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200430010
Status: Excess
Reasons: Extensive deterioration
Bldg.
Sylvan Park Area
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200430011
Status: Excess
Reasons: Extensive deterioration
Bldg.
North Outlet Area
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200430012
Status: Excess
Reasons: Extensive deterioration
3 Vault Toilets
West Rolling Hills
Milford Lake
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200440003
Status: Excess
Reasons: Extensive deterioration
Vault Toilet
East Rolling Hills
Milford Lake
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200440004
Status: Excess
Reasons: Extensive deterioration

Bldgs. 25002, 35012
Lucas Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200510004
Status: Excess
Reasons: Extensive deterioration
Bldgs. 25006, 25038
Lucas Group Camp
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200510005
Status: Excess
Reasons: Extensive deterioration
Bldgs. L37, L38
Lucas Park
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200520005
Status: Excess
Reasons: Extensive deterioration
2 Bldgs.
Mann's Cove PUA
Fall River Co: Greenwood KS 67047
Landholding Agency: COE
Property Number: 31200530002
Status: Excess
Reasons: Extensive deterioration
16 Bldgs.
Cottonwood Point
Marion KS
Landholding Agency: COE
Property Number: 31200530003
Status: Excess
Reasons: Extensive deterioration
3 Bldgs.
Damsite PUA
Fall River Co: Greenwood KS 67047
Landholding Agency: COE
Property Number: 31200530004
Status: Excess
Reasons: Extensive deterioration
2 Bldgs.
Damsite PUA
Fall River Co: Greenwood KS 67047
Landholding Agency: COE
Property Number: 31200530005
Status: Excess
Reasons: Extensive deterioration
Bldgs. L05, L06
Lucas Park Overlook
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31200530006
Status: Excess
Reasons: Extensive deterioration
Bldg. 29442
Admin. Area
Perry KS 66073
Landholding Agency: COE
Property Number: 31200610002
Status: Excess
Reasons: Extensive deterioration
Bldgs. 29475, 29476
Thompsonville Park
Perry KS 66073
Landholding Agency: COE
Property Number: 31200610003
Status: Excess
Reasons: Extensive deterioration
Bldg. 39661
Old Town Park
Perry KS 66073
Landholding Agency: COE

Property Number: 31200610004
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. 29455
 Rock Creek Park
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200610005
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. 29415
 Longview Park
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200610006
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. 29464
 Slough Creek Park
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200610007
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 35015, 35011
 Minooka Park
 Sylvan Grove KS 67481
 Landholding Agency: COE
 Property Number: 31200620021
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs.
 Canning Creek
 Council Grove Co: Morris KS 66846
 Landholding Agency: COE
 Property Number: 31200620022
 Status: Excess
 Reasons: Extensive deterioration
 4 Bldgs.
 East Rolling Hills Park
 Junction City KS 66441
 Landholding Agency: COE
 Property Number: 31200630009
 Status: Unutilized
 Reasons: Extensive deterioration
 Storage Bldg.
 Perry Wildlife Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200640005
 Status: Excess
 Reasons: Extensive deterioration
 Water Treatment Plant
 Old Town Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200640006
 Status: Excess
 Reasons: Extensive deterioration
 Water Treatment Plant
 Sunset Ridge Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200640007
 Status: Excess
 Reasons: Extensive deterioration
 Water Treatment Plant
 Perry Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200640008
 Status: Excess
 Reasons: Extensive deterioration
 Water Treatment Plant

Longview Park Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200640009
 Status: Excess
 Reasons: Extensive deterioration
 Shower
 Longview Park Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200640010
 Status: Excess
 Reasons: Extensive deterioration
 Shower
 Slough Creek Park Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200640011
 Status: Excess
 Reasons: Extensive deterioration
 Shower
 Thompsonville Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200640012
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 28370, 28373, 28298
 Melvern Lake
 Melvern Co: Osage KS 66510
 Landholding Agency: COE
 Property Number: 31200710006
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. 29773
 Melvern Lake
 Melvern Co: Osage KS 66510
 Landholding Agency: COE
 Property Number: 31200710007
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 29785, 29786, 29788
 Melvern Lake
 Melvern Co: Osage KS 66510
 Landholding Agency: COE
 Property Number: 31200710008
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. 39070
 Melvern Lake
 Melvern Co: Osage KS 66510
 Landholding Agency: COE
 Property Number: 31200710009
 Status: Excess
 Reasons: Extensive deterioration
 Bldg.
 South Outlet Park Area
 Lawrence KS
 Landholding Agency: COE
 Property Number: 31200710010
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 School Creek Boat Ramp
 Junction City KS
 Landholding Agency: COE
 Property Number: 31200720001
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 School Creek A Loop
 Junction City KS 66441
 Landholding Agency: COE
 Property Number: 31200720002

Status: Excess
 Reasons: Extensive deterioration
 Bldg. 11001
 West Dam Access Area
 Sylvan Grove KS 67481
 Landholding Agency: COE
 Property Number: 31200730001
 Status: Excess
 Reasons: Extensive deterioration
 8 Bldgs.
 Melvern Lake Project
 Osage KS 66510
 Landholding Agency: COE
 Property Number: 31200730002
 Status: Excess
 Directions: 28370, 28373, 28398, 29773,
 29785, 29786, 29788, 39070
 Reasons: Extensive deterioration
 Bldg. 39663
 Perry Boat Ramp Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200730003
 Status: Excess
 Reasons: Extensive deterioration
 5 Bldgs.
 Slough Creek Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200730004
 Status: Excess
 Directions: 39671, 39672, 39673, 39674,
 39675
 Reasons: Extensive deterioration
 7 Bldgs.
 Slough Creek Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200730005
 Status: Excess
 Directions: 29462, 29463, 29465, 29466,
 29467, 29472, 29473
 Reasons: Extensive deterioration
 Bldgs. 29452, 29453, 29454
 Rock Creek Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200730006
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldgs. 29416, 29417
 Longview Park Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200730007
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 29421, 29422, 29423
 Old Military Trail
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200730008
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 29428, 29431
 Old Town Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200730009
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 29434, 29435
 Outlet Area
 Perry KS 66073

Landholding Agency: COE
 Property Number: 31200730010
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 29477, 29478
 Thompsonville Area
 Perry KS 66073
 Landholding Agency: COE
 Property Number: 31200730011
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 29387, 28390
 Melvern Lake Project
 Osage KS 66510
 Landholding Agency: COE
 Property Number: 31200730021
 Status: Excess
 Reasons: Extensive deterioration
 Vault Toilet
 Farnum Creek Boat Ramp
 Junction City KS 66441
 Landholding Agency: COE
 Property Number: 31200740002
 Status: Excess
 Reasons: Extensive deterioration
 Vault Toilet
 North Overlook Park
 Junction City KS 66441
 Landholding Agency: COE
 Property Number: 31200740003
 Status: Excess
 Reasons: Extensive deterioration
 Vault Toilet
 Curtis Creek Boat Ramp
 Junction City KS 66441
 Landholding Agency: COE
 Property Number: 31200740004
 Status: Excess
 Reasons: Extensive deterioration
 House
 Pomona Lake Project
 Vassar KS 66453
 Landholding Agency: COE
 Property Number: 31200740005
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. 25034
 Lucas Park
 Sylvan Grove KS 67481
 Landholding Agency: COE
 Property Number: 31200740006
 Status: Excess
 Reasons: Extensive deterioration
 2 Vault Toilets
 Tuttle Creek
 Manhattan KS 66502
 Landholding Agency: COE
 Property Number: 31200740007
 Status: Excess
 Reasons: Extensive deterioration
 Kentucky
 Spring House
 Kentucky River Lock and Dam No. 1
 Highway 320
 Carrollton Co: Carroll KY 41008
 Landholding Agency: COE
 Property Number: 21199040416
 Status: Unutilized
 Reasons: Other—Spring House
 6-Room Dwelling
 Green River Lock and Dam No. 3
 Rochester Co: Butler KY 42273
 Landholding Agency: COE

Property Number: 31199120010
 Status: Unutilized
 Directions: Off State Hwy 369, which runs off
 of Western Ky. Parkway
 Reasons: Floodway
 2-Car Garage
 Green River Lock and Dam No. 3
 Rochester Co: Butler KY 42273
 Landholding Agency: COE
 Property Number: 31199120011
 Status: Unutilized
 Directions: Off State Hwy 369, which runs off
 of Western Ky. Parkway
 Reasons: Floodway
 Office and Warehouse
 Green River Lock and Dam No. 3
 Rochester Co: Butler KY 42273
 Landholding Agency: COE
 Property Number: 31199120012
 Status: Unutilized
 Directions: Off State Hwy 369, which runs off
 of Western Ky. Parkway
 Reasons: Floodway
 2 Pit Toilets
 Green River Lock and Dam No. 3
 Rochester Co: Butler KY 42273
 Landholding Agency: COE
 Property Number: 31199120013
 Status: Unutilized
 Reasons: Floodway
 Tract 1379
 Barkley Lake
 Eddyville Co: Lyon KY 42038
 Landholding Agency: COE
 Property Number: 31200420001
 Status: Unutilized
 Reasons: Other—landlocked
 Tract 4300
 Barkley Lake
 Cadiz Co: Trigg KY 42211
 Landholding Agency: COE
 Property Number: 31200420002
 Status: Unutilized
 Reasons: Floodway
 Tracts 317, 318, 319
 Barkley Lake
 Grand Rivers Co: Lyon KY 42045
 Landholding Agency: COE
 Property Number: 31200420003
 Status: Unutilized
 Reasons: Floodway
 Steel Structure
 Mcalpine Locks
 Louisville KY 40212
 Landholding Agency: COE
 Property Number: 31200440006
 Status: Excess
 Reasons: Floodway, Within 2000 ft. of
 flammable or explosive material
 Comfort Station
 Mcalpine Locks
 Louisville KY 40212
 Landholding Agency: COE
 Property Number: 31200440007
 Status: Excess
 Reasons: Floodway, Within 2000 ft. of
 flammable or explosive material
 Shelter
 Mcalpine Locks
 Louisville KY 40212
 Landholding Agency: COE
 Property Number: 31200440008
 Status: Excess
 Reasons: Within 2000 ft. of flammable or
 explosive material, Floodway

Parking Lot
 Mcalpine Locks
 Louisville KY 40212
 Landholding Agency: COE
 Property Number: 31200440009
 Status: Excess
 Reasons: Within 2000 ft. of flammable or
 explosive material, Floodway
 Loading Docks
 Nolin Lake
 Bee Spring KY 42007
 Landholding Agency: COE
 Property Number: 31200540006
 Status: Unutilized
 Reasons: Extensive deterioration
 Sewage Treatment Plant
 Smith Ridge Rec Area
 Campbellsville KY 42718
 Landholding Agency: COE
 Property Number: 31200740008
 Status: Excess
 Reasons: Extensive deterioration
 Louisiana
 Bldg. 11
 Naval Support Activity
 New Orleans LA 70142
 Landholding Agency: Navy
 Property Number: 77200810027
 Status: Excess
 Reasons: Secured Area, Extensive
 deterioration
 Maryland
 Bldg. 12
 Naval Medical Center
 Bethesda MD 20889
 Landholding Agency: Navy
 Property Number: 77200810028
 Status: Underutilized
 Reasons: Secured Area
 Massachusetts
 Lee House
 Knightville Dam Project
 Huntington MA
 Landholding Agency: COE
 Property Number: 31200720003
 Status: Unutilized
 Reasons: Extensive deterioration
 Former Environmental Lab
 200 Coldbrook Road
 Barre MA
 Landholding Agency: COE
 Property Number: 31200720004
 Status: Unutilized
 Reasons: Extensive deterioration
 Missouri
 Rec Office
 Harry S. Truman Dam
 Osceola Co: St. Clair MO 64776
 Landholding Agency: COE
 Property Number: 31200110001
 Status: Unutilized
 Reasons: Extensive deterioration
 Privy/Nemo Park
 Pomme de Terre Lake
 Hermitage MO 65668
 Landholding Agency: COE
 Property Number: 31200120001
 Status: Excess
 Reasons: Extensive deterioration
 Privy No. 1/Bolivar Park
 Pomme de Terre Lake
 Hermitage MO 65668

Landholding Agency: COE
 Property Number: 31200120002
 Status: Excess
 Reasons: Extensive deterioration
 Privy No. 2/Bolivar Park
 Pomme de Terre Lake
 Hermitage MO 65668
 Landholding Agency: COE
 Property Number: 31200120003
 Status: Excess
 Reasons: Extensive deterioration
 #07004, 60006, 60007
 Crabtree Cove/Stockton Area
 Stockton MO 65785
 Landholding Agency: COE
 Property Number: 31200220007
 Status: Excess
 Reasons: Extensive deterioration
 Bldg.
 Old Mill Park Area
 Stockton MO 65785
 Landholding Agency: COE
 Property Number: 31200310007
 Status: Excess
 Reasons: Extensive deterioration
 Stockton Lake Proj. Ofc.
 Stockton Co: Cedar MO 65785
 Landholding Agency: COE
 Property Number: 31200330004
 Status: Unutilized
 Reasons: Extensive deterioration
 House
 Tract 1105
 Thurnau Mitigation Site
 Craig Co: Holt MO 64437
 Landholding Agency: COE
 Property Number: 31200420005
 Status: Unutilized
 Reasons: Extensive deterioration
 30 x 36 Barn
 Tract 1105
 Thurnau Mitigation Site
 Craig Co: Holt MO 64437
 Landholding Agency: COE
 Property Number: 31200420006
 Status: Unutilized
 Reasons: Extensive deterioration
 30 x 26 Barn
 Tract 1105
 Thurnau Mitigation Site
 Craig Co: Holt MO 64437
 Landholding Agency: COE
 Property Number: 31200420007
 Status: Unutilized
 Reasons: Extensive deterioration
 30 x 10 Shed
 Tract 1105
 Thurnau Mitigation Site
 Craig Co: Holt MO 64437
 Landholding Agency: COE
 Property Number: 31200420008
 Status: Unutilized
 Reasons: Extensive deterioration
 30 x 26 Shed
 Tract 1105
 Thurnau Mitigation Site
 Craig Co: Holt MO 64437
 Landholding Agency: COE
 Property Number: 31200420009
 Status: Unutilized
 Reasons: Extensive deterioration
 9 x 9 Shed
 Tract 1105
 Thurnau Mitigation Site

Craig Co: Holt MO 64437
 Landholding Agency: COE
 Property Number: 31200420010
 Status: Unutilized
 Reasons: Extensive deterioration
 Tract 1111
 Thurnau Mitigation Site
 Craig Co: Holt MO 64437
 Landholding Agency: COE
 Property Number: 31200420011
 Status: Excess
 Reasons: Extensive deterioration
 Shower
 Pomme de Terre Lake
 Hermitage Co: Polk MO 65668
 Landholding Agency: COE
 Property Number: 31200420012
 Status: Unutilized
 Reasons: Extensive deterioration
 11 Bldgs.
 Warsaw MO 65355
 Landholding Agency: COE
 Property Number: 31200430013
 Status: Excess
 Directions: Fairfield, Tally Bend, Cooper
 Creek, Shawnee Bend
 Reasons: Extensive deterioration
 2 Storage Bldgs.
 District Service Base
 St. Louis MO
 Landholding Agency: COE
 Property Number: 31200430014
 Status: Excess
 Reasons: Extensive deterioration
 Privy
 Pomme de Terre Lake
 Wheatland Co: Hickory MO
 Landholding Agency: COE
 Property Number: 31200440010
 Status: Underutilized
 Reasons: Floodway
 Vault Toilet
 Ruark Bluff
 Stockton MO
 Landholding Agency: COE
 Property Number: 31200440011
 Status: Excess
 Reasons: Extensive deterioration
 Comfort Station
 Overlook Area
 Stockton MO
 Landholding Agency: COE
 Property Number: 31200440012
 Status: Excess
 Reasons: Extensive deterioration
 Maintenance Building
 Missouri River Area
 Napoleon Co: Lafayette MO 64074
 Landholding Agency: COE
 Property Number: 31200510007
 Status: Excess
 Reasons: Floodway
 Bldg. 34001
 Orleans Trail Park
 Stockton MO 65785
 Landholding Agency: COE
 Property Number: 31200510008
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 34016, 34017
 Orleans Trail Park
 Stockton MO 65785
 Landholding Agency: COE
 Property Number: 31200510009

Status: Excess
 Reasons: Extensive deterioration
 Bldg.
 Pomme de Terre Lake
 Hermitage MO 65668
 Landholding Agency: COE
 Property Number: 31200610008
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldgs. 43841, 43919
 Clearwater Project
 Piedmont MO 63957
 Landholding Agency: COE
 Property Number: 31200630010
 Status: Unutilized
 Reasons: Extensive deterioration
 Dwelling
 Harry S. Truman Project
 Roscoe MO
 Landholding Agency: COE
 Property Number: 31200640013
 Status: Unutilized
 Reasons: Extensive deterioration
 Bldg. 50005
 Ruark Bluff East
 Stockton MO 65785
 Landholding Agency: COE
 Property Number: 31200710011
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. 07002
 Crabtree Cove Park
 Stockton MO 65785
 Landholding Agency: COE
 Property Number: 31200710012
 Status: Excess
 Reasons: Extensive deterioration
 Comfort Station
 Riverlands Way Access
 West Alton MO 63386
 Landholding Agency: COE
 Property Number: 31200710013
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. #55001
 Cooper Creek
 Warsaw MO 65355
 Landholding Agency: COE
 Property Number: 31200720005
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 40006, 40007
 Pomme de Terre Lake
 Pittsburg MO 65724
 Landholding Agency: COE
 Property Number: 31200730012
 Status: Excess
 Reasons: Extensive deterioration
 3 Facilities
 Wappapello Lake Project
 Wayne MO 63966
 Landholding Agency: COE
 Property Number: 31200730013
 Status: Excess
 Reasons: Extensive deterioration
 Bldgs. 05004, 05008
 Cedar Ridge Park
 Stockton MO 65785
 Landholding Agency: COE
 Property Number: 31200740009
 Status: Excess
 Reasons: Extensive deterioration
 Bldg. 11002
 Greenfield Access

Stockton MO 65785
Landholding Agency: COE
Property Number: 31200740010
Status: Excess
Reasons: Extensive deterioration
Bldgs. 14008, 14009, 14010
Hawker Point Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200740011
Status: Excess
Reasons: Extensive deterioration
Bldg. 34006
Orleans Trail Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200740012
Status: Excess
Reasons: Extensive deterioration
Bldg. ES801-8319
Wappapello Lake Project
Wayne MO 63966
Landholding Agency: COE
Property Number: 31200740013
Status: Excess
Reasons: Extensive deterioration

Nebraska
Vault Toilets
Harlan County Project
Republican NE 68971
Landholding Agency: COE
Property Number: 31200210006
Status: Unutilized
Reasons: Extensive deterioration
Patterson Treatment Plant
Harlan County Project
Republican NE 68971
Landholding Agency: COE
Property Number: 31200210007
Status: Unutilized
Reasons: Extensive deterioration
#30004
Harlan County Project
Republican Co: Harlan NE 68971
Landholding Agency: COE
Property Number: 31200220008
Status: Unutilized
Reasons: Extensive deterioration
#3005, 3006
Harlan County Project
Republican Co: Harlan NE 68971
Landholding Agency: COE
Property Number: 31200220009
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 70001, 70002
South Outlet Park
Republican City NE
Landholding Agency: COE
Property Number: 31200510010
Status: Excess
Reasons: Extensive deterioration
Bldgs. 40002, 40003, 40006
Harlan County Lake
Republican City NE 68971
Landholding Agency: COE
Property Number: 31200610009
Status: Excess
Reasons: Extensive deterioration
Bldg. 40020
Harlan County Lake
Republican City NE 68971
Landholding Agency: COE

Property Number: 31200610010
Status: Excess
Reasons: Extensive deterioration
4 Bldgs.
43004, 43007, 43008, 43009
Republican City NE 68971
Landholding Agency: COE
Property Number: 31200610011
Status: Excess
Reasons: Extensive deterioration
6 Bldgs.
Harlan County Lake
Republican City NE 68971
Landholding Agency: COE
Property Number: 31200610012
Status: Excess
Directions: 50003, 50004, 50005, 50006,
50007, 50008
Reasons: Extensive deterioration
New Jersey
Bldgs. 105, 111, 266
Naval Air Eng. Station
Lakehurst NJ 08733
Landholding Agency: Navy
Property Number: 77200820001
Status: Unutilized
Reasons: Secured Area, Extensive
deterioration
Bldgs. 464, 480
Naval Air Eng. Station
Lakehurst NJ 08733
Landholding Agency: Navy
Property Number: 77200820002
Status: Unutilized
Reasons: Extensive deterioration, Secured
Area
Bldgs. 539, 560, 565
Naval Air Eng. Station
Lakehurst NJ 08733
Landholding Agency: Navy
Property Number: 77200820003
Status: Unutilized
Reasons: Extensive deterioration, Secured
Area
New York
Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862-0706
Landholding Agency: COE
Property Number: 31199630007
Status: Unutilized
Reasons: Extensive deterioration
North Carolina
Preston Clark USARC
1301 N. Memorial Dr.
Greenville Co: Pitt NC 27834
Landholding Agency: COE
Property Number: 31200620032
Status: Unutilized
Reasons: Extensive deterioration
Bldg. MC-A01
Morehead City NC
Landholding Agency: COE
Property Number: 31200740014
Status: Excess
Reasons: Extensive deterioration
Ohio
NIKE Site Cd-46
Felicity OH
Landholding Agency: COE
Property Number: 31200740015
Status: Excess

Reasons: Extensive deterioration
Installation 39875
Hayes Reserve Center
Fremont OH 43420
Landholding Agency: COE
Property Number: 31200740016
Status: Excess
Reasons: Extensive deterioration

Oklahoma
Comfort Station
LeFlore Landing PUA
Sallisaw Co: LeFlore OK 74955-9445
Landholding Agency: COE
Property Number: 31200240008
Status: Excess
Reasons: Extensive deterioration
Comfort Station
Braden Bend PUA
Sallisaw Co: LeFlore OK 74955-9445
Landholding Agency: COE
Property Number: 31200240009
Status: Excess
Reasons: Extensive deterioration
Water Treatment Plant
Salt Creek Cove
Sawyer Co: Choctaw OK 74756-0099
Landholding Agency: COE
Property Number: 31200240010
Status: Excess
Reasons: Extensive deterioration
Water Treatment Plant
Wilson Point
Sawyer Co: Choctaw OK 74756-0099
Landholding Agency: COE
Property Number: 31200240011
Status: Excess
Reasons: Extensive deterioration
2 Comfort Stations
Landing PUA/Juniper Point PUA
Stigler Co: McIntosh OK 74462-9440
Landholding Agency: COE
Property Number: 31200240012
Status: Excess
Reasons: Extensive deterioration
Filter Plant/Pumphouse
South PUA
Stigler Co: McIntosh OK 74462-9440
Landholding Agency: COE
Property Number: 31200240013
Status: Excess
Reasons: Extensive deterioration
Filter Plant/Pumphouse
North PUA
Stigler Co: McIntosh OK 74462-9440
Landholding Agency: COE
Property Number: 31200240014
Status: Excess
Reasons: Extensive deterioration
Filter Plant/Pumphouse
Juniper Point PUA
Stigler Co: McIntosh OK 74462-9440
Landholding Agency: COE
Property Number: 31200240015
Status: Excess
Reasons: Extensive deterioration
Comfort Station
Juniper Point PUA
Stigler Co: McIntosh OK 74462-9440
Landholding Agency: COE
Property Number: 31200240016
Status: Excess
Reasons: Extensive deterioration
Comfort Station

Brooken Cove PUA
 Stigler Co: McIntosh OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200240017
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Outlet Channel/Walker Creek
 Waurika OK 73573-0029
 Landholding Agency: COE
 Property Number: 31200340013
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Damsite South
 Stigler OK 74462-9440
 Landholding Agency: COE
 Property Number: 31200340014
 Status: Excess
 Reasons: Extensive deterioration
 19 Bldgs.
 Kaw Lake
 Ponca City OK 74601-9962
 Landholding Agency: COE
 Property Number: 31200340015
 Status: Excess
 Reasons: Extensive deterioration
 30 Bldgs.
 Keystone Lake
 Sand Springs OK 74063-9338
 Landholding Agency: COE
 Property Number: 31200340016
 Status: Excess
 Reasons: Extensive deterioration
 13 Bldgs.
 Oologah Lake
 Oologah OK 74053-0700
 Landholding Agency: COE
 Property Number: 31200340017
 Status: Excess
 Reasons: Extensive deterioration
 14 Bldgs.
 Pine Creek Lake
 Valliant OK 74764-9801
 Landholding Agency: COE
 Property Number: 31200340018
 Status: Excess
 Reasons: Extensive deterioration
 6 Bldgs.
 Sardis Lake
 Clayton OK 74536-9729
 Landholding Agency: COE
 Property Number: 31200340019
 Status: Excess
 Reasons: Extensive deterioration
 22 Bldgs.
 Skiatook Lake
 Skiatook OK 74070-9803
 Landholding Agency: COE
 Property Number: 31200340020
 Status: Excess
 Reasons: Extensive deterioration
 40 Bldgs.
 Eufaula Lake
 Stigler OK 74462-5135
 Landholding Agency: COE
 Property Number: 31200340021
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Holiday Cove
 Stigler OK 74462-5135
 Landholding Agency: COE
 Property Number: 31200340022

Status: Excess
 Reasons: Extensive deterioration
 18 Bldgs.
 Fort Gibson
 Ft. Gibson Co: Wagoner OK 74434-0370
 Landholding Agency: COE
 Property Number: 31200340023
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Fort Supply
 Ft. Supply Co: Woodward OK 73841-0248
 Landholding Agency: COE
 Property Number: 31200340024
 Status: Excess
 Reasons: Extensive deterioration
 Game Bird House
 Fort Supply Lake
 Ft. Supply Co: Woodward OK 73841-0248
 Landholding Agency: COE
 Property Number: 31200340025
 Status: Excess
 Reasons: Extensive deterioration
 11 Bldgs.
 Hugo Lake
 Sawyer OK 74756-0099
 Landholding Agency: COE
 Property Number: 31200340026
 Status: Excess
 Reasons: Extensive deterioration
 5 Bldgs.
 Birch Cove/Twin Cove
 Skiatook OK 74070-9803
 Landholding Agency: COE
 Property Number: 31200340027
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Fairview Group Camp
 Canton OK 73724-0069
 Landholding Agency: COE
 Property Number: 31200340028
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Chouteau Bluff
 Gore Co: Wagoner OK 74935-9404
 Landholding Agency: COE
 Property Number: 31200340029
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Newt Graham L
 Gore OK 74935-9404
 Landholding Agency: COE
 Property Number: 31200340030
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Damsite/Fisherman's Landing
 Sallisaw OK 74955-9445
 Landholding Agency: COE
 Property Number: 31200340031
 Status: Excess
 Reasons: Extensive deterioration
 10 Bldgs.
 Webbers Falls Lake
 Gore OK 74435-5541
 Landholding Agency: COE
 Property Number: 31200340032
 Status: Excess
 Reasons: Extensive deterioration
 Bldg.
 Lower Storage Yard

Skiatook Co: Osage OK 74070
 Landholding Agency: COE
 Property Number: 31200530007
 Status: Excess
 Reasons: Extensive deterioration
 3 Bldgs.
 Birch Cove PUA
 Skiatook Co: Osage OK 74070
 Landholding Agency: COE
 Property Number: 31200530008
 Status: Excess
 Reasons: Extensive deterioration
 Bldg.
 Canadian Public Use Area
 Canton Co: Blaine OK 73724
 Landholding Agency: COE
 Property Number: 31200530009
 Status: Excess
 Reasons: Extensive deterioration
 3 Bldgs.
 Porum Landing PUA
 Stigler Co: McIntosh OK 74462
 Landholding Agency: COE
 Property Number: 31200530010
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Bluff/Afton Landing
 Ft. Gibson Co: Wagoner OK 74434
 Landholding Agency: COE
 Property Number: 31200530012
 Status: Excess
 Reasons: Extensive deterioration
 Bldg.
 Lake Office
 Ft. Supply Co: Woodward OK 73841
 Landholding Agency: COE
 Property Number: 31200530013
 Status: Excess
 Reasons: Extensive deterioration
 4 Bldgs.
 Overlook PUA
 Ft. Supply Co: Texas OK 73841
 Landholding Agency: COE
 Property Number: 31200530014
 Status: Excess
 Reasons: Extensive deterioration
 Bldg.
 Hugo Lake
 Sawyer Co: Chocktaw OK 74756
 Landholding Agency: COE
 Property Number: 31200530015
 Status: Excess
 Reasons: Extensive deterioration
 2 Bldgs.
 Sarge Creek PUA
 Ponca City Co: Kay OK 74601
 Landholding Agency: COE
 Property Number: 31200530016
 Status: Excess
 Reasons: Extensive deterioration
 5 Bldgs.
 Hawthorne Bluff
 Oologah Co: Rogers OK 74053
 Landholding Agency: COE
 Property Number: 31200530017
 Status: Excess
 Reasons: Extensive deterioration
 12 Bldgs.
 Trout Stream PUAs
 Gore Co: Sequoyah OK 74435
 Landholding Agency: COE
 Property Number: 31200530018
 Status: Excess

Reasons: Extensive deterioration
14 Bldgs.
Chicken Creek PUAs
Gore Co: Cherokee OK 74435
Landholding Agency: COE
Property Number: 31200530019
Status: Excess
Reasons: Extensive deterioration
4 Bldgs.
Snake Creek Area
Gore Co: Sequoyah OK 74435
Landholding Agency: COE
Property Number: 31200530020
Status: Excess
Reasons: Extensive deterioration
3 Bldgs.
Brewer's Bend
Gore Co: Muskogee OK 74435
Landholding Agency: COE
Property Number: 31200530021
Status: Excess
Reasons: Extensive deterioration
Facility
Hulah Lake
Copan Co: Osage OK 74022
Landholding Agency: COE
Property Number: 31200620025
Status: Excess
Reasons: Extensive deterioration
Bldg.
Webbers Falls
Muskogee OK 74435
Landholding Agency: COE
Property Number: 31200620026
Status: Excess
Reasons: Extensive deterioration
24 Bldgs.
Hulah Lake
Copan OK
Landholding Agency: COE
Property Number: 31200630011
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 44760, 44707
Canton Lake
Canton OK 73724
Landholding Agency: COE
Property Number: 31200630012
Status: Unutilized
Reasons: Extensive deterioration
Bldg.
Skiatook Lake
Skiatook OK 74070
Landholding Agency: COE
Property Number: 31200630013
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 43263, 42364
Oologah Lake
Oologah OK 74053
Landholding Agency: COE
Property Number: 31200630015
Status: Unutilized
Reasons: Extensive deterioration
Bldg.
Webbers Falls Lake
Webbers Falls OK
Landholding Agency: COE
Property Number: 31200630016
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 43523, 43820
Hugo Lake
Sawyer OK 74756

Landholding Agency: COE
Property Number: 31200630017
Status: Unutilized
Reasons: Extensive deterioration
Bldg.
Newt Graham Lock 18
Inola OK
Landholding Agency: COE
Property Number: 31200640014
Status: Unutilized
Reasons: Extensive deterioration
4 Bldgs.
Gore OK 74435
Landholding Agency: COE
Property Number: 31200640016
Status: Unutilized
Directions: Afton Landing or Bluff Landing
Reasons: Extensive deterioration
Pinecr-58321
Pine Creek Lake
Valiant OK
Landholding Agency: COE
Property Number: 31200710015
Status: Unutilized
Reasons: Extensive deterioration
KAW-58649
Garrett's Landing
Kaw City OK
Landholding Agency: COE
Property Number: 31200710016
Status: Unutilized
Reasons: Extensive deterioration
Bldg.
Sizemore Landing
Gore OK 74435
Landholding Agency: COE
Property Number: 31200720007
Status: Unutilized
Reasons: Extensive deterioration
Bldg.
Taylor Ferry
Fort Gibson OK 74434
Landholding Agency: COE
Property Number: 31200720008
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 42670, 42634
Tenkiller Lake
Gore OK 74435
Landholding Agency: COE
Property Number: 31200730014
Status: Unutilized
Reasons: Extensive deterioration
Bldg. 41946
Webbers Falls Lake
Webbers Lake OK
Landholding Agency: COE
Property Number: 31200730015
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 44760, 44707
Canton Lake
Canton OK
Landholding Agency: COE
Property Number: 31200730016
Status: Unutilized
Reasons: Extensive deterioration
6 Bldgs.
Hugo Lake
Sawyer OK
Landholding Agency: COE
Property Number: 31200730017
Status: Unutilized
Directions: 43803, 43802, 43827, 43760,
43764, 43763

Reasons: Extensive deterioration
Gatehouse
Porum Landing
Stigler OK 75562
Landholding Agency: COE
Property Number: 31200740017
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 42008, 55088
Webbers Falls Lake
Webbers Falls OK
Landholding Agency: COE
Property Number: 31200740019
Status: Unutilized
Reasons: Extensive deterioration
Oregon
2 Floating Docks
Rogue River
Gold Beach Co: Curry OR 97444
Landholding Agency: COE
Property Number: 31200430015
Status: Excess
Reasons: Floodway
2 Trailers
John Day Project
#1 West Marine Drive
Boardman Co: Morrow OR 97818
Landholding Agency: COE
Property Number: 31200510012
Status: Unutilized
Reasons: Extensive deterioration
Pennsylvania
Bldgs. 13, 90, 93, 97
Naval Support Activity
Philadelphia PA 19111
Landholding Agency: Navy
Property Number: 77200820012
Status: Excess
Reasons: Extensive deterioration, Secured
Area
Bldgs. 431, 483
Naval Support Activity
Philadelphia PA 19111
Landholding Agency: Navy
Property Number: 77200820013
Status: Excess
Reasons: Within 2000 ft. of flammable or
explosive material, Extensive deterioration
Bldgs. 530, 534, 567, 585
Naval Support Activity
Philadelphia PA 19111
Landholding Agency: Navy
Property Number: 77200820014
Status: Excess
Reasons: Extensive deterioration, Within
2000 ft. of flammable or explosive material
Bldgs. 618, 743
Naval Support Activity
Philadelphia PA 19111
Landholding Agency: Navy
Property Number: 77200820015
Status: Excess
Reasons: Extensive deterioration
Rhode Island
Bldg. 305CP
Naval Station
Newport RI 02841
Landholding Agency: Navy
Property Number: 77200820004
Status: Excess
Reasons: Extensive deterioration, Secured
Area

South Carolina
Bldgs. 908, 1ATX211–1ATX220
Naval Weapons Station
Goose Creek SC 29445
Landholding Agency: Navy
Property Number: 77200810029
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material
Bldgs. 40, 48, 856
Naval Weapons Station
Goose Creek SC 29445
Landholding Agency: Navy
Property Number: 77200810030
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material
Bldgs. 934, 2333
Naval Weapons Station
Goose Creek SC 29445
Landholding Agency: Navy
Property Number: 77200810031
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

South Dakota
Mobile Home
Tract L–1295
Oahe Dam
Potter SD 00000
Landholding Agency: COE
Property Number: 31200030001
Status: Excess
Reasons: Extensive deterioration

Tennessee
Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030
Landholding Agency: COD
Property Number: 31199011499
Status: Unutilized
Directions: US Highway 85
Reasons: Floodway
Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Directions: TN Highway 135
Reasons: Floodway
Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Directions: TN Highway 135
Reasons: Floodway
Water Treatment Plant
Dale Hollow Lake Project
Obey River Park,
State Hwy 42
Livingston Co: Clay TN 38351
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reasons: Other—water treatment plant
Water Treatment Plant
Dale Hollow Lake Project

Lillydale Recreation Area,
State Hwy 53
Livingston Co: Clay TN 38351
Landholding Agency: COE
Property Number: 31199140012
Status: Excess
Reasons: Other—water treatment plant
Water Treatment Plant
Dale Hollow Lake Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reasons: Other—water treatment plant
Comfort Station/Land
Cook Campground
Nashville Co: Davidson TN 37214
Landholding Agency: COE
Property Number: 31200420024
Status: Unutilized
Reasons: Floodway
Tracts 915, 920, 931C–1
Cordell Hull Dam/Reservoir
Cathage Co: Smith TN 37030
Landholding Agency: COE
Property Number: 31200430016
Status: Unutilized
Reasons: Other—landlocked, Floodway
Residence #5
5050 Dale Hollow Dam Rd.
Celina Co: Clay TN 38551
Landholding Agency: COE
Property Number: 31200540010
Status: Unutilized
Reasons: Other—landlocked
Bldg.
Dale Hollow Lake Dam
Celina Co: Clay TN 38551
Landholding Agency: COE
Property Number: 31200610013
Status: Unutilized
Reasons: Extensive deterioration
3 Bldgs.
Y–12 National Security Complex
9706–01, 9706–01A, 9711–05
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810008
Status: Unutilized
Reasons: Secured Area
3 Bldgs.
Y–12 National Security Complex
9733–01, 9733–02, 9733–03
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810009
Status: Unutilized
Reasons: Secured Area
Bldgs. 9734, 9739
Y–12 National Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810010
Status: Unutilized
Reasons: Secured Area

Texas
Comfort Station
Overlook PUA
Powderly Co: Lamar TX 75473–9801
Landholding Agency: COE
Property Number: 31200240018
Status: Excess
Reasons: Extensive deterioration

148 Bldgs.
Texoma Lake
Denison TX
Landholding Agency: COE
Property Number: 31200740018
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 11–010, T09–031
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200810011
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Virginia
Bldgs. JHK–17433, JHK–17446
John H. Kerr Project
Boydton VA
Landholding Agency: COE
Property Number: 31200740020
Status: Unutilized
Reasons: Extensive deterioration
Bldgs. 439, 466
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820016
Status: Excess
Reasons: Secured Area
Bldgs. 760, 761
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820017
Status: Excess
Reasons: Secured Area
Bldgs. 1820, 1895
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820018
Status: Excess
Reasons: Secured Area
Bldgs. 1977, 1978, 1983
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820019
Status: Excess
Reasons: Secured Area
Bldg. CAD–RR
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200820020
Status: Excess
Reasons: Secured Area

West Virginia
CELRH–OR–BLN
Hinton WV 25951
Landholding Agency: COE
Property Number: 31200640020
Status: Unutilized
Reasons: Secured Area
CELRH–OR–BLN
Hinton WV
Landholding Agency: COE
Property Number: 31200730018
Status: Unutilized
Reasons: Extensive deterioration
CELRH–OR–SUT
Sutton WV

Landholding Agency: COE
 Property Number: 31200730019
 Status: Unutilized
 Reasons: Extensive deterioration
 CELRH-OR-SUM
 Summersville WV
 Landholding Agency: COE
 Property Number: 31200730020
 Status: Unutilized
 Reasons: Extensive deterioration

Wisconsin

SSA Federal Bldg.
 304 Otter Ave.
 Oshkosh WI 54901
 Landholding Agency: GSA
 Property Number: 54200820001
 Status: Excess
 GSA Number: 1-G-WI-603
 Reasons: Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Land

Kentucky

Tract 4626
 Barkley Lake, Kentucky and Tennessee
 Donaldson Creek Launching Area
 Cadiz Co: Trigg KY 42211
 Landholding Agency: COE
 Property Number: 31199010030
 Status: Underutilized
 Directions: 14 miles from U.S. Highway 68.
 Reasons: Floodway
 Tract AA-2747
 Wolf Creek Dam and Lake Cumberland
 US HWY. 27 to Blue John Road
 Burnside Co: Pulaski KY 42519
 Landholding Agency: COE
 Property Number: 31199010038
 Status: Underutilized
 Reasons: Floodway
 Tract AA-2726
 Wolf Creek Dam and Lake Cumberland
 KY HWY. 80 to Route 769
 Burnside Co: Pulaski KY 42519
 Landholding Agency: COE
 Property Number: 31199010039
 Status: Underutilized
 Reasons: Floodway
 Tract 1358
 Barkley Lake, Kentucky and Tennessee
 Eddyville Recreation Area
 Eddyville Co: Lyon KY 42038
 Landholding Agency: COE
 Property Number: 31199010043
 Status: Excess
 Directions: US Highway 62 to state highway 93.
 Reasons: Floodway
 Barren River Lock No. 1
 Richlandville Co: Warren KY 42270
 Landholding Agency: COE
 Property Number: 31199120008
 Status: Unutilized
 Reasons: Floodway
 Green River Lock No. 3
 Rochester Co: Butler KY 42273
 Landholding Agency: COE
 Property Number: 31199120009
 Status: Unutilized
 Directions: Off State Hwy. 369, which runs off of Western Ky. Parkway
 Reasons: Floodway

Green River Lock No. 4
 Woodbury Co: Butler KY 42288
 Landholding Agency: COE
 Property Number: 31199120014
 Status: Underutilized
 Directions: Off State Hwy 403, which is off State Hwy 231
 Reasons: Floodway
 Green River Lock No. 5
 Readville Co: Butler KY 42275
 Landholding Agency: COE
 Property Number: 31199120015
 Status: Unutilized
 Directions: Off State Highway 185
 Reasons: Floodway
 Green River Lock No. 6
 Brownsville Co: Edmonson KY 42210
 Landholding Agency: COE
 Property Number: 31199120016
 Status: Underutilized
 Directions: Off State Highway 259
 Reasons: Floodway
 Vacant land west of locksite
 Greenup Locks and Dam
 5121 New Dam Road
 Rural Co: Greenup KY 41144
 Landholding Agency: COE
 Property Number: 31199120017
 Status: Unutilized
 Reasons: Floodway
 Maryland
 Tract 131R
 Youghiogheny River Lake, Rt. 2, Box 100
 Friendsville Co: Garrett MD
 Landholding Agency: COE
 Property Number: 31199240007
 Status: Underutilized
 Reasons: Floodway
 Mississippi
 Parcel 1
 Grenada Lake
 Section 20
 Grenada Co: Grenada MS 38901-0903
 Landholding Agency: COE
 Property Number: 31199011018
 Status: Underutilized
 Reasons: Within airport runway clear zone
 Missouri
 Ditch 19, Item 2, Tract No. 230
 St. Francis Basin Project
 2½ miles west of Malden
 null Co: Dunklin MO
 Landholding Agency: COE
 Property Number: 31199130001
 Status: Unutilized
 Reasons: Floodway
 Ohio
 Mosquito Creek Lake
 Everett Hull Road Boat Launch
 Cortland Co: Trumbull OH 44410-9321
 Landholding Agency: COE
 Property Number: 31199440007
 Status: Underutilized
 Reasons: Floodway
 Mosquito Creek Lake
 Housel-Craft Rd., Boat Launch
 Cortland Co: Trumbull OH 44410-9321
 Landholding Agency: COE
 Property Number: 31199440008
 Status: Underutilized
 Reasons: Floodway
 36 Site Campground

German Church Campground
 Berlin Center Co: Portage OH 44401-9707
 Landholding Agency: COE
 Property Number: 31199810001
 Status: Unutilized
 Reasons: Floodway
 Pennsylvania
 Lock and Dam #7
 Monongahela River
 Greensboro Co: Greene PA
 Landholding Agency: COE
 Property Number: 31199011564
 Status: Unutilized
 Directions: Left hand side of entrance roadway to project
 Reasons: Floodway
 Mercer Recreation Area
 Shenango Lake
 Transfer Co: Mercer PA 16154
 Landholding Agency: COE
 Property Number: 31199810002
 Status: Unutilized
 Reasons: Floodway
 Tract No. B-212C
 Upstream from Gen. Jadwin Dam
 Honesdale Co: Wayne PA 18431
 Landholding Agency: COE
 Property Number: 31200020005
 Status: Unutilized
 Reasons: Floodway
 Portion/Tract 117
 E. of Strabane Ave.
 Canonsburg PA
 Landholding Agency: GSA
 Property Number: 54200820003
 Status: Excess
 GSA Number: 4-B-PA-811
 Reasons: Contamination
 Tennessee
 Brooks Bend
 Cordell Hull Dam and Reservoir
 Highway 85 to Brooks Bend Road
 Gainesboro Co: Jackson TN 38562
 Landholding Agency: COE
 Property Number: 21199040413
 Status: Underutilized
 Directions: Tracts 800, 802-806, 835-837, 900-902, 1000-1003, 1025
 Reasons: Floodway
 Cheatham Lock and Dam
 Highway 12
 Ashland City Co: Cheatham TN 37015
 Landholding Agency: COE
 Property Number: 21199040415
 Status: Underutilized
 Directions: Tracts E-513, E-512-1 and E-512-2
 Reasons: Floodway
 Tract 2321
 J. Percy Priest Dam and Reservoir
 Murfreesboro Co: Rutherford TN 37130
 Landholding Agency: COE
 Property Number: 31199010935
 Status: Excess
 Directions: South of Old Jefferson Pike
 Reasons: Other—landlocked
 Tract 6737
 Blue Creek Recreation Area
 Barkley Lake, Kentucky and Tennessee
 Dover Co: Stewart TN 37058
 Landholding Agency: COE
 Property Number: 31199011478
 Status: Underutilized

Directions: U.S. Highway 79/TN Highway 761

Reasons: Floodway

Tracts 3102, 3105, and 3106

Brimstone Launching Area

Cordell Hull Lake and Dam Project

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199011479

Status: Excess

Directions: Big Bottom Road

Reasons: Floodway

Tract 3507

Proctor Site

Cordell Hull Lake and Dam Project

Celina Co: Clay TN 38551

Landholding Agency: COE

Property Number 3119901148

Status: Unutilized

Directions: TN Highway 52

Reasons: Floodway

Tract 3721

Obey

Cordell Hull Lake and Dam Project

Celina Co: Clay TN 38551

Landholding Agency: COE

Property Number: 3119901148

Status: Unutilized

Directions: TN Highway 53

Reasons: Floodway

Tracts 608, 609, 611 and 612

Sullivan Bend Launching Area

Cordell Hull Lake and Dam Project

Carthage Co: Smith TN 37030

Landholding Agency: COE

Property Number: 31199011482

Status: Underutilized

Directions: Sullivan Bend Road

Reasons: Floodway

Tracts 1710, 1716 and 1703

Flynns Lick Launching Ramp

Cordell Hull Lake and Dam Project

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199011484

Status: Underutilized

Directions: Whites Bend Road

Reasons: Floodway

Tract 1810

Wartrace Creek Launching Ramp

Cordell Hull Lake and Dam Project

Gainesboro Co: Jackson TN 38551

Landholding Agency: COE

Property Number: 31199011485

Status: Underutilized

Directions: TN Highway 85

Reasons: Floodway

Tract 2524

Jennings Creek

Cordell Hull Lake and Dam Project

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199011486

Status: Unutilized

Directions: TN Highway 85

Reasons: Floodway

Tracts 2905 and 2907

Webster

Cordell Hull Lake and Dam Project

Gainesboro Co: Jackson TN 38551

Landholding Agency: COE

Property Number: 31199011487

Status: Unutilized

Directions: Big Bottom Road

Reasons: Floodway

Tracts 2200 and 2201

Gainesboro Airport

Cordell Hull Lake and Dam Project

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199011488

Status: Underutilized

Directions: Big Bottom Road

Reasons: Floodway, Within airport runway clear zone

Tracts 710C and 712C

Sullivan Island

Cordell Hull Lake and Dam Project

Carthage Co: Smith TN 37030

Landholding Agency: COE

Property Number: 31199011489

Status: Unutilized

Directions: Sullivan Bend Road

Reasons: Floodway

Tract 2403, Hensley Creek

Cordell Hull Lake and Dam Project

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199011490

Status: Unutilized

Directions: TN Highway 85

Reasons: Floodway

Tracts 2117C, 2118 and 2120

Cordell Hull Lake and Dam Project

Trace Creek

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199011491

Status: Unutilized

Directions: Brooks Ferry Road

Reasons: Floodway

Tracts 424, 425 and 426

Cordell Hull Lake and Dam Project

Stone Bridge

Carthage Co: Smith TN 37030

Landholding Agency: COE

Property Number: 31199011492

Status: Unutilized

Directions: Sullivan Bend Road

Reasons: Floodway

Tract 517

J. Percy Priest Dam and Reservoir

Suggs Creek Embayment

Nashville Co: Davidson TN 37214

Landholding Agency: COE

Property Number: 31199011493

Status: Underutilized

Directions: Interstate 40 to S. Mount Juliet Road

Reasons: Floodway

Tract 1811

West Fork Launching Area

Smyrna Co: Rutherford TN 37167

Landholding Agency: COE

Property Number: 31199011494

Status: Underutilized

Directions: Florence Road near Enon Springs Road

Reasons: Floodway

Tract 1504

J. Percy Priest Dam and Reservoir

Lamon Hill Recreation Area

Smyrna Co: Rutherford TN 37167

Landholding Agency: COE

Property Number: 31199011495

Status: Underutilized

Directions: Lamon Road

Reasons: Floodway

Tract 1500

J. Percy Priest Dam and Reservoir

Pools Knob Recreation

Smyrna Co: Rutherford TN 37167

Landholding Agency: COE

Property Number: 31199011496

Status: Underutilized

Directions: Jones Mill Road

Reasons: Floodway

Tracts 245, 257, and 256

J. Percy Priest Dam and Reservoir

Cook Recreation Area

Nashville Co: Davidson TN 37214

Landholding Agency: COE

Property Number: 31199011497

Status: Underutilized

Directions: 2.2 miles south of Interstate 40 near Saunders Ferry Pike

Reasons: Floodway

Tracts 107, 109 and 110

Cordell Hull Lake and Dam Project

Two Prong

Carthage Co: Smith TN 37030

Landholding Agency: COE

Property Number: 31199011498

Status: Unutilized

Directions: US Highway 85

Reasons: Floodway

Tracts 2919 and 2929

Cordell Hull Lake and Dam Project

Sugar Creek

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199011500

Status: Unutilized

Directions: Sugar Creek Road

Reasons: Floodway

Tracts 1218 and 1204

Cordell Hull Lake and Dam Project

Granville—Alvin Yourk Road

Granville Co: Jackson TN 38564

Landholding Agency: COE

Property Number: 31199011501

Status: Unutilized

Reasons: Floodway

Tract 2100

Cordell Hull Lake and Dam Project

Galbreaths Branch

Gainesboro Co: Jackson TN 38562

Landholding Agency: COE

Property Number: 31199011502

Status: Unutilized

Directions: TN Highway 53

Reasons: Floodway

Tract 104 et al.

Cordell Hull Lake and Dam Project

Horshoe Bend Launching Area

Carthage Co: Smith TN 37030

Landholding Agency: COE

Property Number: 31199011504

Status: Underutilized

Directions: Highway 70 N

Reasons: Floodway

Tracts 510, 511, 513 and 514

J. Percy Priest Dam and Reservoir Project

Lebanon Co: Wilson TN 37087

Landholding Agency: COE

Property Number: 31199120007

Status: Underutilized

Directions: Vivrett Creek Launching Area,

Alvin Sperry Road

Reasons: Floodway

Tract A—142, Old Hickory Beach

Old Hickory Blvd.

Old Hickory Co: Davidson TN 37138
Landholding Agency: COE
Property Number: 31199130008
Status: Underutilized
Reasons: Floodway
Tract D, 7 acres
Cheatham Lock
Nashville Co: Davidson TN 37207
Landholding Agency: COE
Property Number: 31200020006
Status: Underutilized
Reasons: Floodway
Tract F-608
Cheatham Lock
Ashland Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 31200420021
Status: Unutilized
Reasons: Floodway
Tracts G702-G706
Cheatham Lock
Ashland Co: Cheatham TN 37015
Landholding Agency: COE
Property Number: 31200420022
Status: Unutilized
Reasons: Floodway
6 Tracts
Shutes Branch Campground
Lakewood Co: Wilson TN
Landholding Agency: COE
Property Number: 31200420023
Status: Unutilized
Reasons: Floodway

Texas
Tracts 104, 105-1, 105-2
Joe Pool Lake
null Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010397
Status: Underutilized
Reasons: Floodway
Part of Tract 201-3
Joe Pool Lake
null Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reasons: Floodway
Part of Tract 323
Joe Pool Lake
null Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reasons: Floodway
Tract 702-3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530-9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reasons: Floodway
Tract 706
Granger Lake
Route 1, Box 172

Granger Co: Williamson TX 76530-9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reasons: Floodway
West Virginia
Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505
Landholding Agency: COE
Property Number: 31199011530
Status: Unutilized
Reasons: Floodway
London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Directions: 20 miles east of Charleston, W.
Virginia.
Reasons: Other—.03 acres; very narrow strip
of land
Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reasons: Other—inaccessible
[FR Doc. E8-8723 Filed 4-24-08; 8:45 am]
BILLING CODE 4210-67-P



Federal Register

**Friday,
April 25, 2008**

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid

42 CFR Part 412

**Medicare Program; Inpatient
Rehabilitation Facility Prospective
Payment System for Federal Fiscal Year
2009; Proposed Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS-1554-P]

RIN 0938-AP19

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2009

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2009 (for discharges occurring on or after October 1, 2008 and on or before September 30, 2009) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before the August 1 that precedes the start of each fiscal year, the classification and weighting factors for the IRF prospective payment system's (PPS) case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

We are proposing to revise existing policies regarding the PPS within the authority granted under section 1886(j) of the Act.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 20, 2008.

ADDRESSES: In commenting, please refer to file code CMS-1554-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1554-P, P.O. Box 8012, Baltimore, MD 21244-8012.

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-1554-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-8012.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses.

a. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Susanne Seagrave, (410) 786-0044, for information regarding the payment policies. Jeanette Kranacs, (410) 786-9385, for information regarding the wage index.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as

they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

Table of Contents

I. Background	
A. Historical Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS)	
B. Operational Overview of the Current IRF PPS	
C. Brief Summary of Proposed Revisions to the IRF PPS for Federal Fiscal Year (FY) 2009	
II. Proposed Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay Values for FY 2009	
III. Proposed FY 2009 IRF PPS Federal Prospective Payment Rates	
A. Increase Factor for FY 2009 and Proposed FY 2009 Labor-Related Share	
B. Proposed Area Wage Adjustment	
C. Description of the Proposed IRF Standard Payment Conversion Factor and Proposed Payment Rates for FY 2009	
D. Example of the Methodology for Adjusting the Proposed Federal Prospective Payment Rates	
IV. Proposed Update to Payments for High-Cost Outliers Under the IRF PPS	
A. Proposed Update to the Outlier Threshold Amount for FY 2009	
B. Update to the IRF Cost-to-Charge Ratio Ceilings	
V. Revisions to the Regulation Text in Response to the Medicare, Medicaid, and SCHIP Extension Act of 2007	
VI. Post Acute Care Payment Reform	
VII. Provisions of the Proposed Rule	
VIII. Collection of Information Requirements	
IX. Response to Public Comments	
X. Regulatory Impact Statement	
Regulation Text	
Addendum	
Acronyms	
Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below.	
ASCA Administrative Simplification Compliance Act, Pub. L. 107-105	
BBA Balanced Budget Act of 1997, Pub. L. 105-33	
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Pub. L. 106-113	
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Pub. L. 106-554	
CBSA Core-Based Statistical Area	
CCR Cost-to-Charge Ratio	
CFR Code of Federal Regulations	
CMG Case-Mix Group	
DRA Deficit Reduction Act of 2005, Pub. L. 109-171	

DSH Disproportionate Share Hospital
 ECI Employment Cost Index
 FI Fiscal Intermediary
 FR **Federal Register**
 FY Federal Fiscal Year
 GDP Gross Domestic Product
 HHH Hubert H. Humphrey Building
 HIPAA Health Insurance Portability and Accountability Act, Pub. L. 104–191
 IFMC Iowa Foundation for Medical Care
 IPF Inpatient Psychiatric Facility
 IPPS Inpatient Prospective Payment System
 IRF Inpatient Rehabilitation Facility
 IRF–PAI Inpatient Rehabilitation Facility–Patient Assessment Instrument
 IRF PPS Inpatient Rehabilitation Facility Prospective Payment System
 IRVEN Inpatient Rehabilitation Validation and Entry
 LIP Low-Income Percentage
 LTCH Long-Term Care Hospital
 MAC Medicare Administrative Contractor
 MEDPAR Medicare Provider Analysis and Review
 MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173
 MSA Metropolitan Statistical Area
 NAICS North American Industrial Classification System
 OMB Office of Management and Budget
 PAI Patient Assessment Instrument
 PPS Prospective Payment System
 RAND RAND Corporation
 RFA Regulatory Flexibility Act, Pub. L. 96–354
 RIA Regulatory Impact Analysis
 RIC Rehabilitation Impairment Category
 RPL Rehabilitation, Psychiatric, and Long-Term Care Hospital Market Basket
 SCHIP State Children’s Health Insurance Program
 SIC Standard Industrial Code
 TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248

I. Background

A. Historical Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS)

Section 4421 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33), as amended by section 125 of the Medicare, Medicaid, and SCHIP (State Children’s Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106–113), and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106–554), provides for the implementation of a per discharge prospective payment system (PPS) under section 1886(j) of the Social Security Act (the Act) for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (hereinafter referred to as IRFs).

Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine,

ancillary, and capital costs) but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the original, FY 2002 IRF PPS final rule (66 FR 41316) as revised in the FY 2006 IRF PPS final rule (70 FR 47880), we are providing below a general description of the IRF PPS for fiscal years (FYs) 2002 through 2005.

Under the IRF PPS from FY 2002 through FY 2005, as described in the FY 2002 IRF PPS final rule (66 FR 41316), the Federal prospective payment rates were computed across 100 distinct case-mix groups (CMGs). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient’s clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget neutral conversion factor). For a detailed discussion of the budget neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted Federal prospective payment rates under the IRF PPS from FYs 2002 through 2005. We then applied adjustments for geographic variations in wages (wage index), the percentage of low-income patients, and location in a rural area (if applicable) to the IRF’s unadjusted Federal prospective payment rates. In addition, we made adjustments to account for short-stay transfer cases, interrupted stays, and high cost outliers.

For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, we determined the final prospective payment amounts

using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRF would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS. The Web site URL is <http://www.cms.hhs.gov/InpatientRehabFacPPS/> and may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166) that we published on September 30, 2005, we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. Any reference to the FY 2006 IRF PPS final rule in this proposed rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166).

In the FY 2007 IRF PPS final rule (71 FR 48354), we further refined the IRF PPS case-mix classification system (the CMG relative weights) and the case-level adjustments, to ensure that IRF PPS payments continue to reflect as accurately as possible the costs of care. For a detailed discussion of the FY 2007 policy revisions, please refer to the FY 2007 IRF PPS final rule (71 FR 48354).

In the FY 2008 IRF PPS final rule (72 FR 44284), we updated the Federal prospective payment rates and the outlier threshold, revised the IRF wage index policy, and clarified how we determine high-cost outlier payments for transfer cases. For more information on the policy changes implemented for FY 2008, please refer to the FY 2008 IRF PPS final rule (72 FR 44284), in which we published the final FY 2008 IRF Federal prospective payment rates.

After publication of the FY 2008 IRF PPS final rule (72 FR 44284), section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173, amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. Section 1886(j)(3)(C) of the Act requires the Secretary to develop an increase factor to update the IRF Federal prospective payment rates for each FY. Based on the legislative change to the increase factor, we revised the FY 2008 Federal prospective payment rates for IRF discharges occurring on or after April 1, 2008. Thus, the final FY 2008 IRF Federal prospective payment rates that were published in the FY 2008 IRF PPS final rule (72 FR 44284) were effective for discharges occurring on or after October 1, 2007 and on or before March 31, 2008; and the revised FY 2008 IRF Federal prospective payment rates will be effective for discharges occurring on or after April 1, 2008 and on or before September 30, 2008. The revised FY 2008 Federal prospective payment rates are available on the CMS Web site at http://www.cms.hhs.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage.

B. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument, the Inpatient Rehabilitation Facility–Patient Assessment Instrument (IRF–PAI). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient grouping programming called the GROUPER software. The GROUPER software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The GROUPER software produces a five-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last four digits represent the distinct CMG number. Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available on the CMS Web site at http://www.cms.hhs.gov/InpatientRehabFacPPS/06_Software.asp.

Once a patient is discharged, the IRF submits a Medicare claim (a Health Insurance Portability and

Accountability Act (HIPAA, Pub. L. 104–191) compliant electronic claim or, if the Administrative Compliance Act (ASCA, Pub. L. 107–105,) permits a paper claim, a UB–04 or a CMS–1450, as appropriate) using the five-digit CMG number and sends it to the appropriate Medicare fiscal intermediary (FI) or Medicare Administrative Contractor (MAC). Claims submitted to Medicare must comply with both ASCA and HIPAA. Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22) which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services “for which a claim is submitted other than in an electronic form specified by the Secretary.” Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider.

In addition, the Secretary also has the authority to waive such denial “in such unusual cases as the Secretary finds appropriate.” See also the final rule, “Medicare Program; Electronic Submission of Medicare Claims” (70 FR 71008, November 25, 2005). Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR, parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the program claim memoranda issued and published by CMS at: <http://www.cms.hhs.gov/ElectronicBillingEDITrans/> and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600. CMS instructions for the limited number of Medicare claims submitted on paper are available at: <http://www.cms.hhs.gov/manuals/downloads/clm104c25.pdf>.)

The Medicare FI or MAC processes the claim through its software system. This software system includes pricing programming called the “PRICER” software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF’s prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF’s

wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the new teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

C. Brief Summary of Proposed Revisions to the IRF PPS for FY 2009

In this proposed rule, we are proposing to make the following updates to the IRF PPS:

- Update the FY 2009 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data, as discussed in section II.
- Update the FY 2009 IRF PPS payment rates by the proposed wage index and labor related share in a budget neutral manner, as discussed in sections III.A and B.
- Update the outlier threshold amount for FY 2009, as discussed in section IV.A.
- Update the cost-to-charge ratio ceiling and the national average urban and rural cost-to-charge ratios for purposes of determining outlier payments under the IRF PPS, as discussed in section IV.B.

II. Proposed Update to the CMG Relative Weights and Average Length of Stay Values for FY 2009

As specified in 42 CFR 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care as well as provider efficiency.

In this proposed rule, we propose to update the CMG relative weights and average length of stay values using the most recent available data (FY 2006). We propose to do this using the same methodology, with one change, that was described in the original, FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880, 47887 through 47888). The proposed change to the methodology involves using new, more detailed cost-to-charge ratio (CCR) data from the cost reports of IRF subprovider units of primary acute care hospitals, instead of CCR data from the associated primary acute care

hospitals, to calculate IRFs' average costs per case. For freestanding IRFs, we propose to continue using CCR data from the freestanding IRF's (that is, the primary hospital's) cost report. Previously, we were only able to use the CCR data from the cost reports of the primary acute care hospitals to estimate the relationship between costs and charges for the IRF subprovider units because those were the best data we had available. However, conceptually, the relationship between costs and charges in the primary acute care hospital could differ from the relationship between costs and charges in the IRF subprovider units. Since the two types of facilities provide a different range of services and treat different populations of patients, it might not be as precise to use the data from the primary acute care hospital to estimate the relationship between costs and charges in the IRF subprovider unit. When we analyzed the CMG relative weights for FY 2009, using both the primary acute care hospital CCRs and the IRF subprovider unit CCRs, we found that the CCRs we used made very little difference in the CMG relative weights. Since the data needed to calculate the IRF subprovider units' CCRs are now available in enough detail, and since conceptually it is more appropriate to use the cost report data from the IRF subprovider units to estimate the relationship between costs and charges in these IRF subprovider units, we are proposing this change to the methodology. As indicated previously, for freestanding IRFs, we propose to continue using CCR data from the freestanding IRF's (that is, the primary hospital's) cost report. In future years, we would continue to estimate the CMG relative weights using both the primary acute care hospital CCRs and the IRF subprovider unit CCRs to ensure that we continue to use the most appropriate data in updating the CMG relative weights.

In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. To estimate these costs for FY 2009, we propose to use the CCRs from the IRF subprovider units of primary acute care hospitals, except for the freestanding IRFs (for which we will continue to use the data from the cost report of the primary hospital, as discussed above). For FY 2009, we propose to use the same methodology we used to compute the CMG relative weights for FYs 2002 through 2008, with the one change described above, to update the CMG relative weights to reflect the most recent available data (FY 2006). The process used to calculate the CMG relative weights for this proposed rule follows below:

Step 1. We calculate the CMG relative weights by estimating the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize to the same average CMG relative weight from the CMG relative weights implemented in the FY 2002 IRF PPS final rule (66 FR 41316), the FY 2006 IRF PPS final rule (70 FR 47880), and the FY 2007 IRF PPS final rule (71 FR 48354). (Note that we did not revise the CMG relative weights in the FY 2008 IRF PPS final rule (72 FR 44284)).

Consistent with the way we implemented changes to the IRF classification system in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166) and the FY 2007 IRF PPS final rule (71 FR 48354), we are proposing to make the revisions to the CMG relative weights for FY 2009 in such a way that total estimated aggregate payments to

IRFs for FY 2009 are the same with or without the proposed changes (that is, in a budget neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate proposed budget neutrality factor to apply to the standard payment amount, we propose to use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2009 (with no proposed changes to the CMG relative weights).

Step 2. Apply the proposed changes to the CMG relative weights (as discussed above) to calculate the estimated total amount of IRF PPS payments for FY 2009.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the proposed factor (0.9969) that would maintain the same total estimated aggregate payments in FY 2009 with and without the proposed changes to the CMG relative weights.

Step 4. Apply the proposed budget neutrality factor (0.9969) to the FY 2008 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section III.C of this proposed rule, we discuss the proposed methodology for calculating the standard payment conversion factor for FY 2009.

Table 1 below, "Proposed Relative Weights and Average Lengths of Stay for Case-Mix Groups," presents the CMGs, the comorbidity tiers, the proposed corresponding relative weights, and the proposed average length of stay values for each CMG and tier for FY 2009. The average length of stay for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment. The proposed relative weights and average length of stay values shown in Table 1 are subject to change for the final rule based on analysis of updated data.

TABLE 1.— PROPOSED RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE-MIX GROUPS

CMG	CMG Description (M = motor, C = cognitive, A = age)	Proposed relative weight				Proposed average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke M>51.05	0.7741	0.7243	0.6463	0.6222	8	9	9	9
0102	Stroke M>44.45 and M<51.05 and C>18.5.	0.9569	0.8953	0.7989	0.7691	11	11	11	10
0103	Stroke M>44.45 and M<51.05 and C<18.5.	1.1184	1.0465	0.9338	0.8990	13	15	12	12
0104	Stroke M>38.85 and M<44.45 ...	1.2008	1.1235	1.0025	0.9651	14	15	13	13
0105	Stroke M>34.25 and M<38.85 ...	1.4207	1.3293	1.1861	1.1419	16	17	15	15
0106	Stroke M>30.05 and M<34.25 ...	1.6395	1.5341	1.3688	1.3178	17	19	17	17
0107	Stroke M>26.15 and M<30.05 ...	1.8826	1.7615	1.5718	1.5132	19	22	20	19
0108	Stroke M<26.15 and A>84.5	2.2430	2.0987	1.8726	1.8028	29	27	24	23
0109	Stroke M>22.35 and M<26.15 and A<84.5.	2.1639	2.0247	1.8066	1.7393	22	25	22	22
0110	Stroke M<22.35 and A<84.5	2.6983	2.5247	2.2528	2.1688	30	31	27	27

TABLE 1.— PROPOSED RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE-MIX GROUPS—Continued

CMG	CMG Description (M = motor, C = cognitive, A = age)	Proposed relative weight				Proposed average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0201	Traumatic brain injury M>53.35 and C>23.5.	0.7957	0.6567	0.5947	0.5509	10	9	8	8
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5.	1.0090	0.8327	0.7541	0.6985	13	12	10	10
0203	Traumatic brain injury M>44.25 and C<23.5.	1.2165	1.0040	0.9092	0.8422	14	13	12	12
0204	Traumatic brain injury M>40.65 and M<44.25.	1.3278	1.0959	0.9924	0.9193	15	15	13	13
0205	Traumatic brain injury M>28.75 and M<40.65.	1.6060	1.3255	1.2004	1.1119	17	17	16	15
0206	Traumatic brain injury M>22.05 and M<28.75.	2.0505	1.6923	1.5326	1.4197	21	21	20	19
0207	Traumatic brain injury M<22.05	2.6905	2.2205	2.0109	1.8627	36	27	25	23
0301	Non-traumatic brain injury M>41.05.	1.0947	0.9303	0.8501	0.7640	12	12	11	10
0302	Non-traumatic brain injury M>35.05 and M<41.05.	1.4084	1.1969	1.0937	0.9829	14	15	14	13
0303	Non-traumatic brain injury M>26.15 and M<35.05.	1.6925	1.4384	1.3144	1.1812	17	18	16	15
0304	Non-traumatic brain injury M<26.15.	2.3001	1.9548	1.7862	1.6053	28	24	21	20
0401	Traumatic spinal cord injury M>48.45.	0.9524	0.8236	0.7692	0.7107	12	11	10	10
0402	Traumatic spinal cord injury M>30.35 and M<48.45.	1.3448	1.1629	1.0862	1.0035	17	16	15	13
0403	Traumatic spinal cord injury M>16.05 and M<30.35.	2.2969	1.9863	1.8552	1.7140	30	25	23	22
0404	Traumatic spinal cord injury M<16.05 and A>63.5.	4.1471	3.5864	3.3497	3.0946	66	44	38	36
0405	Traumatic spinal cord injury M<16.05 and A<63.5.	3.3687	2.9132	2.7209	2.5138	42	30	30	32
0501	Non-traumatic spinal cord injury M>51.35.	0.7485	0.6643	0.5859	0.5236	9	9	8	8
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35.	1.0121	0.8982	0.7922	0.7080	12	12	11	10
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15.	1.3269	1.1777	1.0387	0.9282	15	15	14	12
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25.	1.6143	1.4327	1.2637	1.1293	19	19	17	15
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25.	1.9083	1.6936	1.4938	1.3349	21	19	19	17
0506	Non-traumatic spinal cord injury M<23.75.	2.6059	2.3127	2.0399	1.8229	30	29	24	23
0601	Neurological M>47.75	0.9507	0.7701	0.7182	0.6558	11	11	9	9
0602	Neurological M>37.35 and M<47.75.	1.2627	1.0228	0.9539	0.8710	14	13	12	12
0603	Neurological M>25.85 and M<37.35.	1.6055	1.3005	1.2129	1.1075	16	16	15	15
0604	Neurological M<25.85	2.1200	1.7172	1.6016	1.4624	25	21	20	18
0701	Fracture of lower extremity M>42.15.	0.9081	0.7815	0.7372	0.6629	10	10	10	9
0702	Fracture of lower extremity M>34.15 and M<42.15.	1.1867	1.0212	0.9633	0.8662	14	14	13	12
0703	Fracture of lower extremity M>28.15 and M<34.15.	1.4492	1.2471	1.1765	1.0579	16	16	15	14
0704	Fracture of lower extremity M<28.15.	1.8522	1.5939	1.5037	1.3520	19	20	19	18
0801	Replacement of lower extremity joint M>49.55.	0.6786	0.5637	0.5166	0.4690	8	8	7	7
0802	Replacement of lower extremity joint M>37.05 and M<49.55.	0.9002	0.7477	0.6853	0.6221	10	10	9	9
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5.	1.2808	1.0639	0.9750	0.8851	13	13	13	12
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5.	1.1331	0.9412	0.8625	0.7830	13	12	11	11
0805	Replacement of lower extremity joint M>22.05 and M<28.65.	1.4300	1.1879	1.0886	0.9882	16	15	14	13

TABLE 1.— PROPOSED RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE-MIX GROUPS—Continued

CMG	CMG Description (M = motor, C = cognitive, A = age)	Proposed relative weight				Proposed average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0806	Replacement of lower extremity joint M<22.05.	1.7498	1.4535	1.3320	1.2092	21	19	16	15
0901	Other orthopedic M>44.75	0.8724	0.7428	0.6672	0.5950	12	9	10	9
0902	Other orthopedic M>34.35 and M<44.75.	1.1764	1.0016	0.8997	0.8023	13	13	12	11
0903	Other orthopedic M>24.15 and M<34.35.	1.5455	1.3159	1.1821	1.0541	16	17	15	14
0904	Other orthopedic M<24.15	1.9922	1.6963	1.5238	1.3588	23	21	20	18
1001	Amputation, lower extremity M>47.65.	0.9530	0.9074	0.7850	0.7218	11	16	10	10
1002	Amputation, lower extremity M>36.25 and M<47.65.	1.2690	1.2083	1.0452	0.9611	14	15	13	13
1003	Amputation, lower extremity M<36.25.	1.8511	1.7625	1.5246	1.4019	19	21	19	18
1101	Amputation, non-lower extremity M>36.35.	1.1511	1.0159	0.9562	0.8734	12	13	12	12
1102	Amputation, non-lower extremity M<36.35.	1.7909	1.5805	1.4877	1.3589	19	21	18	16
1201	Osteoarthritis M>37.65	1.0383	0.8996	0.8403	0.7356	12	11	11	10
1202	Osteoarthritis M>30.75 and M<37.65.	1.3069	1.1323	1.0576	0.9258	13	15	13	12
1203	Osteoarthritis M<30.75	1.6806	1.4561	1.3600	1.1906	16	18	17	16
1301	Rheumatoid, other arthritis M>36.35.	1.2933	0.9197	0.8468	0.7603	13	12	11	10
1302	Rheumatoid, other arthritis M>26.15 and M<36.35.	1.7330	1.2324	1.1347	1.0188	18	15	14	14
1303	Rheumatoid, other arthritis M<26.15.	2.2338	1.5885	1.4625	1.3132	18	21	19	17
1401	Cardiac M>48.85	0.8468	0.7331	0.6541	0.5895	10	10	10	9
1402	Cardiac M>38.55 and M<48.85	1.1260	0.9748	0.8697	0.7838	13	13	12	11
1403	Cardiac M>31.15 and M<38.55	1.4026	1.2142	1.0833	0.9764	14	15	14	13
1404	Cardiac M<31.15	1.7824	1.5430	1.3767	1.2407	19	19	17	16
1501	Pulmonary M>49.25	0.8979	0.8644	0.7627	0.7277	10	11	10	10
1502	Pulmonary M>39.05 and M<49.25.	1.1288	1.0867	0.9588	0.9149	12	14	12	12
1503	Pulmonary M>29.15 and M<39.05.	1.3885	1.3367	1.1795	1.1254	16	15	15	14
1504	Pulmonary M<29.15	1.7937	1.7267	1.5236	1.4537	22	20	19	17
1601	Pain syndrome M>37.15	0.9517	0.8382	0.7807	0.6881	13	11	11	10
1602	Pain syndrome M>26.75 and M<37.15.	1.3184	1.1611	1.0815	0.9532	15	15	13	13
1603	Pain syndrome M<26.75	1.6571	1.4593	1.3593	1.1981	15	19	17	16
1701	Major multiple trauma without brain or spinal cord injury M>39.25.	1.0571	0.9515	0.8114	0.7336	12	14	12	10
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25.	1.4300	1.2870	1.0976	0.9924	16	15	14	13
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05.	1.6793	1.5114	1.2889	1.1654	20	19	16	15
1704	Major multiple trauma without brain or spinal cord injury M<25.55.	2.1809	1.9629	1.6740	1.5135	25	23	20	20
1801	Major multiple trauma with brain or spinal cord injury M>40.85.	0.9865	0.9494	0.7674	0.7313	14	13	11	10
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85.	1.6484	1.5864	1.2823	1.2221	20	19	17	16
1803	Major multiple trauma with brain or spinal cord injury M<23.05.	2.8473	2.7401	2.2149	2.1108	38	33	27	25
1901	Guillain Barre M>35.95	1.1894	0.8847	0.8847	0.8847	18	11	13	12
1902	Guillain Barre M>18.05 and M<35.95.	2.3954	1.7817	1.7817	1.7817	30	23	21	22
1903	Guillain Barre M<18.05	3.8382	2.8549	2.8549	2.8549	40	36	34	36
2001	Miscellaneous M>49.15	0.8681	0.7274	0.6556	0.5908	10	10	9	8
2002	Miscellaneous M>38.75 and M<49.15.	1.1547	0.9676	0.8721	0.7859	12	12	11	11
2003	Miscellaneous M>27.85 and M<38.75.	1.4947	1.2525	1.1288	1.0173	16	15	14	13

TABLE 1.— PROPOSED RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE-MIX GROUPS—Continued

CMG	CMG Description (M = motor, C = cognitive, A = age)	Proposed relative weight				Proposed average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
2004	Miscellaneous M<27.85	1.9862	1.6644	1.5000	1.3518	23	20	19	17
2101	Burns M>0	2.0633	1.8370	1.8370	1.3345	33	23	18	16
5001	Short-stay cases, length of stay is 3 days or fewer. ....	.....	.....	.....	0.1503	.....	.....	.....	3
5101	Expired, orthopedic, length of stay is 13 days or fewer. ....	.....	.....	.....	0.6577	.....	.....	.....	8
5102	Expired, orthopedic, length of stay is 14 days or more. ....	.....	.....	.....	1.6370	.....	.....	.....	20
5103	Expired, not orthopedic, length of stay is 15 days or fewer. ....	.....	.....	.....	0.6924	.....	.....	.....	8
5104	Expired, not orthopedic, length of stay is 16 days or more. ....	.....	.....	.....	1.9305	.....	.....	.....	23

Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 2 shows, overall, how the proposed revisions in this proposed rule would affect particular

CMG relative weight values, which affect the overall distribution of payments within CMGs and tiers. Note that, because we propose to implement the CMG relative weight revisions in a budget neutral manner, total estimated

aggregate payments to IRFs for FY 2009 would not be affected. However, the proposed revisions would affect the distribution of payments within CMGs and tiers.

TABLE 2.— DISTRIBUTIONAL EFFECTS OF THE PROPOSED CHANGES TO THE CMG RELATIVE WEIGHTS (FY 2008 VALUES COMPARED WITH FY 2009 VALUES)

Percentage change	Number of cases affected	Percentage of cases affected
Increased by 15% or more	65	0.0
Increased by between 5% and 15%	4,979	1.2
Changed by less than 5%	390,600	96.1
Decreased by between 5% and 15%	1,706	0.4
Decreased by 15% or more	2,531	2.3

As Table 2 shows, over 96 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the proposed revisions. The most significant increase in the proposed CMG relative weight values, in terms of the largest number of cases affected, would be a 3.3 percent increase in the CMG relative weight value for CMG A0802—Replacement of lower extremity joint, motor score greater than 37.05 and motor score less than 49.55—in the “no-comorbidity” tier. In the FY 2006 data, 25,822 IRF discharges were classified into this CMG and tier. We believe that the higher costs reported in this CMG and tier in FY 2006, compared with those reported for this CMG and tier in FY 2003, may reflect recent IRF case mix changes caused, at least in part, by the phase-in of the “75 percent” rule and increased medical review of IRF discharges. These changes to the system have likely increased the complexity of patients being admitted to IRFs, especially among the lower-extremity joint replacement cases with no comorbidities, which do not meet the

75 percent rule criteria and have been the focus of a lot of the medical review activities.

These same trends explain the most significant decrease in the proposed CMG relative weight values, in terms of the largest number of cases affected. The proposed revisions would reduce the CMG relative weight value for CMG 5001—Short-stay cases, length of stay is 3 days or fewer—by 31.7 percent. This decrease is associated with a substantial decrease in the number of cases classified into this extremely short-stay CMG, from 10,222 IRF discharges in FY 2003 to 2,376 IRF discharges in FY 2006. We believe that increases in the complexity of IRF patients resulting from the “75 percent” rule and the IRF medical review activities may mean that fewer IRF patients can effectively be treated in IRFs for 3 days or fewer.

The changes in the proposed average length of stay values in this proposed rule, compared with the current (FY 2008) average length of stay values, are small and primarily distributional. Some values increase and some decrease, compared with the FY 2008 values. The only notable changes are in

3 of the CMGs for traumatic spinal cord injuries, B0403, B0404, and B0405 (all in tier 1), for which the proposed average length of stay values increased by 8.55 days, 14.92 days, and 9.72 days, respectively. This may, again, be due to increases in the complexity of IRF patients resulting from the “75 percent” rule and the IRF medical review activities. The overall average length of stay in IRFs also increased from 12.8 days in FY 2003 to 13.9 days in FY 2006, which may be attributable to increases in IRFs’ case mix over this period.

Given the recent changes in IRFs’ case mix, we believe that it is especially important to update the CMG relative weights and average length of stay values at this time to reflect these changes.

III. Proposed FY 2009 IRF PPS Federal Prospective Payment Rates

A. Increase Factor for FY 2009 and Proposed FY 2009 Labor-Related Share

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix

of goods and services included in the covered IRF services, which is referred to as a market basket index. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF Federal prospective payment rates for each FY. However, section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173, amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. In accordance with section 1886(j)(3)(C) of the Act, as amended by the legislation, we are applying an increase factor of zero percent to update the proposed IRF Federal prospective payment rates for FY 2009 in this proposed rule.

We continue to use the methodology described in the FY 2006 IRF PPS final rule to update the labor-related share for FY 2009. In FY 2004, we updated the 1992 market basket data to 1997 based on the methodology described in the FY 2004 IRF PPS final rule (68 FR 45688 through 45689). As discussed in the FY 2006 IRF PPS final rule (70 FR 47915 through 47917), we rebased and revised the market basket for FY 2006 using the 2002-based cost structures for IRFs, inpatient psychiatric facilities (IPFs), and long-term care hospitals (LTCHs) to determine the FY 2006 labor-related share. For FYs 2007 and 2008, we used the same methodology discussed in the FY 2006 IRF PPS final rule (70 FR at 47908 through 47917) to determine the IRF labor-related share. For FY 2009, we

continue to use the same methodology discussed in the FY 2006 IRF PPS final rule. The labor-related share for FY 2009 is the sum of the FY 2009 relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year (FY 2002) and FY 2009. For this proposed rule, the labor-related share reflects Global Insight's first quarter 2008 forecast. As shown in Table 3, the total FY 2009 Rehabilitation, Psychiatric, and Long-Term Care Hospital Market Basket (RPL) labor-related share in this proposed rule is 75.691 percent. We propose to update the labor-related share with the most recent available data for the final rule.

TABLE 3.—PROPOSED FY 2009 IRF RPL LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	Proposed FY 2009 IRF labor-related share relative importance
Wages and salaries	52.683
Employee benefits	14.039
Professional fees	2.896
All other labor intensive services	2.137
Subtotal:	71.755
Labor-related share of capital costs (.46)	3.936
Total:	75.691

Source: GLOBAL INSIGHT, INC, 1st QTR, 2008; @USMACRO/CONTROL0308 @CISSIM/TL0208.SIM Historical Data through 4th QTR, 2007.

B. Proposed Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs attributable to wages and wage-related costs by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act for a FY are made in a budget neutral manner.

In the FY 2008 IRF PPS final rule (72 FR 44299), we maintained the methodology described in the FY 2006 IRF PPS final rule to determine the wage index, labor market area definitions, and hold harmless policy consistent with the rationale outlined in the FY 2006 IRF PPS final rule (70 FR 47917 through 47933).

For FY 2009, we propose to maintain the policies and methodologies described in the FY 2008 IRF PPS final rule relating to the labor market area definitions and the wage index methodology for areas with wage data. Therefore, this proposed rule continues to use the Core-Based Statistical Area (CBSA) labor market area definitions and the pre-reclassification and pre-floor hospital wage index data based on 2004 cost report data.

When adopting new labor market designations made by the Office of Management and Budget (OMB), we identified some geographic areas where there were no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the FY 2009 IRF PPS wage index.

Additionally, this proposed rule incorporates the CBSA changes

published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current IRF PPS wage index. The changes were nomenclature and did not represent substantive changes to the CBSA-based designations. Specifically, OMB added or deleted certain CBSA numbers and revised certain titles. The OMB bulletins are available online at <http://www.whitehouse.gov/omb/bulletins/index.html>.

Finally, as discussed in the FY 2008 IRF PPS final rule (72 FR 44298), FY 2008 was the third and final year of the 3-year phase-out of the budget neutral hold harmless policy. For FY 2008 and beyond, we no longer apply an adjustment for IRFs that meet the criteria described in the FY 2006 final rule (70 FR 47923 through 47926).

1. Clarification of New England Deemed Counties

We are taking this opportunity to address the change in the treatment of "New England deemed counties" (that is, those counties in New England listed in § 412.64(b)(1)(ii)(B) that were deemed

to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983) that was made in the FY 2008 Inpatient Prospective Payment System (IPPS) final rule with comment period (72 FR 47337). These counties include the following: Litchfield County, CT; York County, ME; Sagadahoc County, ME; Merrimack County, NH; and Newport County, RI. Of these five "New England deemed counties," three (York County, ME, Sagadahoc County, ME, and Newport County, RI) are also included in metropolitan statistical areas (MSAs) defined by OMB and are considered urban under both the current IPPS and IRF PPS labor market area definitions in § 412.64(b)(1)(ii)(A). The remaining two, Litchfield County, CT and Merrimack County, NH, are geographically located in areas that are considered rural under the current IPPS (and IRF PPS) labor market area definitions, but have been previously deemed urban under the IPPS in certain circumstances, as discussed below.

In the FY 2008 IPPS final rule with comment period, (72 FR 47337 through 47338), § 412.64(b)(1)(ii)(B) was revised that the two "New England deemed counties" that are still considered rural under the OMB definitions (Litchfield County, CT and Merrimack County, NH), are no longer considered urban, effective for discharges occurring on or after October 1, 2007, and, therefore, are considered rural in accordance with § 412.64(b)(1)(ii)(C). However, for purposes of payment under the IPPS, acute care hospitals located within those areas are treated as being reclassified to their deemed urban area effective for discharges occurring on or after October 1, 2007 (see 72 FR 47337 through 47338). We note that the IRF PPS does not provide for geographic reclassification. Also, in the FY 2008 IPPS final rule with comment period (72 FR 47338), we explained that we limited this policy change for the "New England deemed counties" only to IPPS hospitals, and any change to non-IPPS provider wage indexes would be addressed in the respective payment system rules.

Accordingly, as stated above, we are taking this opportunity to clarify the treatment of "New England deemed counties" under the IRF PPS in this proposed rule.

As discussed above, the IRF PPS has consistently used the IPPS definition of "urban" and "rural" with regard to the wage index used in the IRF PPS. Under existing § 412.602, an IRF's wage index is determined based on the location of the IRF in an urban or rural area as

defined in §§ 412.64(b)(1)(ii)(A) through (C).

Historical changes to the labor market area/geographic classifications and annual updates to the wage index values under the IRF PPS are made effective October 1 each year. When we established the most recent IRF PPS payment rate update, effective for discharges occurring on or after October 1, 2007 through September 30, 2008, we considered the "New England deemed counties" (including Litchfield County, CT and Merrimack County, NH) as urban for FY 2008, as evidenced by the inclusion of Litchfield County, CT as one of the constituent counties of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT), and the inclusion of Merrimack County, NH as one of the constituent counties of urban CBSA 31700 (Manchester-Nashua, NH).

As noted above, § 412.602 indicates that the terms "rural" and "urban" are defined according to the definitions of those terms in §§ 412.64(b)(1)(ii)(A) through (C). Applying the IPPS definitions, Litchfield County, CT and Merrimack County, NH are not considered "urban" under §§ 412.64(b)(1)(ii)(A) and (B) as revised under the FY 2008 IPPS final rule and, therefore, are considered "rural" under § 412.64(b)(1)(ii)(C). Accordingly, reflecting our policy to use the IPPS definitions of "urban" and "rural", these two counties would be considered "rural" under the IRF PPS effective with the next update of the IRF PPS payment rates, October 1, 2008, and would no longer be included in urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT) and urban CBSA 31700 (Manchester-Nashua, NH), respectively. We note that this policy is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the IRF PPS. We do not need to make any changes to our regulations to effectuate this change.

There is one IRF (in Merrimack County, NH) that greatly benefits from treating these counties as rural. This IRF would begin to receive a higher wage index value and the 21.3 percent adjustment that is applied to IRF PPS payments for rural facilities. Currently, there are no IRFs in the following areas: Litchfield County, CT; rural Connecticut; or rural New Hampshire.

2. Multi-Campus Hospital Wage Index Data

In the FY 2008 IRF PPS final rule (72 FR 44284, August 7, 2007), we established IRF PPS wage index values for FY 2008 calculated from the same data (collected from cost reports

submitted by hospitals for cost reporting periods beginning during FY 2003) used to compute the FY 2007 acute care hospital inpatient wage index, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. The IRF PPS wage index values applicable for discharges occurring on or after October 1, 2007 through September 30, 2008 are shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the addendum to the FY 2008 IRF PPS final rule (72 FR 44312 through 44335).

We are continuing to use IPPS wage data for the FY 2009 IRF PPS Wage Index, because we believe that using the hospital inpatient wage data is appropriate and reasonable for the IRF PPS. We note that the IPPS wage data used to determine the FY 2009 IRF wage index values reflect our policy that was adopted under the IPPS beginning in FY 2008, which apportions the wage data for multi-campus hospitals located in different labor market areas (CBSAs) to each CBSA where the campuses are located (see the FY 2008 IPPS final rule with comment period (72 FR 47317 through 47320)). We computed the FY 2009 IRF PPS wage index values presented in this notice consistent with our pre-reclassified IPPS wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments under the IRF PPS).

For the FY 2009 IRF PPS, we computed the wage index from IPPS wage data (submitted by hospitals for cost reporting periods beginning in FY 2004 and used in the FY 2008 IPPS wage index), which allocated salaries and hours to the campuses of two multi-campus hospitals with campuses that are located in different labor areas, one in Massachusetts and another in Illinois. Thus, the proposed FY 2009 IRF PPS wage index values for the following CBSAs are affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI-MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974) and Lake County-Kenosha County, IL-WI (CBSA 29404) (please refer to Table 1 in the addendum of this proposed rule).

3. Methodology for Applying the Proposed Revisions to the Area Wage Adjustment for FY 2009 in a Budget-Neutral Manner

To calculate the wage-adjusted facility payment for the payment rates set forth in this proposed rule, we multiply the unadjusted Federal prospective payment by the proposed FY 2009 RPL labor-related share (75.691 percent) to determine the labor-related portion of

the Federal prospective payments. We then multiply this labor-related portion by the applicable proposed IRF wage index shown in Table 1 for urban areas and Table 2 for rural areas in the addendum.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner; therefore, we calculated a budget neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule and codified at § 412.624(e)(1), and described in the steps below. We propose to use the following steps to ensure that the FY 2009 IRF standard payment conversion factor reflects the update to the proposed wage indexes (based on the FY 2004 pre-reclassified and pre-floor hospital wage data) and the proposed labor-related share in a budget neutral manner:

Step 1. Determine the total amount of the estimated FY 2008 IRF PPS rates, using the FY 2008 standard payment conversion factor and the labor-related share and the wage indexes from FY 2008 (as published in the FY 2008 IRF PPS final rule).

Step 2. Calculate the total amount of estimated IRF PPS payments, using the FY 2008 standard payment conversion factor and the proposed FY 2009 labor-related share and proposed CBSA urban and rural wage indexes.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2, which equals the FY 2009 budget neutral wage adjustment factor of 1.0004.

Step 4. Apply the FY 2009 budget neutral wage adjustment factor from

step 3 to the FY 2008 IRF PPS standard payment conversion factor after the application of the estimated market basket update to determine the FY 2009 standard payment conversion factor.

C. Description of the Proposed IRF Standard Payment Conversion Factor and Proposed Payment Rates for FY 2009

To calculate the proposed standard payment conversion factor for FY 2009, as illustrated in Table 5 below, we begin with the standard payment conversion factor for FY 2008. To explain how we determined the standard payment conversion factor for FY 2008, we include Table 4 below. The final FY 2008 IRF standard payment conversion factor that we show in Tables 4 and 5 below is different than the IRF standard payment conversion factor that we finalized in the FY 2008 IRF PPS final rule (72 FR 44284) because we adjusted the IRF standard payment conversion factor for IRF discharges occurring on or after April 1, 2008 to reflect the changes codified in section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173). Section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 amended section 1886(j)(3)(C) of the Act to require the Secretary to apply a zero percent increase factor for FYs 2008 and 2009, effective for discharges occurring on or after April 1, 2008. Section 1886(j)(3)(C) of the Act requires the Secretary to develop an increase factor to update the IRF Federal prospective payment rates for each FY. For a discussion of the increase factor the Secretary typically

uses to update the IRF Federal prospective payment rates, see the FY 2008 IRF PPS final rule (72 FR 44284). In the FY 2008 IRF PPS final rule, we used the RPL market basket estimate described in that final rule (3.2 percent) to update the IRF standard payment conversion factor. As shown in Table 3 of the FY 2008 IRF PPS final rule, applying this market basket estimate to the standard payment amount resulted in a final standard payment conversion factor for FY 2008 of \$13,451.

However, section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 had the effect of changing the increase factor for FY 2008 from 3.2 percent to zero percent for discharges occurring on or after April 1, 2008. This, in turn, had the effect of decreasing the IRF standard payment conversion factor for discharges occurring on or after April 1, 2008.

As shown in Table 4, to develop the FY 2008 standard payment conversion factor for discharges beginning on or after April 1, 2008, we started with the FY 2007 standard payment conversion factor that was finalized in the FY 2007 IRF PPS final rule (71 FR 48354). We then multiplied this by the zero percent increase factor, as described above. Then, we applied the same FY 2008 budget neutrality factor (1.0041) for the Wage Index, Labor-Related Share, and the Hold Harmless Provision that was published in the FY 2008 IRF PPS Final Rule (72 FR 44284). This resulted in the final FY 2008 standard payment conversion factor, effective for discharges occurring on or after April 1, 2008, of \$13,034.

TABLE 4.—CALCULATIONS TO DETERMINE THE FY 2008 IRF STANDARD PAYMENT CONVERSION FACTOR FOR DISCHARGES BEGINNING ON OR AFTER APRIL 1, 2008

Explanation for adjustment	Calculations
FY 2007 Standard Payment Conversion Factor (published in the FY 2007 IRF PPS Final Rule (71 FR 48354))	\$12,981
Zero Percent Increase Factor for Discharges Occurring on or after April 1, 2008	× 1.0000
Budget Neutrality Factor for the Wage Index, Labor-Related Share, and the Hold Harmless Provision that was published in the FY 2008 IRF PPS Final Rule (72 FR 44284)	× 1.0041
Standard Payment Conversion Factor for Discharges Occurring on or After April 1, 2008	= \$13,034

As a result, the IRF standard payment conversion factor changed from \$13,451 for discharges occurring on or after October 1, 2007 to \$13,034 for discharges occurring on or after April 1, 2008.

Further, as required by section 115 of the Medicare, Medicaid, and SCHIP

Extension Act of 2007, we apply an increase factor of zero percent to the standard payment conversion factor for FY 2009, meaning that it does not change from the current value of \$13,034. Next, we apply the proposed combined budget neutrality factor for the FY 2009 wage index and labor

related share of 1.0004, which would result in a standard payment amount of \$13,039. Finally, we apply the proposed budget neutrality factor for the revised CMG relative weights of 0.9969, which would result in the proposed FY 2009 standard payment conversion factor of \$12,999.

TABLE 5.—CALCULATIONS TO DETERMINE THE PROPOSED FY 2009 STANDARD PAYMENT CONVERSION FACTOR

Explanation for adjustment	Calculations
Standard Payment Conversion Factor for Discharges Occurring on or After April 1, 2008	\$13,034

TABLE 5.—CALCULATIONS TO DETERMINE THE PROPOSED FY 2009 STANDARD PAYMENT CONVERSION FACTOR—
Continued

Explanation for adjustment	Calculations
Zero Percent Increase Factor for FY 2009	× 1.0000
Proposed Budget Neutrality Factor for the Wage Index and Labor-Related Share	× 1.0004
Proposed Budget Neutrality Factor for the Revisions to the CMG Relative Weights	× 0.9969
Proposed FY 2009 Standard Payment Conversion Factor	= \$12,999

After the application of the CMG relative weights described in section II of this proposed rule, the resulting

proposed unadjusted IRF prospective payment rates for FY 2009 are shown

below in Table 6, “Proposed FY 2009 Payment Rates.”

TABLE 6.—PROPOSED FY 2009 PAYMENT RATES

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0101	\$10,062.53	\$9,415.18	\$8,401.25	\$8,087.98
0102	12,438.74	11,638.00	10,384.90	9,997.53
0103	14,538.08	13,603.45	12,138.47	11,686.10
0104	15,609.20	14,604.38	13,031.50	12,545.33
0105	18,467.68	17,279.57	15,418.11	14,843.56
0106	21,311.86	19,941.77	17,793.03	17,130.08
0107	24,471.92	22,897.74	20,431.83	19,670.09
0108	29,156.76	27,281.00	24,341.93	23,434.60
0109	28,128.54	26,319.08	23,483.99	22,609.16
0110	35,075.20	32,818.58	29,284.15	28,192.23
0201	10,343.30	8,536.44	7,730.51	7,161.15
0202	13,115.99	10,824.27	9,802.55	9,079.80
0203	15,813.28	13,051.00	11,818.69	10,947.76
0204	17,260.07	14,245.60	12,900.21	11,949.98
0205	20,876.39	17,230.17	15,604.00	14,453.59
0206	26,654.45	21,998.21	19,922.27	18,454.68
0207	34,973.81	28,864.28	26,139.69	24,213.24
0301	14,230.01	12,092.97	11,050.45	9,931.24
0302	18,307.79	15,558.50	14,217.01	12,776.72
0303	22,000.81	18,697.76	17,085.89	15,354.42
0304	29,899.00	25,410.45	23,218.81	20,867.29
0401	12,380.25	10,705.98	9,998.83	9,238.39
0402	17,481.06	15,116.54	14,119.51	13,044.50
0403	29,857.40	25,819.91	24,115.74	22,280.29
0404	53,908.15	46,619.61	43,542.75	40,226.71
0405	43,789.73	37,868.69	35,368.98	32,676.89
0501	9,729.75	8,635.24	7,616.11	6,806.28
0502	13,156.29	11,675.70	10,297.81	9,203.29
0503	17,248.37	15,308.92	13,502.06	12,065.67
0504	20,984.29	18,623.67	16,426.84	14,679.77
0505	24,805.99	22,015.11	19,417.91	17,352.37
0506	33,874.09	30,062.79	26,516.66	23,695.88
0601	12,358.15	10,010.53	9,335.88	8,524.74
0602	16,413.84	13,295.38	12,399.75	11,322.13
0603	20,869.89	16,905.20	15,766.49	14,396.39
0604	27,557.88	22,321.88	20,819.20	19,009.74
0701	11,804.39	10,158.72	9,582.86	8,617.04
0702	15,425.91	13,274.58	12,521.94	11,259.73
0703	18,838.15	16,211.05	15,293.32	13,751.64
0704	24,076.75	20,719.11	19,546.60	17,574.65
0801	8,821.12	7,327.54	6,715.28	6,096.53
0802	11,701.70	9,719.35	8,908.21	8,086.68
0803	16,649.12	13,829.64	12,674.03	11,505.41
0804	14,729.17	12,234.66	11,211.64	10,178.22
0805	18,588.57	15,441.51	14,150.71	12,845.61
0806	22,745.65	18,894.05	17,314.67	15,718.39
0901	11,340.33	9,655.66	8,672.93	7,734.41
0902	15,292.02	13,019.80	11,695.20	10,429.10
0903	20,089.95	17,105.38	15,366.12	13,702.25
0904	25,896.61	22,050.20	19,807.88	17,663.04
1001	12,388.05	11,795.29	10,204.22	9,382.68
1002	16,495.73	15,706.69	13,586.55	12,493.34
1003	24,062.45	22,910.74	19,818.28	18,223.30
1101	14,963.15	13,205.68	12,429.64	11,353.33
1102	23,279.91	20,544.92	19,338.61	17,664.34

TABLE 6.—PROPOSED FY 2009 PAYMENT RATES—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
1201	13,496.86	11,693.90	10,923.06	9,562.06
1202	16,988.39	14,718.77	13,747.74	12,034.47
1203	21,846.12	18,927.84	17,678.64	15,476.61
1301	16,811.61	11,955.18	11,007.55	9,883.14
1302	22,527.27	16,019.97	14,749.97	13,243.38
1303	29,037.17	20,648.91	19,011.04	17,070.29
1401	11,007.55	9,529.57	8,502.65	7,662.91
1402	14,636.87	12,671.43	11,305.23	10,188.62
1403	18,232.40	15,783.39	14,081.82	12,692.22
1404	23,169.42	20,057.46	17,895.72	16,127.86
1501	11,671.80	11,236.34	9,914.34	9,459.37
1502	14,673.27	14,126.01	12,463.44	11,892.79
1503	18,049.11	17,375.76	15,332.32	14,629.07
1504	23,316.31	22,445.37	19,805.28	18,896.65
1601	12,371.15	10,895.76	10,148.32	8,944.61
1602	17,137.88	15,093.14	14,058.42	12,390.65
1603	21,540.64	18,969.44	17,669.54	15,574.10
1701	13,741.24	12,368.55	10,547.39	9,536.07
1702	18,588.57	16,729.71	14,267.70	12,900.21
1703	21,829.22	19,646.69	16,754.41	15,149.03
1704	28,349.52	25,515.74	21,760.33	19,673.99
1801	12,823.51	12,341.25	9,975.43	9,506.17
1802	21,427.55	20,621.61	16,668.62	15,886.08
1803	37,012.05	35,618.56	28,791.49	27,438.29
1901	15,461.01	11,500.22	11,500.22	11,500.22
1902	31,137.80	23,160.32	23,160.32	23,160.32
1903	49,892.76	37,110.85	37,110.85	37,110.85
2001	11,284.43	9,455.47	8,522.14	7,679.81
2002	15,009.95	12,577.83	11,336.43	10,215.91
2003	19,429.61	16,281.25	14,673.27	13,223.88
2004	25,818.61	21,635.54	19,498.50	17,572.05
2101	26,820.84	23,879.16	23,879.16	17,347.17
5001	0.00	0.00	0.00	1,953.75
5101	0.00	0.00	0.00	8,549.44
5102	0.00	0.00	0.00	21,279.36
5103	0.00	0.00	0.00	9,000.51
5104	0.00	0.00	0.00	25,094.57

D. Example of the Methodology for Adjusting the Proposed Federal Prospective Payment Rates

Table 7 illustrates the proposed methodology for adjusting the Federal prospective payments (as described in sections III.A through III.C of this proposed rule). The examples below are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) appears in Table 6 above.

One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a non-teaching hospital, has a disproportionate share hospital (DSH) percentage of 5 percent (which results in a low-income percentage (LIP) adjustment of 1.0309), a wage index of 0.8576, and an applicable rural adjustment of 21.3 percent. Facility B, a

teaching hospital, has a DSH percentage of 15 percent (which results in a LIP adjustment of 1.0910), a wage index of 0.9065, and an applicable teaching status adjustment of 0.109.

To calculate each IRF's labor and non-labor portion of the Federal prospective payment, we begin by taking the unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) from Table 6 above. Then, we multiply the estimated labor-related share (75.691) described in section III.A by the unadjusted Federal prospective payment rate. To determine the non-labor portion of the Federal prospective payment rate, we subtract the labor portion of the Federal payment from the unadjusted Federal prospective payment.

To compute the wage-adjusted Federal prospective payment, we multiply the result of the labor portion of the Federal payment by the appropriate wage index found in the addendum in Tables 1 and 2, which

would result in the wage-adjusted amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted amount to the non-labor portion.

Adjusting the Federal prospective payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted Federal prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.109, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted Federal prospective payment rates. Table 7 illustrates the components of the proposed adjusted payment calculation.

TABLE 7.—EXAMPLE OF COMPUTING AN IRF-PROPOSED FY 2009 FEDERAL PROSPECTIVE PAYMENT

Steps		Rural Facility A (Spencer Co., IN)	Urban Facility B (Harrison Co., IN)
1	Unadjusted Federal Prospective Payment	\$28,192.23	\$28,192.23
2	Labor Share	× 0.75691	× 0.75691
3	Labor Portion of Federal Payment	= \$21,338.98	= \$21,338.98
4	CBSA Based Wage Index (shown in the Addendum, Tables 1 and 2)	× 0.8576	× 0.9065
5	Wage-Adjusted Amount	= \$18,300.31	= \$19,343.79
6	Non-labor Amount	+ \$6,853.25	+ \$6,853.25
7	Wage-Adjusted Federal Payment	= \$25,153.56	= \$26,197.04
8	Rural Adjustment	× 1.213	× 1.000
9	Wage- and Rural-Adjusted Federal Payment	= \$30,511.27	= \$26,197.04
10	LIP Adjustment	× 1.0309	× 1.0910
11	FY 2009 Wage-, Rural- and LIP-Adjusted Federal Prospective Payment Rate	= \$31,454.07	= \$28,580.97
12	FY 2009 Wage- and Rural-Adjusted Federal Prospective Payment	\$30,511.27	\$26,197.04
13	Teaching Status Adjustment	× 0.000	× 0.109
14	Teaching Status Adjustment Amount	= \$0.00	= \$2,855.48
15	FY 2009 Wage-, Rural-, and LIP-Adjusted Federal Prospective Payment Rate	+ \$31,454.07	+ \$28,580.97
16	Total FY 2009 Adjusted Federal Prospective Payment	= \$31,454.07	= \$31,436.44

Thus, the proposed adjusted payment for Facility A would be \$31,454.07 and the proposed adjusted payment for Facility B would be \$31,436.44.

IV. Proposed Update to Payments for High-Cost Outliers Under the IRF PPS

A. Proposed Update to the Outlier Threshold Amount for FY 2009

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall CCR by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41316, 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. Subsequently, we updated the IRF outlier threshold amount in the FYs 2006, 2007, and 2008 IRF PPS final rules (70 FR 47880, 70 FR 57166, 71 FR 48354, and 72 FR 44284) to maintain estimated outlier payments at 3 percent of total estimated payments, and we also stated that we would continue to

analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

For this proposed rule, we performed an updated analysis of FY 2006 claims and IRF-PAI data using the same methodology that we used to set the initial outlier threshold amount when we first implemented the IRF PPS in the FY 2002 IRF PPS final rule (66 FR 41316), which is also the same methodology we used to update the outlier threshold amounts for FYs 2006, 2007, and 2008. (Note that the methodology that we use to calculate the appropriate outlier threshold amount for each FY requires us to simulate Medicare payments for that FY, which requires the use of IRF-PAI data. The CMGs and tiers in effect for FY 2009 would be slightly different than those that were in effect for FY 2006, due to revisions that were implemented in the FY 2007 IRF PPS final rule (71 FR 48354). Thus, we use the IRF-PAI data rather than the IRF claims data to classify the FY 2006 patients into the appropriate CMGs and tiers for FY 2009 to simulate payments and thereby calculate the appropriate outlier threshold amount.) We did not update the outlier threshold amounts for FYs 2003, 2004, and 2005 because data from the FYs immediately after we implemented the IRF PPS were not yet available to perform the analysis of the outlier threshold amount for these FYs.

For FY 2009, based on an analysis of updated FY 2006 claims and IRF-PAI data, we estimate that IRF outlier payments as a percentage of total estimated payments would be 3.7 percent without the proposed change to the outlier threshold amount. The reason for this change is discussed below.

In the FY 2008 IRF PPS final rule (72 FR 44284), we established an outlier threshold amount for FY 2008 that would maintain estimated IRF outlier payments equal to 3 percent of total estimated IRF payments. However, the estimate of the outlier threshold amount for a given FY is dependent upon the estimated total IRF PPS payments for that FY. If estimated total IRF PPS payments for a FY decrease, then the outlier threshold amount must increase to maintain estimated outlier payments at 3 percent of total estimated payments. Further, we use the IRF market basket estimate to project IRF cost increases for each FY. If we project IRF cost increases for a given FY that are larger than the projected increase in IRF PPS payments in that FY, then the outlier threshold amount must increase for that FY to maintain estimated outlier payments at 3 percent of total estimated payments.

As discussed previously in this proposed rule, section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173), which amended section 1886(j)(3)(C) of the Social Security Act, required the Secretary to apply a zero percent increase factor for FYs 2008 and 2009, effective for discharges occurring on or after April 1, 2008. The effect of this change was to decrease projected IRF PPS payments after we implemented what would have been the appropriate outlier threshold amount for FY 2008 if the increase factor had not been adjusted mid-year. We estimate that total IRF PPS payments for FY 2008 decreased from approximately \$6.5 billion to approximately \$6.4 billion as a result of the changes codified in section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173). This reduction in estimated total payments for FY 2008, and lack of

increase to estimated total payments for FY 2009 that is an effect of the legislative adjustment to the increase factor for FY 2009 (described above), had the indirect effect of increasing our estimates of outlier payments as a percentage of total estimated payments for FYs 2008 and 2009. We estimate that IRF outlier payments as a percentage of total estimated payments for FY 2008 would exceed 3 percent, because of the change in estimated aggregate IRF PPS payments for FY 2008 that is described above.

In addition, we estimate that IRF costs would increase by 3.0 percent (the FY 2009 IRF market basket estimate) between FY 2008 and FY 2009. The combined effect of the estimated decrease in IRF PPS payments for FY 2008, the lack of increase to IRF PPS payments for FY 2009 that is an effect of the legislative adjustment to the increase factor for FY 2009 (described above), and the projected 3.0 percent increase in IRF costs for FY 2009 is to increase estimated IRF outlier payments to 3.7 percent of total estimated payments for FY 2009. This increase in estimated IRF outlier payments as a percentage of total estimated payments for FY 2009 results in a larger than anticipated increase in the outlier threshold amount for FY 2009 to maintain estimated outlier payments at 3 percent of total estimated payments.

Based on the updated analysis of FY 2006 claims and IRF-PAI data and the revised estimates of total IRF PPS payments for FYs 2008 and 2009 (as discussed above), we propose to update the outlier threshold amount to \$9,191 to maintain estimated outlier payments at 3 percent of total estimated aggregate IRF payments for FY 2009.

The outlier threshold amount for FY 2009 is subject to change in the final rule based on analysis of updated data.

B. Update to the IRF Cost-to-Charge Ratio Ceilings

In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR 45692 through 45694), we apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we propose to update the national urban and rural CCRs for IRFs. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of the proposed national CCR ceiling for FY 2009, as discussed below.
- Other IRFs accurate data which to calculate an overall CCR are not available.

Specifically, for FY 2009, we estimate a proposed national average CCR of 0.616 for rural IRFs, which we calculate by taking an average of the CCRs for all rural IRFs for which we have sufficient cost report data. Similarly, we estimate a proposed national CCR of 0.486 for urban IRFs, which we calculate by taking an average of the CCRs for all urban IRFs for which we have sufficient cost report data. We weight both of these averages by the IRFs' estimated costs, meaning that the CCRs of IRFs with higher costs factor more heavily into the averages than the CCRs of IRFs with lower costs. For new IRFs, we use these national CCRs until the facility's actual CCR can be computed using the first settled cost report (either tentative or final, whichever is earlier).

In addition, we propose to set the national CCR ceiling at 1.58 for FY 2009. This means that, if an individual IRF's CCR exceeds this ceiling of 1.58 for FY 2009, we would replace the IRF's CCR with the appropriate national average CCR (either rural or urban, depending on the geographic location of the IRF). We estimate the national CCR ceiling by:

Step 1. Taking the national average CCR of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined);

Step 2. Estimating the standard deviation of the national average CCR computed in step 1;

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3; and

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

We note that the proposed national average rural and urban CCRs and our estimate of the national CCR ceiling in this section are subject to change in the final rule based on analysis of updated data.

V. Revisions to the Regulation Text in Response to the Medicare, Medicaid, and SCHIP Extension Act of 2007

Section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110-173) amended section 5005 of the Deficit Reduction Act of 2005 (DRA, Pub. L. 109-171) to revise the following elements of the 75 percent rule that are used to classify IRFs:

- The compliance rate that IRFs must meet to be excluded from the IPPS and to be paid under the IRF PPS shall be no greater than the 60 percent compliance rate that became effective for cost reporting periods beginning on or after July 1, 2006.

- Patient comorbidities that satisfy the criteria specified in 42 CFR 412.23(b)(2)(i) shall be included in the calculations used to determine whether an IRF meets the 60 percent compliance percentage for cost reporting periods beginning on or after July 1, 2007.

Although section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110-173) grants the Secretary broad discretion to implement compliance criteria up to 60 percent, we are setting the compliance rate at 60 percent, the highest level possible within current statutory authority, for the reasons discussed below. In addition, we will monitor the impact of the new compliance criteria to ensure that IRFs predominantly treat patients who benefit most from this level of care.

We believe that a 60 percent compliance rate implements the provisions of the statute with minimal disruption to IRF operations. The 60 percent compliance rate has been in effect for cost reporting periods beginning on or after July 1, 2005, and the overwhelming majority of IRFs have already adjusted operations to meet or exceed the 60 percent compliance rate. Fewer than 20 IRFs out of approximately 1,250 IRFs nationwide have been declassified since the May 7, 2004 final rule (69 FR 25752) became effective. Thus, a conservative estimate is that over 98 percent of IRFs have been able to meet or exceed the 60 percent compliance rate.

Maintaining the 60 percent compliance rate also allows us to more effectively analyze changes in IRF operations and admissions patterns that would be needed to comply with the current statutory requirement to analyze IRF utilization and issue a report to Congress.

Finally, we believe that setting the compliance rate at 60 percent, the highest level possible within current statutory authority, will help to ensure that IRFs predominantly treat patients who benefit most from this level of care. Prior to the implementation of section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110-173), the Medicare regulations in 42 CFR § 412.23(b)(2) specified that a 75 percent compliance rate would become effective, and that comorbidities would no longer be used to determine whether an IRF met the 75 percent rule requirements, for cost reporting periods beginning on or after July 1, 2008.

We note that the FY 2009 President's budget proposes a repeal of the provisions in section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110-173) that require that the compliance rate be

set no higher than 60 percent for cost reporting periods beginning on or after July 1, 2006 and that patient comorbidities continue to be used in the calculations for determining whether an IRF meets the compliance percentage for cost reporting periods beginning on or after July 1, 2007.

For these reasons, we propose the following revisions to the regulation text in § 412.23(b). Specifically, we propose to remove the following phrases from the first sentence of § 412.23(b)(2)(i):

- “and before July 1, 2007;” and
- “and for cost reporting periods

beginning on or after July 1, 2007 and before July 1, 2008, the hospital has served an inpatient population of whom at least 65 percent,”

We also propose to remove § 412.23(b)(2)(ii) in its entirety, redesignate the existing § 412.23(b)(2)(iii) to § 412.23(b)(2)(ii), and revise all references to the previously numbered § 412.23(b)(2)(iii) accordingly.

As noted above, we will continue to monitor trends in IRF utilization and spending to ensure that IRFs are treating the types of patients who benefit most from the intensive rehabilitation therapies provided in IRFs. In this regard, we will also continue to work with the Medicare contractors to review the medical necessity of IRF claims. With the IRF compliance rate set below 75 percent, it is particularly important for the Medicare contractors to review the medical necessity of IRF stays, regardless of whether the primary reason for admission is 1 or more of the 13 conditions listed in § 412.23(b)(2)(iii) (which is being redesignated as § 412.23(b)(2)(ii) in this proposed rule). We also believe that it is important for us to work with stakeholders to review the IRF medical necessity criteria to ensure that they reflect the current practice of medicine, and that they are consistently interpreted and applied by the stakeholders.

VI. Post Acute Care Payment Reform

Under current law, Medicare covers post-acute care (PAC) services in various care settings, including skilled nursing facilities (SNFs), home health agencies (HHAs), long-term care hospitals (LTCHs), and IRFs. Each of the PAC sites has a separate payment system that relies on different patient assessment instruments, although there is no mandated assessment instrument for LTCHs. The current model is based on provider-oriented “silos” with significant payment differentials existing between provider types that treat similar patients and provide similar services.

In the FY 2007 IRF PPS proposed rule (71 FR at 28134), we described our plans to explore refinements to the existing PAC payment methodologies to create a more seamless system for the delivery and payment of PAC services under Medicare. The new model will focus on beneficiary needs rather than provider type and will be characterized by more consistent payments for the same type of care across different sites of service, quality driven pay-for-performance incentives, and collection of uniform clinical assessment information to support quality and discharge planning functions.

We also noted in the FY 2007 IRF PPS proposed rule (71 FR at 28134) that section 5008 of the Deficit Reduction Act (DRA) of 2005 mandates a PAC payment reform demonstration for purposes of understanding costs and outcomes across different PAC sites. To meet this mandate, CMS implemented the PAC Payment Reform Demonstration (PAC-PRD) to examine differences in costs and outcomes for PAC patients of similar case mix who use different types of PAC providers and to develop a standardized patient assessment tool for use at acute care hospital discharge and at PAC admission and discharge. This tool, the Continuity Assessment Record and Evaluation (CARE) tool, will measure the health and functional status of Medicare acute discharges. During the demonstration, CARE will be completed upon a patient’s discharge from the acute care hospital and upon admission and discharge from a PAC setting. The CARE instrument consists of a core set of assessment items that are common to all patients and care settings and are organized under several major domains: Medical, Functional, Cognitive, Social, and Continuity of Care, in addition to supplemental items for specific conditions and care settings.

Additional information on the PAC-PRD is available at: <http://www.cms.hhs.gov/DemoProjectsEvalRpts/MD/itemdetail.asp?filterType=dual,%20keyword&filterValue=post%20acute%20care&filterByDID=0&sortByDID=3&sortOrder=descending&itemID=CMS1201325&intNumPerPage=10>.

We are interested in receiving public comments on the CARE instrument, and specifically invite comments on how CARE might advance the use of Health Information Technology (HIT) in automating the process for collecting and submitting quality data. The CARE tool is available at <http://www.cms.hhs.gov/paperworkreductionactof1995/pral/list.asp>. Viewers should scroll down to

the entry for CMS–10243, “Data Collection for Administering the Medicare Continuity Assessment Record and Evaluation (CARE) Instrument.” Viewers can then click on the link to CMS–10243, click on the link to “Downloads,” and open Appendix A (“CARE Tool Item Matrix,” a .pdf file) and Appendix B (“CARE Tool Master Document,” in Microsoft Word).

In addition, we wish to take this opportunity to discuss recent developments in the related area of value-based purchasing (VBP). VBP ties payment to performance through the use of incentives based on measures of quality and cost of care. The implementation of VBP is rapidly transforming CMS from being a passive payer of claims to an active purchaser of higher quality, more efficient health care for Medicare beneficiaries. Our VBP initiatives include hospital pay for reporting (the Reporting Hospital Quality Data for the Annual Payment Update Program), physician pay for reporting (the Physician Quality Reporting Initiative), home health pay for reporting, the Hospital VBP Plan Report to Congress, and various VBP demonstration programs across payment settings, including the Premier Hospital Quality Incentive Demonstration and the Physician Group Practice Demonstration.

The preventable hospital-acquired conditions (HAC) payment provision for IPPS hospitals is another of CMS’ value-based purchasing initiatives. Section 1886(d)(4)(D) of the Act required the Secretary to select for the HAC IPPS payment provision conditions that: (a) Are high cost, high volume, or both; (b) are assigned to a higher-paying diagnosis-related group (DRG) when present as a secondary diagnosis; and (c) could reasonably have been prevented through the application of evidence-based guidelines. Beginning October 1, 2008, Medicare can no longer assign an inpatient hospital discharge to a higher-paying MS-DRG if a selected HAC condition was not present on admission. That is, the case will be paid as though the preventable condition that becomes a secondary diagnosis were not present. (Medicare will continue to assign a discharge to a higher-paying MS-DRG in those instances where the selected condition was, in fact, present on admission).

The broad principle articulated in the HAC payment provision for IPPS hospitals—of Medicare not paying for these types of preventable conditions—could potentially be applied to other Medicare payment systems for similar conditions that occur in settings other than IPPS hospitals. Other possible

settings of care might include hospital outpatient departments, SNFs, HHAs, end-stage renal disease facilities, and physician practices. The implementation would be different for each setting, as each payment system is different and the reasonable preventability through the application of evidence-based guidelines would vary for candidate conditions over the different settings. However, alignment of incentives across settings of care is an important goal for all of CMS' VBP initiatives, including the HAC provision.

A related application of the broad principle behind the HAC payment provision for IPPS hospitals could be considered through Medicare secondary payer policy by requiring the provider that failed to prevent the occurrence of a preventable condition in one setting to pay for all or part of the necessary follow-up care in a second setting. This would help shield the Medicare program from inappropriately paying for the downstream effects of a preventable condition acquired in the first setting but treated in the second setting.

We note that we are not proposing new Medicare policy in this discussion of the possible application of HACs payment policy for IPPS hospitals to other settings, as some of these approaches may require new statutory authority. Rather, we are seeking public comment on the application of the preventable HACs payment provision for IPPS hospitals to other Medicare payment systems and settings. We look forward to working with stakeholders in the fight against these preventable conditions.

VII. Provisions of the Proposed Rule

We are proposing to make revisions to the regulation text in response to section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110-173). Specifically, we are proposing to revise 42 CFR part 412. We discuss these proposed revisions and others in detail below.

A. Section 412.23 Excluded Hospitals: Classifications

As discussed in section V of this proposed rule, we propose to revise the regulation text in paragraph (b)(2)(i) and remove paragraph (b)(2)(ii) in response to section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. To summarize, for cost reporting periods—

(1) Beginning on or after July 1, 2005, the hospital has served an inpatient population of whom at least 60 percent require intensive rehabilitation services for treatment of one or more of the

conditions specified at paragraph (b)(2)(ii) of this section.

(2) A comorbidity that meets the criteria as specified in § 412.23(b)(2)(i) (as amended by removing former (b)(2)(ii) and redesignating former (b)(2)(iii) as the new (b)(2)(ii)) may continue to be used to determine the compliance threshold.

B. Additional Proposed Changes

- Update the FY 2009 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data, as discussed in section II.
- Update the FY 2009 IRF PPS payment rates by the proposed wage index and labor related share in a budget neutral manner, as discussed in section III.A and B.
- Update the outlier threshold amount for FY 2009, as discussed in section IV.A.
- Update the cost-to-charge ratio ceiling and the national average urban and rural cost-to-charge ratios for purposes of determining outlier payments under the IRF PPS, as discussed in section IV.B.

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IX. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

X. Regulatory Impact Statement

We have examined the impact of this proposed 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), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

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 one year). This proposed rule does not reach the \$100 million economic threshold and thus is not considered a major rule. We estimate that the total impact of the proposed changes in this proposed rule would be a decrease of approximately \$20 million (this reflects a \$20 million decrease due to the proposed update to the outlier threshold amount to decrease estimated outlier payments from approximately 3.3 percent in FY 2008 to 3 percent in FY 2009).

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IRFs 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 one year. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432, November 17, 2000.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,200 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. Medicare fiscal intermediaries and carriers are not considered to be small entities. 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, and the Secretary certifies, that this proposed rule would 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 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. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would 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 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$130 million. This proposed rule would not mandate any requirements for State, local, or tribal governments, nor would it affect private sector costs.

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. As stated above, this proposed rule would not have a substantial effect on State and local governments.

In accordance with the provisions of Executive Order 12866, this regulation

was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital—Related Costs

2. Section 412.23 is amended by—

A. Revising paragraph (b)(2)(i).

B. Removing paragraph (b)(2)(ii).

C. Redesignating paragraph (b)(2)(iii) as (b)(2)(ii).

The revision reads as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) * * *

(2) * * *

(i) For cost reporting periods beginning on or after July 1, 2004 and before July 1, 2005, the hospital has served an inpatient population of whom at least 50 percent, and for cost reporting periods beginning on or after July 1, 2005, the hospital has served an inpatient population of whom at least 60 percent required intensive rehabilitation services for treatment of one or more of the conditions specified at paragraph (b)(2)(ii) of this section. A patient with a comorbidity, as defined at § 412.602, may be included in the inpatient population that counts toward the required applicable percentage if—

(A) The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions specified in paragraph (b)(2)(ii) of this section;

(B) The patient has a comorbidity that falls in one of the conditions specified in paragraph (b)(2)(ii) of this section; and

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: March 20, 2008.

Kerry Weems,
Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 10, 2008.

Michael O. Leavitt,
Secretary.

BILLING CODE 4120-01-P

Table 1. -- PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.7957
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3448
10420	Akron, OH Portage County, OH Summit County, OH	0.8794
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8514
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8588
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9554

The following addendum will not appear in the Code of Federal Regulations.

ADDENDUM

This addendum contains the tables referred to throughout the preamble of this proposed rule. The tables presented below are as follows:

Table 1.-- Proposed Inpatient Rehabilitation Facility Wage Index for Urban Areas for Discharges Occurring from October 1, 2008 through September 30, 2009

Table 2.-- Proposed Inpatient Rehabilitation Facility Wage Index for Rural Areas for Discharges Occurring from October 1, 2008 through September 30, 2009

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	1.0517
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9828
12100	Atlantic City, NJ Atlantic County, NJ	1.2198

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.7979
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9865
11020	Altoona, PA Blair County, PA	0.8618
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9116
11180	Ames, IA Story County, IA	1.0046
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1913
11300	Anderson, IN Madison County, IN	0.8827
11340	Anderson, SC Anderson County, SC	0.9086
11460	Ann Arbor, MI Washtenaw County, MI	1.0539
11500	Anniston-Oxford, AL Calhoun County, AL	0.7926
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9598
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9185

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8034
12980	Battle Creek, MI Calhoun County, MI	1.0179
13020	Bay City, MI Bay County, MI	0.8897
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8531
13380	Bellingham, WA Whatcom County, WA	1.1474
13460	Bend, OR Deschutes County, OR	1.0942
13644	Bethesda-Gaithersburg-Frederick, MD Frederick County, MD Montgomery County, MD	1.0511
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8666
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8949

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12220	Auburn-Opelika, AL Lee County, AL	0.8090
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9645
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9544
12540	Bakersfield, CA Kern County, CA	1.1051
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0134
12620	Bangor, ME Penobscot County, ME	0.9978
12700	Barnstable Town, MA Barnstable County, MA	1.2603

CBSA Code	Urban Area (Constituent Counties)	Wage Index
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0904
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2735
15180	Brownsville-Harlingen, TX Cameron County, TX	0.8914
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9475
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9568
15500	Burlington, NC Alamance County, NC	0.8747
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9660
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1215
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0411
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8935
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9396
16180	Carson City, NV Carson City, NV	1.0003
16220	Casper, WY Natrona County, WY	0.9385

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8898
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7225
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8192
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8915
14060	Bloomington-Normal, IL McLean County, IL	0.9325
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9465
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1792
14500	Boulder, CO Boulder County, CO	1.0426
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8159

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8994
16940	Cheyenne, WY Laramie County, WY	0.9308
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0715
17020	Chico, CA Butte County, CA	1.1290
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9784

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8852
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	0.9392
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8289
16700	Charleston-North Charleston, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9124
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9520
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9277

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8729
18020	Columbus, IN Bartholomew County, IN	0.9537
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0085
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8588
18700	Corvallis, OR Benton County, OR	1.0959
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8294
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	0.9915

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8251
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8052
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9339
17660	Coeur d'Alene, ID Kootenai County, ID	0.9532
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9358
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9719
17860	Columbia, MO Boone County, MO Howard County, MO	0.8658
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8800

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9226
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9999
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7270
20100	Dover, DE Kent County, DE	1.0099
20220	Dubuque, IA Dubuque County, IA	0.9058
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	0.9975
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9816
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9475
20764	Edison, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1181
20940	El Centro, CA Imperial County, CA	0.8914

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8760
19180	Danville, IL Vermilion County, IL	0.8957
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8240
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8830
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9190
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7885
19500	Decatur, IL Macon County, IL	0.8074
19660	Daytona-Ormond Beach, FL Volusia County, FL	0.9031
19740	Denver-Aurora, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0718

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8742
22380	Flagstaff, AZ Coconino County, AZ	1.1687
22420	Flint, MI Genesee County, MI	1.1220
22500	Florence, SC Darlington County, SC Florence County, SC	0.8249
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7680
22540	Fond du Lac, WI Fond du Lac County, WI	0.9667
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9897
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0229
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7933
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8743
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9284

CBSA Code	Urban Area (Constituent Counties)	Wage Index
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8711
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9611
21300	Elmira, NY Chemung County, NY	0.8264
21340	El Paso, TX El Paso County, TX	0.8989
21500	Erie, PA Erie County, PA	0.8495
21660	Eugene-Springfield, OR Lane County, OR	1.0932
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8662
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1050
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4375
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8042
22140	Farmington, NM San Juan County, NM	0.9587
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9368

CBSA Code	Urban Area (Constituent Counties)	Wage Index
24540	Greeley, CO Weld County, CO	0.9658
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9727
24660	Greensboro--High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9010
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9402
24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9860
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3064
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8773
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9013
25260	Hanford-Corcoran, CA Kings County, CA	1.0499
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9280

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9693
23420	Fresno, CA Fresno County, CA	1.0993
23460	Cadtsden, AL Etowah County, AL	0.8159
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9196
23580	Gainesville, GA Hall County, GA	0.9216
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9224
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8256
24140	Goldsboro, NC Wayne County, NC	0.9288
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7881
24300	Grand Junction, CO Mesa County, CO	0.9864
24340	Grand Rapids--Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9315
24500	Great Falls, MT Cascade County, MT	0.8675

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9041
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9146
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9264
26900	Indianapolis-Carmel, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	0.9844
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9568
27060	Ithaca, NY Tompkins County, NY	0.9630
27100	Jackson, MI Jackson County, MI	0.9329
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8011

CBSA Code	Urban Area (Constituent Counties)	Wage Index
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.8867
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.0959
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7366
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9028
25980	Hinesville-Fort Stewart, GA ¹ Liberty County, GA Long County, GA	0.9251
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9006
26180	Honolulu, HI Honolulu County, HI	1.1556
26300	Hot Springs, AR Garland County, AR	0.9109
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7892
26420	Houston-Sugar Land-Baytown, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	0.9939

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9504
28420	Kennewick-Richland-Pasco, WA Benton County, WA Franklin County, WA	1.0075
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8249
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7658
28740	Kingston, NY Ulster County, NY	0.9556
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8036

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27180	Jackson, TN Chester County, TN Madison County, TN	0.8676
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9021
27340	Jacksonville, NC Onslow County, NC	0.8079
27500	Janesville, WI Rock County, WI	0.9702
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8478
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.7677
27780	Johnstown, PA Cambria County, PA	0.7543
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7790
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8951
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0433
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0238

CBSA Code	Urban Area (Constituent Counties)	Wage Index
30020	Lawton, OK Comanche County, OK	0.8025
30140	Lebanon, PA Lebanon County, PA	0.8192
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9454
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9193
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9191
30620	Lima, OH Allen County, OH	0.9424
30700	Lincoln, NE Lancaster County, NE Seward County, NE	1.0051
30780	Little Rock-North Little Rock-Conway, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8863
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9183
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8717
31020	Longview, WA Cowlitz County, WA	1.0827

SA de	Urban Area (Constituent Counties)	Wage Index
20	Kokomo, IN Howard County, IN Tipton County, IN	0.9591
00	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9685
40	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.8869
80	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8247
40	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7777
04	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0603
20	Lake Havasu City-Kingman, AZ Mohave County, AZ	0.9333
60	Lakeland, FL Polk County, FL	0.8661
40	Lancaster, PA Lancaster County, PA	0.9252
20	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0119
00	Laredo, TX Webb County, TX	0.8093
40	Las Cruces, NM Dona Ana County, NM	0.8676
20	Las Vegas-Paradise, NV Clark County, NV	1.1799
40	Lawrence, KS Douglas County, KS	0.8227

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.0935
31700	Manchester-Nashua, NH Hillsborough County, NH	1.0273
31900	Mansfield, OH ¹ Richland County, OH	0.9271
32420	Mayaguez, PR Hormigueros Municipio, PR Mayaguez Municipio, PR	0.3711
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.9123
32780	Medford, OR Jackson County, OR	1.0318
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9250
32900	Merced, CA Merced County, CA	1.2120
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	1.0002
33140	Michigan City-La Porte, IN LaPorte County, IN	0.8914
33260	Midland, TX Midland County, TX	1.0017

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31084	Los Angeles-Long Beach-Santa Ana, CA Los Angeles County, CA	1.1771
31140	Louisville-Jefferson County, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY Trimble County, KY	0.9065
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8680
31340	Lynchburg, VA Annerst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8732
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9541
31460	Madera, CA Madera County, CA	0.8069

CBSA Code	Urban Area (Constituent Counties)	Wage Index
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8321
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7388
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0529
34620	Muncie, IN Delaware County, IN	0.8214
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9836
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC	0.8634
34900	Napa, CA Napa County, CA	1.4476
34940	Naples-Marco Island, FL Collier County, FL	0.9487
34980	Nashville-Davidson-Murfreesboro--Franklin, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	0.9689
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2640

CBSA Code	Urban Area (Constituent Counties)	Wage Index
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0214
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1093
33540	Missoula, MT Missoula County, MT	0.8953
33660	Mobile, AL Mobile County, AL	0.8033
33700	Modesto, CA Stanislaus County, CA	1.1962
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7832
33780	Monroe, MI Monroe County, MI	0.9414
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8088

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36100	Ocala, FL Marion County, FL	0.8627
36140	Ocean City, NJ Cape May County, NJ	1.0988
36220	Odessa, TX Ector County, TX	1.0042
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9000
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.8815
36500	Olympia, WA Thurston County, WA	1.1512
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9561
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9226
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9551

CBSA Code	Urban Area (Constituent Counties)	Wage Index
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1862
35300	New Haven-Milford, CT New Haven County, CT	1.1871
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.8897
35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.3115
35660	Niles-Benton Harbor, MI Berrien County, MI	0.9141
35980	Norwich-New London, CT New London County, CT	1.1432
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.5685

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0264
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.7839
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Payette County, PA Washington County, PA Westmoreland County, PA	0.8525
38340	Pittsfield, MA Berkshire County, MA	1.0091
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9465
38660	Ponce, PR Juana Diaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4450
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0042
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1498

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36980	Owensboro, KY Davies County, KY Hancock County, KY McLean County, KY	0.8652
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1852
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9325
37380	Palm Coast, FL Flagler County, FL	0.8945
37460	Panama City-Lynn Haven, FL Bay County, FL	0.8313
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8105
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8647
37764	Peabody, MA Essex County, MA	1.0650
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8281
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9299
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0925

CBSA Code	Urban Area (Constituent Counties)	Wage Index
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0715
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9425
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1100
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8691

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38940	Port St. Lucie, FL Martin County, FL St. Lucie County, FL	1.0016
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.0982
39140	Prescott, AZ Yavapai County, AZ	1.0020
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0574
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9557
39380	Pueblo, CO Pueblo County, CO	0.8851
39460	Punta Gorda, FL Charlotte County, FL	0.9254
39540	Racine, WI Racine County, WI	0.9498
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9839
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.8811
39740	Reading, PA Berks County, PA	0.9356
39820	Redding, CA Shasta County, CA	1.3541

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	0.8762
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.9024
41420	Salem, OR Marion County, OR Polk County, OR	1.0572
41500	Salinas, CA Monterey County, CA	1.4775
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.8994
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9399

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.0755
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8858
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9814
40484	Rockingham County, NH Rockingham County, NH Strafford County, NH	1.0111
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9001
40660	Rome, GA Floyd County, GA	0.9042
40900	Sacramento-Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.3505
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8812
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.0549
41100	St. George, UT Washington County, UT	0.9358

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerio Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4528

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8579
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8834
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1492
41780	Sandusky, OH Erie County, OH	0.8822
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5195
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4729
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.5735

CBSA Code	Urban Area (Constituent Counties)	Wage Index
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9251
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9563
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9617
43900	Spartanburg, SC Spartanburg County, SC	0.9422
44060	Spokane, WA Spokane County, WA	1.0455
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8944
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0366
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8695
44220	Springfield, OH Clark County, OH	0.8694
44300	State College, PA Centre County, PA	0.8768
44700	Stockton, CA San Joaquin County, CA	1.1855

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2488
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1766
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1714
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6122
42140	Santa Fe, NM Santa Fe County, NM	1.0734
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.4696
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9933
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9131
42540	Scranton-Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8457
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1572
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9412
43100	Sheboygan, WI Sheboygan County, WI	0.8975
43300	Sherman-Denison, TX Grayson County, TX	0.8320
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8476

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0699
46060	Tucson, AZ Pima County, AZ	0.9245
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8340
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8303
46340	Tyler, TX Smith County, TX	0.9114
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8486
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8098
46700	Vallejo-Fairfield, CA Solano County, CA	1.4666
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8302
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0133

CBSA Code	Urban Area (Constituent Counties)	Wage Index
44940	Sumter, SC Sumter County, SC	0.8599
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9910
45104	Tacoma, WA Pierce County, WA	1.1055
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.9025
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9020
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.8805
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.7770
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9431
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8538

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church city, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.0855
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8519
48140	Wausau, WI Marathon County, WI	0.9679
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.7924
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	1.1469
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9728

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8818
47300	Visalia-Porterville, CA Tulare County, CA	1.0091
47380	Waco, TX McLennan County, TX	0.8518
47580	Warner Robins, GA Houston County, GA	0.9128
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	1.0001

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3284
49620	York-Hanover, PA York County, PA	0.9359
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.9002
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.0756
49740	Yuma, AZ Yuma County, AZ	0.9488

*At this time, there are no hospitals located in this urban area on which to base a wage index.

**Table 2.— PROPOSED INPATIENT REHABILITATION FACILITY WAGE
INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING
FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009**

CBSA Code	Nonurban Area	Wage Index
1	Alabama	0.7533
2	Alaska	1.2109
3	Arizona	0.8479
4	Arkansas	0.7371
5	California	1.2023
6	Colorado	0.9704
7	Connecticut	1.1119
8	Delaware	0.9727
10	Florida	0.8465
11	Georgia	0.7659

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6961
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgewick County, KS Sumner County, KS	0.9062
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.7920
48700	Williamsport, PA Lycoming County, PA	0.8043
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0824
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9410
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	0.9913
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9118
49340	Worcester, MA Worcester County, MA	1.1287
49420	Yakima, WA Yakima County, WA	1.0267

CBSA Code	Nonurban Area	Wage Index
47	Vermont	0.9919
48	Virgin Islands	0.6830
49	Virginia	0.7896
50	Washington	1.0259
51	West Virginia	0.7454
52	Wisconsin	0.9667
53	Wyoming	0.9287
65	Guam	0.9611

¹ All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2009. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2008.

CBSA Code	Nonurban Area	Wage Index
12	Hawaii	1.0612
13	Idaho	0.7920
14	Illinois	0.8335
15	Indiana	0.8576
16	Iowa	0.8566
17	Kansas	0.7981
18	Kentucky	0.7793
19	Louisiana	0.7373
20	Maine	0.8476
21	Maryland	0.9034
22	Massachusetts ¹	1.1644
23	Michigan	0.8953
24	Minnesota	0.9079
25	Mississippi	0.7700
26	Missouri	0.7930
27	Montana	0.8379
28	Nebraska	0.8849
29	Nevada	0.9272
30	New Hampshire	1.0470
31	New Jersey ¹	-----
32	New Mexico	0.8940
33	New York	0.8268
34	North Carolina	0.8603
35	North Dakota	0.7182
36	Ohio	0.8714
37	Oklahoma	0.7492
38	Oregon	0.9906
39	Pennsylvania	0.8385
40	Puerto Rico ¹	0.4047
41	Rhode Island ¹	-----
42	South Carolina	0.8656
43	South Dakota	0.8549
44	Tennessee	0.7723
45	Texas	0.7968
46	Utah	0.8116



Federal Register

**Friday,
April 25, 2008**

Part V

**Environmental
Protection Agency**

**Department of
Health and Human
Services**

Food and Drug Administration

**EPA White Paper Regarding StarLink®
Corn Dietary Exposure and Risk;
Availability; Notice**

**Guidance for Industry on FDA
Recommendations for Sampling and
Testing Yellow Corn and Dry-Milled
Yellow Corn Shipments Intended for
Human Use for Cry9C Protein Residues;
Withdrawal of Guidance; Notice**

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OPP-2007-0832; FRL-8358-7]****EPA White Paper Regarding StarLink® Corn Dietary Exposure and Risk; Availability****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: EPA is making available a final White Paper that reviews data on the level in the human food supply of Cry9C protein from StarLink® corn grain. It concludes that the protein has been sufficiently removed from the human food supply to render the level of risk low enough that continued testing for the protein in yellow corn at dry mills and masa production facilities provides no added public health protection. The White Paper therefore recommends that the Food and Drug Administration (FDA) withdraw its guidance recommending testing yellow corn grain for Cry9C at dry mills and masa production facilities. Concurrent with this notice, FDA is publishing a notice in the **Federal Register** withdrawing their guidance.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8715; fax number: (703) 308-7026; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer or food manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to

certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0832. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>.

II. Background

EPA is making available a final White Paper that reviews data on the level in the human food supply of Cry9C protein from StarLink® corn grain.

The Agency notified the public regarding the availability of a draft version of the White Paper in the October 17, 2007 **Federal Register** (72 FR 58978) (FRL-8145-7), with a docket identification number of EPA-HQ-OPP-2007-0832. The open comment period from October 17, 2007 to December 3, 2007, was held to allow members of the general public to submit letters and/or documents to the Agency on this White Paper. The Agency received comment from the North American Export Grain Association, Inc., the Corn Refiners Association, the Biotechnology Industry Association (BIO), the National Grain and Feed Association, the U. S. Grains Council, the North American Millers’ Association, the Food Corn Industry Coalition, the National Corn Growers, and two unsigned comments. These comments are addressed in the final White Paper.

The final White Paper concludes that the Cry9C protein has been sufficiently removed from the human food supply to render the level of risk low enough that continued testing for the protein in yellow corn at dry mills and masa production facilities provides no added public health protection. The final White

Paper therefore recommends that FDA withdraw its guidance recommending testing yellow corn grain at dry mills and masa production facilities. A full copy of the final EPA White Paper is available in docket EPA-HQ-OPP-2007-0832.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: April 21, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8-9003 Filed 4-24-08; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2008-D-0229 (formerly Docket No. 2001D-0025)]

Guidance for Industry on the Food and Drug Administration Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a guidance document entitled “FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues.” FDA is withdrawing its guidance in response to the release by the Environmental Protection Agency (EPA) of its final “White Paper Concerning Dietary Exposure to Cry9C Protein Produced by STARLINK Corn and the Potential Risks Associated With Such Exposure,” the availability of which is announced elsewhere in this issue of the **Federal Register**.

DATES: April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Lauren Posnick Robin or Samir Assar, Center for Food Safety and Applied Nutrition (HFS-300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1639 or 301-436-1636, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 22, 2001 (66 FR 6627), FDA announced the availability of a guidance document entitled "FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues." Cry9C is a pesticidal protein in the STARLINK variety of yellow corn that makes the corn more resistant to certain types of insects. EPA authorized STARLINK corn only for use in animal feed. EPA did not authorize the use of STARLINK corn in human food because of unresolved questions about the allergenic potential of the Cry9C protein. Although restricted to animal food use, some STARLINK corn was commingled with yellow corn intended for human use. In addition, in certain limited cases, the Cry9C protein was also detected in corn seeds of a non-STARLINK variety of corn or in corn from such seeds. In response to these findings, Aventis S.A. (the developer of STARLINK corn), EPA, FDA, the U.S. Department of Agriculture, and the food industry undertook efforts starting in 2000 to remove all STARLINK corn from the food supply. Among other measures, FDA issued guidance recommending that corn dry milling and masa operations screen yellow corn (and milled yellow corn in certain situations) to minimize the production of human food products with corn containing the Cry9C protein. Corn containing the Cry9C pesticide is adulterated under

section 402(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(B)) if such corn is for human food use because there is no tolerance or exemption from the need for a tolerance under section 408 of the act (21 U.S.C. 346a). Therefore, FDA recommended that manufacturers who detected Cry9C-containing corn in any lot should divert the lot to animal feed or industrial use.

In the **Federal Register** of October 17, 2007 (72 FR 58978), EPA announced the availability of its draft "White Paper Concerning Dietary Exposure to Cry9C Protein Produced by STARLINK Corn and the Potential Risks Associated with Such Exposure" (draft White Paper), in which it concluded that the Cry9C protein has been sufficiently removed from the human food supply to render the level of risk low enough that continued testing for the protein in yellow corn at dry mills and masa production facilities provides no additional human health protection. EPA reached that conclusion based on information including results from more than 4 million tests for Cry9C at corn handling operations over the past 7 years and an exposure assessment by Exponent, Inc., of the levels of Cry9C still present in the U.S. food supply. Based on its analysis, EPA recommended in its draft White Paper that FDA withdraw its guidance on the sampling and testing of yellow corn grain for Cry9C at dry mills and masa production facilities.

In response to the EPA recommendation that FDA withdraw its

guidance on the sampling and testing of yellow corn grain for Cry9C at dry mills and masa production facilities (72 FR 58978), FDA announced that it was seeking comment on whether to withdraw its guidance document entitled "FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues" (72 FR 58980, October 17, 2007). FDA received five comments, all from trade associations, that supported withdrawal of the guidance document.

In its final "White Paper Concerning Dietary Exposure to Cry9C Protein Produced by STARLINK Corn and the Potential Risks Associated With Such Exposure," EPA continues to recommend, as reflected elsewhere in this issue of the **Federal Register**, that FDA withdraw its guidance. Based on EPA's recommendation, the comments that FDA received that support withdrawal of the guidance, and its own evaluation of these circumstances, FDA is withdrawing its guidance document entitled "FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues."

Dated: April 17, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-8805 Filed 4-24-08; 8:45 am]

BILLING CODE 4160-01-S



Federal Register

**Friday,
April 25, 2008**

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 589

**Substances Prohibited From Use in
Animal Food or Feed; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 2002N-0273] (Formerly Docket No. 02N-0273)

RIN 0910-AF46

Substances Prohibited From Use in Animal Food or Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the agency's regulations to prohibit the use of certain cattle origin materials in the food or feed of all animals. These materials include the following: The entire carcass of bovine spongiform encephalopathy (BSE)-positive cattle; the brains and spinal cords from cattle 30 months of age and older; the entire carcass of cattle not inspected and passed for human consumption that are 30 months of age or older from which brains and spinal cords were not removed; tallow that is derived from BSE-positive cattle; tallow that is derived from other materials prohibited by this rule that contains more than 0.15 percent insoluble impurities; and mechanically separated beef that is derived from the materials prohibited by this rule. These measures will further strengthen existing safeguards against BSE.

DATES: This final rule is effective April 27, 2009. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in new 21 CFR 589.2001 effective April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Burt Pritchett, Center for Veterinary Medicine (HFV-222), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-453-6860, e-mail: burt.pritchett@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Comments on the Proposed Rule
 - A. General Comments
 - B. Comments on Proposed New § 589.2001—Cattle Materials Prohibited in Animal Food or Feed
 - C. Comments on Proposed Amendments to § 589.2000—Animal Proteins Prohibited in Ruminant Feed
- III. Description of the Final Rule
 - A. Definitions

- B. Requirements
- C. Recordkeeping and Access Requirements
- D. Changes to § 589.2000—Animal Proteins Prohibited in Ruminant Feed
- IV. Analysis of Economic Impacts
 - A. Summary of Final Regulatory Impact Analysis
 - B. Cost Effectiveness of Final Rule and Alternatives
 - C. Need for Regulation
 - D. Benefits
 - E. Costs
 - F. Government Costs
 - G. Sensitivity Analysis
 - H. Regulatory Flexibility Analysis
- V. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)
- VI. Paperwork Reduction Act of 1995
- VII. Environmental Impact
- VIII. Federalism
- IX. References

I. Introduction

BSE is a progressive and fatal neurological disorder of cattle that results from an unconventional transmissible agent. BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). All TSEs affect the central nervous system of infected animals. However, the distribution of infectivity in the body of the animal and mode of transmission differ according to the species and TSE agent. In addition to BSE, TSEs include, among other diseases, scrapie in sheep and goats, chronic wasting disease in deer and elk, and Creutzfeldt-Jakob disease in humans.

The agent that causes BSE has yet to be fully characterized. The theory that is most accepted in the international scientific community is that the agent is an abnormal form of a normal protein known as cellular prion protein. The BSE agent does not evoke a traditional immune response or inflammatory reaction in host animals. BSE is confirmed by post-mortem microscopic examination of an animal's brain tissue or by detection of the abnormal form of the prion protein in an animal's brain tissues. The pathogenic form of the protein is both less soluble and more resistant to degradation than the normal form. The BSE agent is resistant to heat and to normal sterilization processes.

BSE is not a contagious disease, and therefore is not spread through casual contact between animals. The possibility of maternal transmission (i.e., from a bovine dam directly to her offspring) was suggested by a 1997 study conducted in the United Kingdom. However, subsequent studies have shown that it is unlikely that maternal transmission of BSE occurs at any epidemiologically significant level,

if it occurs at all. Scientists believe that the primary route of transmission requires that cattle ingest feed that has been contaminated with a sufficient amount of meat and bone meal (MBM) from an infected animal. This route of transmission can be prevented by excluding potentially contaminated materials from ruminant feed.

Scientific and epidemiological studies have linked variant Creutzfeldt-Jakob disease (vCJD) in humans to exposure to the BSE agent, most likely through human consumption of beef products contaminated with the agent. As of February 2007, 165 probable and confirmed cases of vCJD have been reported in the United Kingdom. It is believed that in the United States, where measures to prevent the introduction and spread of BSE have been in place for some time, there is far less potential for human exposure to the BSE agent. The Centers for Disease Control and Prevention (CDC) leads a surveillance system for vCJD in the United States. As of November 2006, CDC had detected two vCJD cases involving United States residents who were born and raised in the United Kingdom. A third case was confirmed by CDC in November 2006 and involved a United States resident living in Virginia who was born and raised in Saudi Arabia and had lived in the United States since 2005. This individual did not live in Europe at any time, and CDC has determined that this person was most likely infected from contaminated cattle products consumed as a child when living in Saudi Arabia.

On December 23, 2003, the U.S. Department of Agriculture (USDA) diagnosed BSE in an adult cow in the United States that had been imported from Canada. Since then, USDA has confirmed two other cases of BSE in adult cows in the United States. One cow, which was diagnosed on June 24, 2005, was born and raised in Texas. The other cow, which was diagnosed on March 15, 2006, had been on a farm in Alabama for less than a year. The Texas cow was 12 years old and the Alabama cow was determined to be more than 10 years old. Therefore, both cows were born before FDA's 1997 ruminant feed rule (62 FR 30936, June 5, 1997) was in place.

Under USDA's enhanced BSE surveillance program, 787,711 cattle were tested between June 1, 2004, and September 20, 2006. As previously noted, only two animals tested positive for BSE, one in Texas and one in Alabama. In September 2006, USDA transitioned to an ongoing surveillance plan under which approximately 40,000 cattle are tested per year.

In the October 6, 2005, issue of the **Federal Register** (70 FR 58570), FDA published a proposed rule (the October 2005 proposed rule) that would prohibit the use of certain cattle origin materials in the food or feed of all animals. The materials identified in the proposal include the following: (1) The brains and spinal cords from cattle 30 months of age and older; (2) the brains and spinal cords from cattle of any age not inspected and passed for human consumption; (3) the entire carcass of cattle not inspected and passed for human consumption if the brains and spinal cords have not been removed; (4) tallow that is derived from the materials prohibited by the proposed rule that contains more than 0.15 percent insoluble impurities; and (5) mechanically separated beef that is derived from the materials prohibited by the proposed rule.

The preamble to the proposed rule contained information regarding BSE, including a summary of the current animal feed safeguards in the United States and the risk of BSE in North America, other options FDA considered for strengthening animal feed protections, and the reasons for proposing to exclude certain cattle-derived risk materials from all animal food and feed. Also discussed in the preamble to the proposed rule was the Harvard Risk Assessment (referred to in the preamble to the proposed rule as the "Harvard-Tuskegee Study"), completed for USDA in 2001. The authors released a revised risk assessment in 2003. Among other things, the Harvard-Tuskegee Study identified pathways or practices that, if addressed, could further decrease the already low risk of the spread of BSE if it were introduced into this country.

In mid-July 2006, USDA's Food Safety and Inspection Service (FSIS) released a further revised Harvard Risk Assessment. Conducted in 2005, the risk assessment used an updated model to simulate the impact of measures adopted by USDA and considered by FDA in response to the detection of a BSE-positive cow in Washington State in December 2003. The 2005 study confirmed the original findings in the 2001 Harvard-Tuskegee Study and noted that, with the protective measures in place in the United States in 2003, the introduction of BSE would result in limited spread, and the disease would be eliminated over time. Of the additional feed-related mitigation measures evaluated, the revised model predicted that removal of specified risk materials (SRMs) from all animal feed would result in a substantial reduction of any residual BSE disease agent not

eliminated by the 1997 feed ban, because doing so eliminates transmissions resulting from cross-contamination and on-farm misfeeding.

The current U.S. ruminant feed regulation (§ 589.2000 (21 CFR 589.2000)) prohibits the use of certain mammalian-origin proteins in ruminant feed, but allows the use of these materials in feed for non-ruminant animals. While the prevalence of BSE in the United States is very much lower than in European countries with BSE, evidence from the European experience has demonstrated that, in countries with a high level of circulating BSE infectivity, measures on only ruminant feed were not sufficient to eliminate all transmission of BSE; new cases continued to be found in cattle born in the United Kingdom after implementation of a ruminant-to-ruminant feed ban. As stated in the proposed rule, these new cases were attributed to either cross-contamination during feed manufacture and transport, or to intentional or unintentional misfeeding on the farm. FDA believes that the presence of certain cattle-derived risk materials in the non-ruminant feed supply presents a potential source of exposure in the United States. Although in the United States, compliance with the 1997 ruminant feed rule by the U.S. animal feed industry, i.e., renderers, protein blenders, and feed mills, has been very high, inspections of feed manufacturing firms have identified some instances of inadequate cleanout procedures, mislabeling, and recordkeeping deficiencies.

As discussed in the preamble to the proposed rule, data from both naturally infected and experimentally infected cattle indicate that roughly 90 percent of BSE infectivity is contained in the brain and spinal cord, and only about 10 percent of BSE infectivity is present in the retina, dorsal root and trigeminal ganglia, and the distal ileum (Ref. 1). The agency continues to believe that the 1997 ruminant feed rule provides a strong primary line of defense against BSE transmission by prohibiting the use in ruminant feed of all materials with potential BSE infectivity. The additional measures taken in this final rule will further reinforce the existing rule by removing certain cattle-derived risk materials from all animal feed. This action greatly minimizes the residual BSE risks not eliminated by the 1997 feed ban if cross-contamination of ruminant feed with non-ruminant feed, or diversion of non-ruminant feeds to ruminants, were to occur.

As discussed in greater detail in section II of this document, FDA

received numerous comments on its proposed rule. Based on these comments, the agency has made some modifications to this final rule. Specifically, a statement has been added setting forth the purpose of the new section, i.e., to prohibit the use of certain cattle origin materials in the food or feed of all animals to further reduce the risk of the spread of BSE within the United States. This change was made to clarify that the cattle materials prohibited by this rule are being prohibited from use in all animal food or feed because of their risk for transmitting BSE. This rule, however, should not be construed to mean that it is legal to use any portion of an animal that is adulterated under the Federal Food, Drug, and Cosmetic Act (the act) in animal food or feed.

Under section 402(a)(5) of the act (21 U.S.C. 342(a)(5)), animal feed and feed ingredients containing material derived from a BSE-positive animal are adulterated because they are in whole or in part the product of a diseased animal. The definition of cattle materials prohibited in animal feed (CMPAF) has been revised to include the entire carcass of BSE-positive cattle. This change was made to be consistent with the agency's previous guidance entitled "Use of Material from BSE-Positive Cattle in Animal Feed," for which a notice of availability was published in the **Federal Register** of September 30, 2004 (69 FR 58448). In that guidance, the agency made clear that it was not going to exercise enforcement discretion with regard to the use of BSE-positive cattle in animal food or feed. Therefore, this rule prohibits the use of BSE-positive cattle in all animal food or feed.

Additional changes have also been made in this final rule to the definition of CMPAF. As defined in the proposed rule, CMPAF included the brains and spinal cords from cattle of any age not inspected and passed for human consumption (or the entire carcass, if brain and spinal cord were not removed). FDA explained in the preamble to the proposed rule its rationale for applying these requirements to cattle of any age. This rationale cited surveillance data showing that cattle not inspected and passed for human consumption were included in the population of cattle at highest risk of BSE, and noted that inspection programs were not in place in the rendering industry for verifying the age of dead cattle. However, given the challenges of removing the brain and spinal cord from this class of cattle, FDA specifically requested comment on this issue.

FDA has revised the definition of CMPAF in the final rule (proposed § 589.2001(a)(iii) and new section 589.2001(b)(iii)) to prohibit the use of the entire carcass of cattle not inspected and passed for human consumption that are 30 months of age or older from which brain and spinal cord have not been effectively removed or otherwise effectively excluded from animal feed. As a result, the rule now prohibits the use of the entire carcass of cattle not inspected and passed for human consumption unless: (1) The cattle are shown to be less than 30 months of age, or (2) the brains and spinal cords were effectively removed or effectively excluded from animal feed use. The final rule was further revised to require renderers to develop and maintain written procedures for determining the age of and/or removing the brain and spinal cord from, dead cattle, and to make the written procedures available for FDA inspection. FDA notes that, for cattle not inspected and passed that are diseased or that died otherwise than by slaughter, the entire carcass of such animals is adulterated under section 402(a)(5) of the act. FDA has traditionally exercised enforcement discretion with regard to the use of such animals in animal feed. For example, see Compliance Policy Guide 675.400. FDA intends to continue exercising such discretion for the use in animal feed of: (1) The remaining material from cattle that are diseased or that die otherwise than by slaughter when the brain and spinal cord are effectively removed or effectively excluded from animal feed use and (2) the entire carcass from cattle that are diseased or that die otherwise than by slaughter if such cattle are shown to be less than 30 months of age.

FDA made these revisions based on comments indicating that it is feasible to put processes in place to age such cattle and that very little risk reduction is gained by excluding material from such cattle. FDA also received many comments that raised concerns about the environmental impacts of disposing of these animals by means other than rendering them for animal feed use.

FDA noted in the preamble to the October 2005 proposed rule (70 FR 58570) that European surveillance data suggest that cattle not inspected and passed for human consumption are more likely to test positive for BSE than healthy cattle that have been inspected and passed. However, FDA considered the level of risk reduction that might potentially be achieved by prohibiting materials from cattle that are not inspected and passed for human consumption and that are less than 30

months of age. FDA also considered the following: (1) Surveillance data indicate the current risk of BSE to U.S. cattle is very low, (2) the existing ruminant feed regulation provides strong protection against BSE, and (3) the new measures established by the final rule represent a secondary level of protection to address failures in compliance that may occur with the existing ruminant feed rule. After considering all of the previously mentioned factors, FDA determined that the proposed measure to prohibit materials from cattle that are not inspected and passed for human consumption and that are less than 30 months of age is not necessary.

Based on comments received, FDA has added a provision to this rule so that the agency may designate a country as not subject to the new requirements in this rule. As explained elsewhere in this document, a country seeking such a designation must submit a written request and include information about the country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other relevant information.

Lastly, for renderers handling cattle materials, this final rule provides, as did the proposed rule, that such renderers must establish and maintain records sufficient to demonstrate that material rendered for animal feed was not manufactured from, processed with, or does not otherwise contain CMPAF. Based on comments received regarding verification of CMPAF segregation in slaughter facilities, this final rule has been revised to clarify that the renderer's records must also include documentation that establishments supplying cattle materials to the renderers have adequate procedures in place to effectively exclude CMPAF. These supplier-related records must include either certification or other documentation from the supplier that material supplied to the renderer does not include CMPAF or documentation of another method, acceptable to FDA, such as third-party certification, for verifying that suppliers have effectively excluded CMPAF from animal feed.

II. Comments on the Proposed Rule

FDA received more than 840 comments on the proposed rule. They came from a wide variety of organizations, such as cattlemen, renderers, feed manufacturers, Federal agencies, State agriculture departments, trade associations, professional organizations, universities and research institutions, consumer organizations, and individuals. Many comments questioned the need for additional controls in light of the high compliance

with FDA's 1997 feed rule by the U.S. animal feed industry, coupled with the low prevalence of BSE in this country. Some comments took the opposing view, stating that more aggressive steps should be taken by FDA and that all ruminant-derived material should be prohibited in all animal feed. Some comments urged that all exemptions (e.g., plate waste and poultry litter) be removed from the regulations. Other comments asserted that the proposed rule was not scientifically based and should not be finalized.

Many comments from industry raised concerns about the increased burden—financial and otherwise—if the proposed rule is finalized. Some comments discussed the difficulty of ensuring complete removal of brain and spinal cord from dead cattle. Other comments expressed concerns about the increased volume of materials that would have to be disposed of through incineration, landfills, or other means. Potentially adverse environmental effects—and resultant adverse animal and public health consequences—from the increased volume of disposal materials were mentioned by several comments. Comments also expressed concerns about registration, certification, verification of segregation of CMPAF at slaughter establishments, recordkeeping, and record retention time.

A description of the comments and FDA's responses follows.

A. General Comments

1. Need for Additional BSE Safeguards

(Comment 1) Many comments, in addressing the proposed rule generally, said that the current BSE feed regulation does not need to be strengthened. Reasons given for this position were the low prevalence of BSE in this country as shown by USDA's surveillance results, the conclusion of the original Harvard Risk Assessment that the United States is resistant to BSE, and the effectiveness of the current ruminant feed rule (§ 589.2000) as evidenced by the high rate of industry compliance and the absence of BSE cases in cattle born after the 1997 ruminant feed rule. One comment said that FDA should develop a more accurate estimation of BSE risk to U.S. cattle by entering USDA's most recent prevalence data into the Harvard Risk Assessment model.

(Response) FDA agrees that the prevalence of BSE in the United States is very low, and that compliance with the current feed ban by the U.S. animal feed industry is at a high level. Though the situations are not directly

comparable, evidence from the European experience has demonstrated that BSE transmission can continue to occur even with a ruminant feed ban in place. FDA believes that eliminating the highest risk cattle-derived materials from the non-ruminant feed supply will further reduce the potential for cattle exposure to the BSE agent via cross-contamination of ruminant feed during feed manufacturing or transportation, or through on-farm misfeeding. As stated in the preamble to the proposed rule, without fully dedicated equipment, it may not be possible to completely prevent carryover of feed or feed ingredients even when cleanout procedures are in place.

(Comment 2) One comment said that, because the cow found in Texas in June 2005 did not test positive as a typical case of BSE, this case does not support the need for additional regulation.

(Response) FDA is aware that the PrP^{Sc} (disease-specific prion protein) isolates from the Texas and Alabama cases are atypical in that they have characteristics on immunohistochemical and western blot analyses that distinguish them from the typical BSE isolate. Because the significance of these differences, particularly with respect to origin and transmissibility, is not yet clear, the agency believes the atypical nature of these two cases does not diminish the need to strengthen BSE feed controls.

(Comment 3) Several comments said that the proposed rule was not based on the BSE situation in the United States, but rather on the situation in Europe where the incidence of BSE was 500-fold greater and control measures were instituted after BSE cases were identified. One comment also thought FDA might have developed its proposal based on the BSE situation in Japan.

(Response) While the data from Europe and Japan on BSE provided the agency with important information to help develop our response to BSE, the agency based its decision on the BSE situation in the United States and believes that these measures are appropriate to the United States situation. The agency believes, however, that the early firewalls (prohibition on imports of animals and ruminant feed from countries with BSE and the ruminant feed ban) put in place in the United States makes it possible and appropriate to strengthen feed controls with measures that are still less expansive than those that would be appropriate in countries with higher BSE prevalence such as in European countries and Japan. The measures being implemented are commensurate

with the BSE prevalence in the United States.

(Comment 4) Several comments declared that the recommendations in the International Review Team's (IRT) February 2005 report are not relevant to the development of this rule because they were not based on science, they do not reflect the difference in BSE risk between Europe and the United States, and they do not present an accurate understanding of the U.S. industry's compliance with the existing BSE feed regulation.

(Response) FDA agrees that not all of the IRT recommendations are appropriate for the U.S. situation. However, FDA is adopting the IRT recommendation to require the removal of certain cattle-derived risk materials from all animal feed. FDA believes that the level of compliance with the current ruminant feed rule by the U.S. animal feed industry is high, but believes that the additional measures provide a secondary level of protection to address failures in compliance that may occur with the existing ruminant feed rule.

(Comment 5) One comment said that cross-contamination is not a problem because the BSE prevalence is so low in the United States. Another comment asked for the data the agency is relying on to show that cross-contamination and feeding errors need to be controlled, especially since the agency's own statistics show the industry is in high compliance with the 1997 ruminant feed rule.

(Response) FDA agrees that overall compliance with the 1997 ruminant feed rule by the U.S. animal feed industry has been high, but there have been instances of noncompliance with the rule that could have resulted in cattle being exposed to prohibited material through cross-contamination, mislabeling, or intentional or unintentional misfeeding. Information describing these instances of noncompliance was set forth in the preamble to the October 2005 proposed rule (70 FR 58570 at 58577). An updated summary of compliance information is provided in the References section of this document (Ref. 2).

(Comment 6) A few comments asked FDA to recognize that the USDA 18-month surveillance snapshot may not be an accurate indication of BSE prevalence in the United States. Specifically, because the BSE cases to date are likely clustered in time and location, USDA's surveillance results may underestimate the true risk.

(Response) FDA stated in the preamble to the proposed rule that the detection of one BSE case in over 418,000 samples analyzed under

USDA's enhanced surveillance program at the time of the publication of the proposed rule indicates that the prevalence of BSE is very low in the U.S. cattle population. FDA notes that USDA has conducted surveillance for BSE since 1990. A July 20, 2006, USDA report entitled "An Estimate of the Prevalence of BSE in the United States" supports FDA's qualitative statement of a very low prevalence of BSE in the United States (Ref. 3). According to the report, a model developed in Europe was used to calculate U.S. BSE prevalence from two BSE cases detected in 735,213 samples collected over a 7-year period ending in March 2006. Results of this analysis support a conclusion that the prevalence of BSE in the U.S. cattle population is less than one infected animal per million adult cattle.

FDA remains confident in the two models used by USDA. The most likely values calculated by these models for the estimated number of cases were 4 or 7 infected animals out of 42 million adult cattle. USDA's analysis was submitted to the scrutiny of a peer review process, and the expert panel agreed with the appropriateness of USDA's assumptions and the factors it considered, as well as with the estimate of BSE prevalence.

(Comment 7) One comment noted that the effectiveness of the feed ban, especially at the farm level, is not known.

(Response) Inspection results indicate that compliance by U.S. animal feed industry is high. However, FDA agrees that it is very difficult to assess compliance with the ruminant feed rule at the farm level. FDA believes excluding certain cattle-derived risk materials from all animal feed channels will minimize any residual risks from on-farm misfeeding.

(Comment 8) Two comments indicated that the agency's feed control measures for ensuring compliance with the 1997 ruminant feed rule have been inadequate, citing a Government Accountability Office (GAO) study as evidence.

(Response) FDA disagrees with these comments. FDA believes its enforcement activities are adequate for ensuring industry compliance with the 1997 ruminant feed rule. The agency's response to the GAO's study can be found in Appendix VI of the GAO's report (Ref. 4).

(Comment 9) One comment speculated that, in some species, atypical BSE might be more pathogenic than typical BSE.

(Response) FDA is not aware of any scientific evidence that atypical BSE is

more pathogenic than typical BSE. Therefore, the agency believes that the controls in this final rule are appropriate.

(Comment 10) Several comments said the proposed rule will hamper BSE surveillance by reducing the number of cattle available for sampling.

(Response) FDA has conferred with USDA on the development of this rule. Further, USDA's transition from enhanced BSE surveillance to ongoing BSE surveillance places greater importance on collecting samples where clinical histories on sampled animals are more likely to be available, such as on farms and at diagnostic laboratories, and less importance on sampling at rendering plants where clinical histories are usually not available (Ref. 5).

2. Other Approaches for Strengthening Feed Controls

A number of comments recommended ways to strengthen feed controls that they believed would provide better protection than the measures proposed by FDA.

(Comment 11) Several comments stated that the proposed rule does not go far enough, that it still allows materials derived from ruminant species to be fed to other species, and that it does not include any of the actions announced on January 26, 2004. Several comments suggested that no animal or mammalian products be allowed in cattle feed or in feed for any other food-producing animal species. One comment noted that, although the proposed rule is a small step in the right direction, it is inadequate to close the existing loopholes. Two comments stated that the proposal ignores some of the recommendations made by the IRT and other BSE experts. Several comments stated that the proposed rule would leave 10 percent of the potential infectivity in the feeding system. One comment stated that the 10-percent infectivity may represent 780 ID₅₀ (ID₅₀ is the amount of infective material that would result in a case of BSE in 50 percent of the cattle that consumed it). Another comment remarked that distal ileum should be removed from animal feed, regardless of the disposal problems this could cause. In contrast, several comments were supportive of the agency's reasoning behind the proposed rule. These comments stated that removal of brain and spinal cord from cattle 30 months of age and older is the single most important step that can be taken to prevent the amplification of BSE and thereby shorten the time it takes to eradicate any latent BSE infectivity that might be present but undetected in U.S. cattle. Some

comments further noted that the proposal is consistent with the IRT recommendation regarding a staged approach to removing SRM from animal feed.

(Response) The agency does not believe it is necessary, given the low prevalence of BSE in the United States, to prohibit all ruminant material from animal feed, nor is it necessary to prohibit all animal or all mammalian products in cattle feed. Our reasoning for deciding against the measures under consideration by FDA that were announced on January 26, 2004, and choosing instead to focus on certain cattle-derived risk materials was fully explained in the preamble to the October 2005 proposed rule (70 FR 58570 at 58578). In deciding to prohibit brain and spinal cord only from cattle 30 months of age or older, rather than the full list of SRMs, FDA considered the following: (1) Surveillance data indicate the current risk of BSE to U.S. cattle is very low, (2) the existing ruminant feed regulation provides strong protection against BSE, and (3) the new measures in this rule represent a secondary level of protection to address potential failures in compliance that may occur with the existing ruminant feed rule. FDA believes that the existing ruminant feed rule provides a strong line of defense by prohibiting the use in ruminant feed of protein derived from mammalian tissues. The additional measures in this final rule will further reinforce existing ruminant feed protection measures by removing the highest risk cattle-derived materials from all animal feed.

(Comment 12) One comment stated that the agency's proposal was too broad and asked that the rule be limited to removal of brain and spinal cord from dead and antemortem condemned cattle 30 months of age or older. The comment said this would have captured the two BSE cases in Washington and Texas.

(Response) FDA believes that the rule should apply to cattle slaughtered for human consumption as well as to cattle not inspected and passed for human consumption at antemortem inspection. Infected cattle that are over 30 months of age and in the preclinical stage of disease could pass antemortem inspection, yet still harbor significant levels of BSE infectivity in the brain and spinal cord.

(Comment 13) Numerous comments suggested that FDA prohibit the use of blood in animal feed. Reasons mentioned were that blood has been shown to contain TSE infectivity in several species, that vCJD has been found to be transmitted through blood, and that emboli created by stunning

could carry infectivity. One comment said that, with more sensitive detection methods, BSE infectivity may be confirmed in blood. In contrast, numerous comments said FDA should continue to allow the use of blood in animal feed because there is no scientific basis for prohibiting blood in cattle feed and because calf health is dependent on colostrum supplements, which include blood products. One comment said that the chair of the IRT committee stated that blood does not transmit BSE.

(Response) As explained in the preamble to the proposed rule, FDA is not prohibiting the use of blood and blood products in animal feed because we believe such a prohibition would do very little to reduce the risk of BSE transmission. Although TSE infectivity has been demonstrated experimentally in the blood (Ref. 6) of sheep and rodents (Ref. 7), species differences in the involvement of the lymphoreticular system in TSE diseases suggest that these findings cannot necessarily be extrapolated to cattle (Ref. 8). Studies using mouse and cattle bioassays have so far failed to detect BSE infectivity in bovine blood (Ref. 9). While FDA agrees that more sensitive detection methods might some day demonstrate BSE infectivity in bovine blood, the agency believes that it is highly unlikely that the BSE agent is present in blood of infected cattle at levels sufficient to transmit disease through oral administration of processed blood products. This conclusion is based on the inefficiency of the oral route of transmission relative to the intracerebral route, which was used in unsuccessful attempts to detect BSE infectivity in bovine blood. FDA believes that the prohibitions in this final rule make it unnecessary to also preclude the use of blood in animal feed.

(Comment 14) A number of comments requested that poultry litter not be permitted to be fed to cattle, citing several reasons. One comment asked that FDA determine actual risk before deciding that poultry litter is not a risk factor. One comment stated that feces were infectious in rodents orally challenged with scrapie. Another comment noted that, in the United Kingdom, when cattle are orally challenged, the feces must be treated as medical waste for 1 month post-challenge. Another comment stated that TSE agents may be present in the porcine/poultry intestinal content, while still another comment stated that the 2001 World Health Organization/Food and Agriculture Organization of the United Nations/World Organisation for Animal Health (OIE) Technical

Consultation concluded that digestive contents and fecal material from livestock or poultry being fed meat and bone meal (MBM) potentially contaminated with BSE should not be used as an ingredient in animal feed.

(Response) In the preamble to the October 2005 proposed rule, FDA provided calculations submitted in comments to the advance notice of proposed rulemaking (ANPRM) that published in the **Federal Register** on July 14, 2004 (69 FR 42288), showing that a cow would need to consume a very large volume of poultry litter to ingest an infectious dose of BSE, assuming that the poultry feed spilled into the litter was formulated with MBM derived from a BSE-infected cow. Based on this analysis, FDA believes that the risk of cattle exposure to an infectious dose of BSE through poultry litter is low. The measures contained in this final regulation should reduce that risk even further because removing CMPAF from all animal feed prevents BSE infectivity from reaching poultry in the first place.

(Comment 15) Several comments disagreed with the need for prohibiting poultry litter in cattle feed if FDA finalizes the proposed measures. Two comments said that there is no scientific basis for prohibiting poultry material in ruminant rations. Another comment pointed out that banning poultry litter would create significant disposal issues.

(Response) As discussed in the response to the previous comment, because the rule prohibits the use of the highest risk cattle-derived materials in all animal feed, FDA agrees that it is not necessary to prohibit poultry litter from being fed to cattle.

(Comment 16) Several comments recommended that dedicated facilities and equipment be required in order to prevent cross-contamination. One comment disagreed, stating that requiring dedicated facilities would force some renderers to discontinue operations.

(Response) As explained in the preamble to the October 2005 proposed rule (70 FR 58570 at 58584), FDA fully expects this final rule to reduce substantially the remaining risk associated with cross-contamination, and therefore does not believe that the rule needs to also require dedicated facilities and equipment.

(Comment 17) One comment suggested a "systems approach" as a substitute for the measures presented in the proposed rule. This approach, according to the comment, would prohibit the entire carcass (except skeletal muscle) of mature dead cattle and the brain and spinal cord of mature

slaughter cattle from all animal feed. It would also prohibit the use of hypobaric (vacuum) rendering for processing inedible ruminant material. The commenter submitted modeling data obtained using the Harvard Risk Assessment model, which showed that this approach is as protective of animal and public health as a complete SRMs ban, while creating a much smaller disposal challenge. According to the modeling results, the "systems approach" and the full SRMs approach would reduce cases of BSE by 97 percent and 99 percent, respectively. FDA's proposed measures would reduce new cases by 40 percent to 63 percent, depending on the effectiveness of brain and spinal cord removal. The comment acknowledged that the "systems approach" would initially create disposal challenges, especially in the dairy sector, but that cost-effective carcass disposal methods could be implemented.

(Response) The difference between the comment's "systems approach" and the approach in this final rule is that the "systems approach" would exclude the entire carcass of dead cattle 30 months of age or older rather than only the brain and spinal cord. As the comment acknowledges, eliminating the rendering option (other than disposal rendering) for disposal of all dead cattle 30 months of age or older may create major disposal challenges in some regions of the country (see "Environmental Assessment" for this final rule, Docket No. 2002N-0273). Modeling results submitted by the same commenter in response to the ANPRM showed that eliminating vacuum rendering contributed very little to the effectiveness of the "systems approach." The agency believes that excluding brain and spinal cord from all cattle 30 months of age or older, and not the complete list of SRMs, is the most appropriate course of action for the United States where the BSE prevalence is low and strong feed controls are already in place.

(Comment 18) Citing the link of BSE cases in Alberta to hypobaric (or vacuum) rendering, one comment recommended that the use of hypobaric rendering be prohibited because it provides no TSE inactivation.

(Response) FDA agrees that the cluster of BSE cases associated with a vacuum renderer in Alberta underscores the concern about the ability of this process to inactivate BSE infectivity. A major advantage of the measures in this final rule over other options considered is that they prevent the highest risk cattle-derived materials from all animal feed,

thereby reducing concerns about vacuum rendering.

(Comment 19) One comment said that FDA should prohibit the use of mammalian protein in feed for food producing animals, and cited the following recent research to support this position:

- Infectious dose may be smaller than previously thought: Attack rate studies in the United Kingdom have demonstrated transmission at a 0.001 gram (g) dose (no reference), 10 times lower than the 0.01 g dose described by FDA in the proposal.

- Repeated low dose exposure: A study in which scrapie was injected into mice (Jacquemot 2005) showed that repeated low doses caused scrapie when a single dose of the same size did not. A second study in which scrapie was administered orally to hamsters (Diringer 1998) showed a higher incidence of scrapie in hamsters receiving repeated doses than in hamsters receiving a single dose.

- Additional organs may be infectious: Disease-specific prion protein (PrP^{Sc}) was found in the kidney, pancreas, and liver of scrapie infected mice when inflammation was induced in these organs (Heikenwalder 2005). Another study showed PrP^{Sc} in the urine of scrapie infected mice with kidney inflammation. A third study found PrP^{Sc} present in mammary glands of sheep with mastitis (Ligios 2005).

- Interspecies barrier may be smaller than previously thought: Some studies have shown interspecies inoculation produced subclinical disease but not clinical disease, suggesting that previously assumed species barriers were not complete (Hill 2000).

(Response) FDA is aware that BSE transmission has been demonstrated at a 0.001 g dose. FDA is also aware of the other recent scientific findings and considered this information as we were developing the final rule. The agency believes that the risks associated with repeated low dose exposure, infectivity in inflamed organs, and unapparent carriers of BSE infectivity are very low. The agency believes the risks of BSE infection are adequately addressed by the 1997 ruminant feed rule and this final rule, and that it is not necessary to prohibit all mammalian protein in feed for food-producing animals.

(Comment 20) One comment noted that species which appear to be resistant may in fact be unapparent carriers and over time could become sources of the BSE agent. Another comment added that failure to detect infectivity in tissues of experimentally infected pigs and chickens might be due to insufficiently sensitive bioassay techniques. Another

comment suggested that because swine and poultry may be silent carriers, materials derived from swine and poultry should not be fed to cattle.

(Response) These concerns were first addressed in the 1997 ruminant feed rule (62 FR 30936 at 30939). The agency has received no new information that would lead us to conclude that the additional measures suggested by these comments are needed to protect against BSE at this time.

(Comment 21) Several comments said that FDA should remove the exemptions in the current feed rule, with the possible exception of the exemption for milk.

(Response) As discussed in the preamble to the October 2005 proposed rule (70 FR 58570 at 58573), the agency considered eliminating certain of the current exemptions in the 1997 ruminant feed rule. However, as further discussed in that preamble, given low levels of BSE prevalence and high compliance with the 1997 ruminant feed ban, the agency determined that prohibiting the highest risk cattle-derived materials from all animal feed would be the most appropriate measure in the United States to further reduce the remaining risk of BSE infection not already addressed by the 1997 feed ban. Other responses to comments in the preamble to this final rule also discuss the agency's reasons for not eliminating certain exemptions in the 1997 ruminant feed rule.

(Comment 22) Numerous comments suggested that the plate waste exemption be eliminated. Reasons cited were that plate waste could contain highly infectious material, FDA has not specified the reheating requirements sufficient to inactivate the agent, it could be a factor in the spread of scrapie, and it confounds feed testing. In contrast, one comment advised against eliminating the exemption, noting that potential infectivity in high risk material has already been removed from meat by USDA regulations.

(Response) The exemption in the 1997 ruminant feed rule is specifically for "inspected meat products which have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings)" (§ 589.2000(a)(1)). FDA disagrees that it is necessary to eliminate the plate waste exemption because, since 2004, human food has been required to be free of SRMs by USDA and FDA (69 FR 1862, January 12, 2004 (affirmation of interim rule 72 FR 38699, July 13, 2007), and 69 FR 42256, July 14, 2004, respectively).

3. International Trade Issues

The agency received a number of comments about trade, particularly about international standards related to feed controls for the prevention of BSE.

(Comment 23) One comment stated that FDA should not place more importance on trade considerations than on animal health, while another comment asserted that the proposed rule does not meet international standards, and therefore export markets may remain closed to U.S. products. In contrast, another comment stated that the proposed rule would satisfy trading partners and should help to reopen export markets.

(Response) FDA's mission is to promote and protect public health. The agency's regulations are issued to achieve this mission. FDA is also aware of the international trade obligations of the United States and considers these obligations in rulemaking. FDA believes that this final rule, while based on its mission to promote and protect the public health, is consistent with international trade obligations.

(Comment 24) One comment stated that the OIE recommends that feed and certain other commodities from controlled risk countries should not be traded if they contain protein from brains, eyes, spinal cord, skull, or vertebral column from cattle 30 months of age or older, or contain protein from the distal ileum or tonsils from cattle of any age. The comment added that if these commodities should not be traded internationally, then they should not be used domestically.

(Response) The OIE guidelines described in the comment apply to meat products for human consumption and ruminant feed. They do not apply to all animal feed. FDA also notes that these risk materials are already prohibited from all ruminant feed. As discussed throughout the preamble to this final rule, FDA believes further prohibiting brain and spinal cord from cattle 30 months of age and older in all animal food or feed is appropriate for the U.S. situation.

(Comment 25) Several comments stated that FDA should harmonize its new BSE feed regulations with those proposed by Canada. One comment provided a recommendation on how the United States and Canadian feed regulations should be harmonized, suggesting that both countries prohibit dead and downer cattle and require the removal of brain and spinal cord from cattle 30 months of age and older at slaughter. In contrast, another comment stated that trade with Canada should be restricted because of inadequate feed

controls and inadequate surveillance in Canada.

(Response) The governments of the United States and Canada discussed the differences between their proposed regulations and considered options for aligning the two regulations. This led to a better understanding of each country's situation. Having considered the circumstances related to each of the BSE-positive cows and the control systems in place in Canada and the United States, FDA has concluded that measures in the 1997 ruminant feed rule and in this final rule are the most appropriate for the situation in the United States.

(Comment 26) Australia and New Zealand commented that they should not have to meet the proposed FDA requirements for exporting feed products to the United States because both countries have BSE-free status. Further, they stated that such requirements are contrary to World Trade Organization obligations under the Sanitary and Phytosanitary Agreement.

(Response) As stated previously, FDA is aware of the international trade obligations of the United States and has considered these obligations throughout the rulemaking process for this regulation. In the preamble to FDA's interim final rule on prohibiting the use of certain cattle materials in human food and cosmetics (69 FR 42256, July 14, 2004), FDA requested comment on standards to apply when determining another country's BSE status, providing an exemption for "BSE-free" countries, and how to determine that countries meet any standards that might be developed. On July 13, 2007, USDA's FSIS published a final rule "*Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Prohibition on the Use of Certain Stunning Devices Used to Immobilize Cattle During Slaughter*" (also referred to as "the SRM final rule") (72 FR 38700), which affirmed, with changes, interim measures implemented by FSIS to minimize human exposure to materials that could potentially contain the BSE agent. One change that FSIS made in the SRM final rule was to exclude from the definition of SRMs materials from cattle from a country that can demonstrate that its BSE risk status can reasonably be expected to provide the same level of protection from human exposure to the BSE agent as prohibiting the use of SRMs for human food does in the United States. In the preamble to the SRM final rule, FSIS explained that those countries that believe that they are eligible to have materials from their

cattle excluded from the definition of SRMs should provide sufficient scientific evidence to support their claimed BSE risk status, and FSIS would then develop criteria to evaluate the equivalence request. FDA has decided to adopt a similar approach, and will allow a foreign country to seek a designation from FDA by which the restrictions otherwise applicable to animal feed would not apply to cattle-derived material from that country. Any country seeking such a designation would have to provide sufficient scientific evidence to support its claimed BSE risk status.

B. Comments on Proposed New § 589.2001—Cattle Materials Prohibited in Animal Food or Feed

1. Definition of Cattle Materials Prohibited in Animal Feed (CMPAF)

FDA received numerous comments addressing the definition of “cattle materials prohibited in animal food or feed” (CMPAF) as set forth in proposed § 589.2001(a). While some urged that all deads and downers, regardless of age, be included in the definition, others suggested that younger cattle be excluded from the definition because of science showing a lower infectivity risk in this group.

(Comment 27) Numerous comments suggested that FDA exclude all deads and downers, regardless of their age, from the feed chain because they contain the highest level of infectivity and because the Harvard-Tuskegee Study showed reduction of the risk of BSE transmission when these two categories of animals were eliminated from the feed stream. Several comments said that infectivity could be present in tissues other than brain and spinal cord. Specifically mentioned was new research showing infectivity in peripheral nerves, both in one cow using a new bioassay technique (Buschmann and Groschup, 2005 (Ref. 10)), and in a 94-month-old BSE infected cow in Japan using a western blot method. One comment said that subclinical infection could be present in cattle younger than 30 months of age.

(Response) FDA disagrees that it is necessary to prohibit all cattle not inspected and passed for human consumption from all animal feed to prevent BSE infection. BSE has a long incubation period. Epidemiological data from the United Kingdom epidemic have demonstrated that, on average, cattle develop clinical signs 4 to 6 years after infection (Bradley 1991; Anderson 1996 (Ref. 11)), though the incubation period can be longer or shorter than 4 to 6 years. With BSE, as with other

TSEs, the total amount of infectivity in an animal increases throughout the incubation period, reaching the highest load at the end, very close to the death of the animal. Infectivity is considered to increase exponentially after exposure, reaching 4.5 logs less than clinical cases by 50 percent of the incubation period, and 3 logs less than a clinical case at 70 percent of the incubation period (Comer and Huntly, 2003 (Ref. 12)). Therefore, FDA assumes that the benefit shown in the Harvard-Tuskegee Study of excluding animals that die on the farm from the animal feed chain (77 percent reduction in mean number of new cases) is primarily attributable to excluding older deadstock.

FDA does not believe that studies showing BSE infectivity in peripheral nerves are sufficient to justify prohibiting all cattle not inspected and passed from use in all animal feed to prevent BSE infection. In the Buschmann and Groschup study, the experimental mice used were approximately 10 times more sensitive than cattle to the BSE agent, and the donor cow was showing severe signs of late-stage clinical BSE. Furthermore, based on end-point titration, incubation time, and transmission rate, the infectivity levels in peripheral nerves are extremely low compared to levels in brain and spinal cord. The mice were injected both intracerebrally and intraperitoneally, which is much more efficient than the oral route of administration. Therefore, the agency believes that very little BSE risk reduction would be realized if this final rule prohibited all cattle not inspected and passed for human consumption from use in all animal feed.

(Comment 28) Several comments suggested that deads and downers under 30 months of age be allowed in non-ruminant feed without brain and spinal cord removal, pointing out that no risk reduction is achieved by this requirement, and that age of deadstock could be verified by dentition, records, animal identification systems, or an onsite inspection. One comment said that FDA should provide guidance to renderers for procedures to verify age of cattle.

(Response). FDA agrees that very little BSE risk reduction would be realized by prohibiting from animal feed all cattle less than 30 months of age that were not inspected and passed for human consumption and from which brain and spinal cord had not been removed. In the preamble to the October 2005 proposed rule, the agency explained the rationale for the 30-month age criterion and stated that it should be applied in the animal feed context. However, the

agency also explained that the decision to prohibit all cattle not inspected and passed for human consumption from which the brain and spinal cord were not removed from animal feed was based on the fact that procedures were currently not in place at rendering facilities to verify that firms were determining the age of cattle effectively (70 FR 58570 at 58578). Several comments suggested methods to determine the age of dead cattle, including animal identification systems, dairy herd records, dentition, body weight, or feed lot origin.

Based on the limited scientific basis with regard to BSE risk reduction for prohibiting cattle not inspected and passed for human consumption less than 30 months of age and the comments suggesting ways to determine the age of such cattle, FDA has revised the definition of CMPAF in the final rule. The revised definition of CMPAF includes the entire carcass of cattle not inspected and passed for human consumption that are 30 months of age or older from which brains and spinal cords were not effectively removed or otherwise effectively excluded from animal feed. The final rule requires renderers to maintain written procedures if they remove brain and spinal cord from such cattle, or separate such animals based on whether or not they are 30 months of age or older. As suggested by one comment, FDA will issue separate guidance for industry on methods for determining the age of cattle. FDA will work with USDA to develop methods consistent with those of USDA.

As FDA noted previously (70 FR 58570 at 58579), section 402(a)(5) of the act states that a food shall be deemed to be adulterated if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter. Since the category of cattle defined in this final rule as “cattle not inspected and passed for human consumption” are animals that already fall within the category of animals referred to in section 402(a)(5) of the act as “diseased animals or animals which died otherwise than by slaughter,” any animal feed derived from such animals would be considered adulterated. However, FDA has traditionally exercised enforcement discretion with regard to the use of such animals in animal feed. For example, see Compliance Policy Guide 675.400. With the implementation of this final rule, FDA will no longer exercise enforcement discretion over those materials prohibited by this regulation (i.e., CMPAF) that are derived from cattle not inspected and passed for

human consumption. FDA intends to continue exercising such discretion (relative to section 402(a)(5) of the act) for the use in animal feed of material derived from such cattle that are not defined as CMPAF. This includes (1) The remaining material from cattle not inspected and passed for human consumption when the brain and spinal cord are effectively removed or effectively excluded from animal feed use and (2) the entire carcass from cattle not inspected and passed for human consumption if such cattle are shown to be less than 30 months of age.

(Comment 29) One comment asked that downer cattle not be allowed in animal feed.

(Response) Under the final rule, to prevent BSE, cattle not inspected and passed for human consumption are prohibited from use in animal feed unless they are shown to be less than 30 months of age or the brain and spinal cord are effectively removed or effectively excluded from animal feed. FDA originally included cattle of any age that were not inspected and passed for human consumption in the definition of CMPAF because: (1) European surveillance data suggested that cattle not inspected and passed for human consumption posed a higher risk for BSE and (2) we believed that processes were currently not established in the rendering industry for verifying the age of such cattle through inspection. However, FDA received comments on the feasibility of aging such cattle and on the relatively low risk reduction achieved by excluding such cattle if they were less than 30 months of age. FDA considered these comments, surveillance data indicating the current risk of BSE to U.S. cattle is very low, the strong feed protection provided by the existing ruminant feed rule, and the added secondary level of protection provided by the other provisions of this final rule. Based on these factors, FDA concluded that it was not necessary to include in the definition of CMPAF cattle not inspected and passed for human consumption that are under 30 months of age.

(Comment 30) One comment requested that striated muscle from cattle that died otherwise than by slaughter be allowed to be harvested for use in non-ruminant feed.

(Response) This final rule does not prohibit the use of cattle not inspected and passed for human consumption in animal feed if they are shown to be less than 30 months of age or if the brain and spinal cord are effectively removed or otherwise effectively excluded from animal feed. 4-D operations (plants that

harvest skeletal muscle from dead, dying, diseased, or disabled cattle) that harvest skeletal muscle for such use as pet and mink food fall within the final rule's definition of renderer and must have written procedures in place describing the aging methods and specifying how brain and spinal cord, or parts of carcasses containing brain and spinal cord, will be effectively removed or effectively excluded from animal feed. As discussed in more detail in the response to Comment 28, FDA notes that the use in animal feed of materials from cattle not inspected and passed for human consumption that are diseased or that die otherwise than by slaughter is the subject of enforcement discretion.

(Comment 31) One comment from a foreign country requested that FDA clarify whether beef recovered by Advanced Meat Recovery (AMR) systems from vertebral column, from which spinal cord has been removed, is permissible in animal feed.

(Response) This final rule does not prohibit in animal feed an AMR product derived from the vertebral column of cattle from which spinal cord has been removed prior to the AMR process, provided that the other requirements of the final rule are also met.

2. Definition of Cattle Not Inspected and Passed for Human Consumption

(Comment 32) Several comments stated that cattle carcasses and parts condemned on post-mortem inspection should not be considered CMPAF because some parts of the condemned carcass may have already been commingled with normal slaughter byproducts. The comments suggested that the definition "cattle not inspected and passed for human consumption" be changed to "cattle that do not pass ante-mortem inspection."

(Response) The agency did not intend for the purposes of this regulation that the carcasses of cattle condemned on post-mortem inspection be included in the definition of cattle not inspected and passed for human consumption. The agency intended this category of cattle to include cattle that had been presented to a slaughter establishment and rejected (did not pass ante-mortem inspection) as well as cattle that had not been presented to a slaughter establishment and, hence, were not subject to inspection by an appropriate regulatory authority. To clarify this, FDA is modifying the definition of "cattle not inspected and passed for human consumption" in this final rule to mean "cattle that did not pass ante-mortem inspection by the appropriate regulatory authority."

3. Restrictions on Tallow

(Comment 33) One comment stated that the proposal is unclear as to whether the 0.15-percent insoluble impurity standard applies to all tallow or only to tallow derived from CMPAF. The comment requested that the tallow standard only apply to CMPAF-derived tallow.

(Response) The final rule defines tallow as CMPAF if it is derived from: (1) BSE-positive cattle or (2) from other CMPAF material and contains insoluble impurities greater than 0.15 percent. The existing § 589.2000 has been changed to clarify that protein derived from mammalian tissues does not include tallow containing 0.15 percent or less insoluble impurities. The result of these changes is that tallow usage is more restrictive in ruminant feed than in feed for non-ruminants. All tallow that contains more than 0.15 percent insoluble impurities is prohibited in ruminant feed, but only tallow that contains more than 0.15 percent insoluble impurities and that is made from CMPAF is prohibited in the food or feed of all animals.

(Comment 34) Five comments stated that tallow should be prohibited in animal feed. Two comments said that tallow should be entirely free of protein impurities. In contrast, another comment said that tallow from animals inspected and passed for human consumption with SRM removed should be allowed in animal feed without the 0.15 percent restriction.

(Response) The agency disagrees that all tallow should be prohibited in animal feed or that tallow should be free of impurities to be used in animal feed. The OIE considers tallow with less than 0.15 percent insoluble impurities to be protein-free. Further, OIE guidelines recommend that tallow meeting this standard is safe for use in animal feed, regardless of the exporting country's BSE status. As explained in the proposed rule, the agency is concerned about protein impurities that may be present in tallow particularly now that an attack rate study in the United Kingdom has found that oral administration of a very low dose (1 milligram (mg)) of BSE-infected brain produced disease in 1 of 15 calves receiving the dose. The agency sought comment on its proposed action, but no comments were received that provided a scientific basis for the agency to modify its position. Therefore, FDA has decided to prohibit all tallow containing more than 0.15 percent insoluble impurities from use in ruminant feed, but prohibit only tallow that contains more than 0.15 percent insoluble

impurities and is made from CMPAF from use in food or feed for other animal species.

(Comment 35) Two comments said that, because no BSE risk is associated with the dirt, bone, and sand that comprise the impurities in tallow, the agency does not need to prohibit tallow containing more than 0.15 percent impurities.

(Response) These comments imply that protein is not a component of tallow impurities. A 2001 report from a European Scientific Steering Committee stated that analysis of impurities in six tallow samples found that crude protein levels ranged from 5 percent to 16 percent, assuming that all nitrogen in the impurities was of protein origin (Ref. 13). Since protein may be a component of tallow impurities, FDA believes that limiting tallow impurities to the OIE recommended level of 0.15 percent is appropriate.

4. Feasibility of Removing Brain and Spinal Cord

(Comment 36) Many comments stated that brain and spinal cord cannot be removed completely from some dead cattle, and that the feasibility of removal depends on such things as condition of the carcass, size of the animal, worker skill, weather conditions, and distance between the production site and the rendering facility. Some comments submitted estimates of the percentage of dead animals from which brain and spinal cord could feasibly be removed. Those estimates ranged from as low as 15 percent to as high as 54 percent.

(Response) FDA acknowledges that removing brain and spinal cord from dead cattle may be difficult for the reasons mentioned, and that the agency may have overestimated the number of independent renderers that would choose to remove brain and spinal cord from dead cattle. However, FDA believes that, unless cattle not inspected and passed for human consumption are shown to be less than 30 months of age, the brain and spinal cord must be removed prior to use in animal food or feed to prevent BSE. As discussed in more detail in the response to Comment 28, FDA notes that the use in animal feed of materials from cattle not inspected and passed that are diseased or that die otherwise than by slaughter is the subject of enforcement discretion.

(Comment 37) FDA was asked to define what constitutes an "acceptable" level of brain/spinal cord removal. Another comment recommended that renderers maintain written procedures for processes used to remove brain and spinal cord and verify that such

processes meet FDA standards for removal.

(Response) During an inspection, FDA will review the adequacy of a firm's written procedures for removal of brain and spinal cord and will verify that the firm is following its procedures and effectively removing all the brain and spinal cord or otherwise excluding it from animal feed use.

(Comment 38) One comment said that custom-slaughter plants (not federally or State inspected) will need to remove the brain and spinal cord of all cattle, regardless of the animal's age.

(Response) Meat from cattle slaughtered under the custom-slaughter exemption is exclusively for the use by the owner of the animal, members of his or her household, and nonpaying guests and employees (Federal Meat Inspection Act, section 623(a)). Because such cattle are slaughtered without inspection by an appropriate regulatory authority, these animals would be considered cattle not inspected and passed for human consumption. The rule prohibits their use in animal feed if they are not shown to be less than 30 months of age or the brain and spinal cord are not effectively removed or effectively excluded from animal feed.

(Comment 39) One comment stated that FDA should require firms that intend to render deadstock for use in animal feed to obtain a special permit and demonstrate to FDA's satisfaction that they have implemented a system that is consistently effective in removing brain and spinal cord.

(Response) This final rule requires that rendering firms maintain written procedures specifying how brain and spinal cord are effectively removed. The agency does not believe that requiring such firms to obtain a permit is necessary at this time. FDA believes that following its current approach of working collaboratively with its State counterparts to ensure compliance with BSE regulations will continue to be effective.

5. Determining the Age of Cattle Not Inspected and Passed for Human Consumption

(Comment 40) Two comments stated that dentition will not work for the process of determining the age of cattle and that an animal identification system is needed.

(Response) The final rule has been revised to emphasize that firms are responsible for having processes in place to ensure cattle not inspected and passed for human consumption from which brain and spinal cord are not removed are shown to be less than 30 months of age. If a firm is unable to

determine the age of an animal, the brain and spinal cord must be removed in order for the remaining carcass to be used for animal feed and not violate the prohibitions in this final rule. As discussed in more detail in the response to Comment 28, FDA notes that the use in animal feed of materials from cattle not inspected and passed that are diseased or that die otherwise than by slaughter is the subject of enforcement discretion.

Cattle under 30 months of age may be adequately identified through dentition. Veterinary texts and academic articles indicate that the second set of permanent incisors erupt when cattle are between 24 and 30 months of age. Thus, cattle would be considered to be 30 months of age and older if at least one of the second set of permanent incisors has erupted. However, environmental or operational conditions could make aging by dentition difficult. Therefore, firms' written procedures may need to include other means of age determination or adopt the default assumption that the animal is over 30 months.

6. Disposal of Prohibited Materials

A significant number of comments were submitted pertaining to disposal problems that could be created if the proposed rule is finalized. These problems ranged from the financial burden created by collection fees to State and local regulations that restrict non-feed disposal of prohibited materials.

(Comment 41) Numerous comments said that FDA underestimated the volume of material that will require alternative disposal when FDA's proposed measures force renderers to increase collection fees or discontinue deadstock pickup. One comment said that as a result of the new regulation, pig, horse, and deer mortalities will no longer be picked up on discontinued routes. Another comment stated that farmers and dairymen will probably bury, compost, landfill, or dump carcasses to avoid the increased collection fee that renderers will charge.

(Response) FDA agrees that renderers who continue to collect deadstock will likely increase collection fees to cover the costs of complying with the new requirements, and that we may have underestimated the impact that higher fees will have on deadstock collection. In the October 2005 proposed rule (70 FR 585701 at 58592), we estimated that the 17 percent of dead cattle currently being collected would decrease by 3.5 percent, and did not assume a decrease in the collection of dead animals of other species. The revised economic

impact analysis that accompanies this rule estimates that collection of calves and cattle will decline by 29.4 percent to 44.8 percent, with an additional 10-percent loss in rendering volume throughput to reflect a decrease in collection of dead animals of other species. Dead animals no longer collected should be disposed of in an environmentally and legally acceptable manner.

(Comment 42) Some comments stated that rendering is the best disposal option and that burial, composting, and incineration are undesirable alternatives. One comment said that if SRMs and deadstock are diverted from animal feed use, FDA will no longer have control over this material. Another comment pointed out that it takes 14 months to properly compost a 1500-pound (lb) cow.

(Response) FDA believes this final rule appropriately controls materials to be rendered for animal feed. FDA intends to work with relevant local, State, and other Federal agencies concerning disposal issues.

(Comment 43) Some comments stated that an infrastructure is not in place to provide alternative disposal in all areas of the country. Several comments said the rule will create a disposal crisis. One comment said that landfill operators and solid waste regulators are not prepared to deal with the magnitude of the disposal problem, and that some landfills will not accept dead animals or slaughter byproducts. Another comment said that they found no incinerators in their service area that would accept dead animals. One comment said that disposal rendering is feasible, but may not be locally available or that collection fees may be prohibitive. The last comment also said that alkaline hydrolysis digesters are not feasible, strict air pollution measures might preclude the use of incinerators, composting is prohibited in some areas, and land for burial is unavailable in densely populated areas.

(Response) FDA recognizes that no single method of disposal is available or suitable in all regions of the country and acknowledges that the transition from rendering to other forms of disposal will be challenging in some parts of the country. The regulation will not become effective until 12 months after publication of this final rule, so that livestock producers, meat packers, renderers, and regulators have sufficient time to arrange for disposal of CMPAF using one or more of the alternatives mentioned or any other legal alternative.

(Comment 44) A number of comments stated that, due to disposal restrictions at the State and local levels, a

comprehensive disposal plan is needed before the proposed rule is implemented. Several comments said that FDA should consult with Federal, State, and local agencies, and with the affected industries, on environmentally safe disposal of deadstock. One comment said that neither FDA nor USDA has jurisdiction over on-farm disposal. Another comment said that USDA should use its broad animal health authority to lead a Federal agency task force on disposal.

(Response) Non-feed disposal of carcasses and slaughter byproducts is primarily regulated by State and local agencies. Under certain circumstances, Federal agencies, such as the Environmental Protection Agency (EPA), may use their authorities to regulate disposal of this material. FDA consulted with EPA and participated in an industry sponsored roundtable in July 2006 to discuss practical solutions for non-feed disposal throughout the United States. FDA is ready to work with industry and other governmental agencies in identifying appropriate ways to dispose of CMPAF.

(Comment 45) Some comments pointed out that Europe avoided massive disposal problems through government subsidies to the rendering industry for picking up and rendering prohibited material. Subsidies would help with disposal problems in the United States.

(Response) FDA does not have authority to subsidize alternative disposal of CMPAF.

(Comment 46) Several comments urged FDA to explore alternative ways to use CMPAF, such as in the production of biofuel.

(Response) FDA welcomes innovative ways of disposing of animal byproducts, such as using them for the production of biofuels. The agency has participated in industry/government workshops that explored ideas for using deadstock and animal byproducts for the production of energy. The agency encourages environmentally sound, commercial uses of these materials so that the disposal burden is minimized.

(Comment 47) One comment indicated that FDA should not expect a disposal-only rendering industry to develop if the proposed rule is implemented.

(Response) FDA acknowledges that many factors, including the implementation of this final rule, play a role in determining whether facilities dedicated to disposal rendering may emerge in the marketplace.

(Comment 48) One comment stated that prohibited brain and spinal cord material should not be diverted for use

as fertilizer because the infectious agent can survive in soil and be recycled to cattle through crops.

(Response) FDA is not aware of any data showing that BSE can be transmitted by this route.

(Comment 49) One comment asked that the U.S. Government focus on research and on supporting the rendering industry's development of alternative uses for animal byproducts.

(Response) FDA agrees that alternative uses for animal byproducts need to be encouraged and studied further.

7. Ensuring Appropriate Handling of Prohibited Material

(Comment 50) Several comments addressed certification/registration of facilities handling cattle materials. One comment suggested that FDA should require annual certification to ensure that every facility handling cattle materials is in compliance with the rule. Another comment suggested registration of entities that handle prohibited cattle material, including renderers, farms that feed or mix feed for ruminants, and other parties that handle prohibited material, except where government inspection is already present (packer-associated renderers).

(Response) The agency does not believe that requiring certification or registration of firms is necessary at this time. FDA believes that continuing its current approach of working collaboratively with its State counterparts to ensure compliance with BSE regulations will continue to be effective.

(Comment 51) One comment asked whether written statements from slaughter and processing establishments would be acceptable to FDA as evidence that offal is free of prohibited material. One comment said that, due to liability concerns, renderers will be reluctant to accept material from plants that are not federally inspected. Two comments said that slaughter plants should be required to verify that raw materials sent for rendering into animal feed are free of prohibited cattle materials.

(Response) The proposed rule provided that renderers that handle cattle materials must establish and maintain records sufficient to demonstrate that materials rendered for animal feed are not manufactured from, processed with, or does not otherwise contain CMPAF. The final rule has been revised to further clarify that renderers' records must also include certification or other documentation from each supplier, or other documentation acceptable to FDA, that CMPAF has been excluded from materials to be

rendered for use in animal feed. Certification or other documentation from the supplier would be considered acceptable provided it includes a description of the supplier's segregation procedures, documentation that the supplier confirms that its segregation procedures are in place prior to supplying any cattle material to the renderer, and records of the renderer's periodic review of the suppliers' certification or other documentation. Other methods acceptable to FDA, such as third-party certification, may also be used by renderers to document that suppliers have excluded CMPAF from material supplied to the renderer.

(Comment 52) One comment asked that FDA clarify whether separate lines of equipment (barrels, room storage, pick-up vehicles) are required for handling SRM material. Another comment said the proposal's requirement that facilities be dedicated may cause renderers to discontinue processing CMPAF. A third comment stated that equipment for processing and transportation of prohibited cattle materials should be specifically designated for such purposes only. A fourth comment suggested that renderers and slaughter plants should have verifiable separation and identification procedures in place.

(Response) Under the final rule, renderers that provide a service to a slaughter plant by disposing of CMPAF must ensure that there is no cross-contamination, either through direct contact or via equipment surfaces, between CMPAF and animal feed or feed ingredients. In addition, CMPAF material is required to be marked and labeled "Do not feed to animals." Renderers are responsible for ensuring that firms collecting such material on their behalf meet these requirements.

8. Enforcement Issues

FDA received many comments that addressed enforcement issues. Specifically, concerns were raised about an increased inspection burden, prohibited materials being illegally transported and dumped, and the need for agency guidance on recordkeeping.

(Comment 53) Several comments said that additional resources will be needed to effectively enforce the new measures. One comment said that additional inspectors may be needed to ensure proper removal and disposal of the CMPAF. Two other comments said that increased inspectional presence will be necessary to ensure that firms comply with aging and brain and spinal cord removal requirements.

(Response) FDA agrees that successful enforcement of the new measures will

require an increased inspectional presence at firms that render cattle materials. Any reallocation of inspections needed to enforce this new rule should not affect the inspections of high-risk firms that are already being conducted to enforce the current ruminant feed rule.

(Comment 54) One comment said the proposed rule creates too much of an inspectional burden with an over reliance on the examination of records. Another comment, in contrast, said that visual inspection by investigators ultimately cannot determine the presence or absence of the BSE agent.

(Response) The agency considers both onsite observations of firms' operations and examination of records to be important and valuable components for ensuring compliance with the new rule. Inspections are not intended to detect the presence of the BSE agent, but rather are intended to ensure that CMPAF are not used in animal feed. Records examination is intended to verify that firms maintain and follow written procedures and to facilitate tracking the receipt, processing, and distribution of CMPAF.

(Comment 55) One comment stated that increases in renderer pick-up fees will result in illegal transportation and dumping of deads, downers, and CMPAF.

(Response) FDA intends to vigorously enforce this new rule to ensure that CMPAF is not used in animal feed. FDA believes this final rule appropriately controls materials to be rendered for animal feed. FDA intends to work with relevant local, State, and other Federal agencies concerning disposal issues.

(Comment 56) One comment said the proposal may cause independent renderers to stop accepting offal from red meat slaughter and processing establishments unless assurances are received that prohibited materials have been removed. Another comment cited a statement from a USDA OIG report saying that slaughter establishments are not adequately removing SRMs under current USDA regulations (Ref.14). The comment expressed concern that assurance cannot be provided for the removal of CMPAF from slaughter cattle under the proposed FDA regulation.

(Response) As stated in the proposed rule, this final rule requires renderers to establish and maintain records sufficient to demonstrate that raw materials to be rendered for animal feed are free of CMPAF. The agency expects that, as a condition of collection, renderers will require beef slaughter establishments to provide sufficient documentation to enable the renderers to meet their obligation for establishing

and maintaining records demonstrating CMPAF removal. As discussed above, this final rule clarifies that renderers' records must include documentation, such as certification or other documentation from the supplier that material supplied to the renderer does not include CMPAF, or documentation of another method acceptable to FDA to verify that CMPAF has been segregated from slaughter byproducts that are to be rendered for animal feed use.

(Comment 57) Several comments stated that renderers might not collect offal from 4-D plants and custom slaughter establishments because there is not routine government inspection of these operations to ensure removal of CMPAF. Several comments suggested that FDA require written certification of CMPAF removal.

(Response) Because 4-D plants meet the definition of renderer, these firms are subject to the requirements of this rule. The final rule requires that renderers maintain written procedures for how they will remove brain and spinal cord from cattle not inspected and passed for human consumption and, if such cattle are to be rendered without brain and spinal cord removal, written procedures for how they will verify that such cattle are less than 30 months of age. Rendering firms that collect material from a 4-D operation would have the responsibility of showing that CMPAF had been removed by the 4-D plant prior to collection, or that any CMPAF-containing material collected is not introduced into animal feed.

With respect to custom slaughter, the final rule defines CMPAF to include certain cattle not inspected and passed for human consumption by the appropriate regulatory authority. Since the slaughter and processing of cattle in custom slaughter operations are not subject to inspection, the cattle handled by custom slaughter facilities would be considered not inspected and passed for human consumption. Therefore, cattle materials from custom slaughter establishments cannot be rendered for use in animal feed if the brain and spinal cord are not effectively removed from cattle that are 30 months of age or older. It is the renderer's responsibility to establish and maintain records sufficient to demonstrate that material rendered for use in animal feed does not contain CMPAF. The final rule clarifies that these records must include certification or other documentation from the supplier demonstrating that adequate segregation procedures are in place at slaughter establishments, including custom slaughter

establishments, that supply cattle materials to the renderers.

If renderers receive CMPAF for disposal, they are responsible for ensuring that it is excluded from animal feed. As discussed in more detail in the response to Comment 29, FDA notes that the use in animal feed of materials from cattle not inspected and passed for human consumption that are diseased or that die otherwise than by slaughter is the subject of enforcement discretion.

(Comment 58) Numerous comments asked that FDA provide guidance on several aspects of the rule, such as proper recordkeeping, acceptable processes for removing brain and spinal cord from cattle not inspected and passed for human consumption, and separation and dedication of processing areas.

(Response) FDA has specified in the final rule the recordkeeping requirement for renderers receiving raw materials from slaughter facilities. FDA will provide guidance as needed for meeting other requirements of the new rule.

(Comment 59) One comment suggested that FDA require firms handling prohibited material to be registered.

(Response) Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, facilities that manufacture, process, pack, or hold food for consumption in the United States must register with FDA. The agency does not believe that requiring additional registration of all firms handling prohibited material is necessary at this time. FDA believes that following its current approach of working collaboratively with its State counterparts to ensure compliance with BSE regulations will continue to be effective.

(Comment 60) One comment suggested that FDA license firms handling prohibited cattle material just as it licenses feed mills that use Category II drugs as Type A medicated articles.

(Response) The agency does not believe that requiring that firms be licensed is necessary at this time. FDA believes that continuing its current approach of working collaboratively with its state counterparts to ensure compliance with BSE regulations will continue to be effective.

(Comment 61) Two comments questioned whether FDA has jurisdiction to inspect slaughter establishments to verify proper segregation of CMPAF. Another comment said it strongly opposes new FSIS inspectional activity to oversee CMPAF removal from animal feed. In addition, two comments said that the

proposed rule amounts to an unfunded mandate requiring States to conduct additional inspections at slaughter establishments to ensure proper removal of CMPAF.

(Response) Under this final rule, it is the responsibility of the renderer to ensure that material rendered for use in animal feed is free of CMPAF. FDA acknowledges that it does not conduct inspections in USDA-regulated slaughter establishments. Nevertheless, the agency believes that ensuring the segregation of CMPAF from other slaughter byproducts is pivotal to enhancing the safety of all animal feed. During inspections at rendering facilities, FDA intends to verify that renderers maintain records sufficient to demonstrate that material rendered for use in animal feed does not contain CMPAF. In response to comments regarding recordkeeping and the need for verification of the raw materials, the final rule has been revised to clarify that a renderer's records must either include certification or other documentation from the supplier that material supplied to the renderer does not include CMPAF, or documentation of another method acceptable to FDA, such as third party certification, for verifying that suppliers have effectively excluded CMPAF.

(Comment 62) Two comments stated that distribution records should be sufficiently detailed to allow for conducting trace forward and trace back investigations of prohibited cattle materials.

(Response) As finalized herein, § 589.2001(c)(2)(vi) (21 CFR 589.2001(c)(2)(vi)) requires renderers that handle CMPAF to establish and maintain records sufficient to track CMPAF to ensure such material is not introduced into animal feed, and make the records available for inspection and copying by FDA. And under § 589.2001(c)(3)(i), renderers that handle any cattle materials must establish and maintain records sufficient to demonstrate that material rendered for use in animal feed was not manufactured from, processed with, or does not otherwise contain, CMPAF, and make the copies available for inspection and copying by FDA. FDA expects to provide guidance, as needed.

(Comment 63) One comment stated that renderers should maintain records on how they dispose of prohibited cattle material.

(Response) The final rule requires renderers to maintain records sufficient to track CMPAF to ensure that the material was not introduced into animal feed.

(Comment 64) Several comments suggested that instead of requiring that records be kept for 1 year, FDA should require that records be maintained for a longer time period. Suggestions ranged from 3 to 12 years.

(Response) FDA does not consider it necessary to extend the recordkeeping requirement. As discussed in greater detail in the preamble to the October 2005 proposed rule (70 FR 58570 at 58582), FDA believes 1 year is appropriate, considering the amount of time the products will be in the animal feed production and distribution systems.

9. Implementation of New Requirements

(Comment 65) Several comments pointed out that time may be needed for implementation of the rule. Two comments suggested that it would take more than a year for renderers to develop dedicated rendering facilities or other types of disposal in California. Two other comments suggested a staged approach.

(Response) FDA received numerous comments regarding the impacts of the proposed new requirements, particularly with respect to the separation and appropriate disposal of CMPAF. The analysis of economic impacts completed for this final rule estimates that slaughter and rendering facilities will incur substantial one-time capital costs in order to comply with the new requirements. Furthermore, this analysis indicates that a substantial component of the total cost of this rule is associated with the disposal of CMPAF. Based on comments received on the proposed rule and on FDA's impact analysis completed for this final rule, FDA agrees that sufficient time will be needed to effectively implement the new requirements of this final rule including the development of alternate methods for disposing of CMPAF. FDA believes that 12 months should be a sufficient amount of time for the U.S. animal feed industry to come into compliance with this final rule.

(Comment 66) Several comments said that instead of implementing new measures, FDA should provide additional resources to support compliance and enforcement of the current ban. Two comments stated that implementation of the new rule should not lessen enforcement of the current rule.

(Response) The basis for the measures in this final rule was discussed in the preamble to the October 2005 proposed rule (70 FR 58570 at 58578). Implementation of this new rule should not diminish inspection and enforcement of the 1997 ruminant feed

rule at firms that handle prohibited mammalian protein. Current resources should allow for effective enforcement of both rules.

(Comment 67) One comment said that rendering plants will need time to modify equipment and procedures before the rule is implemented.

(Response) FDA understands that rendering plants will have to make a variety of modifications to comply with the final rule. For this reason, FDA has made the new rule effective 12 months from the date of publication.

C. Comments on Proposed Amendments to § 589.2000—Animal Proteins Prohibited in Ruminant Feed

The final rule amends § 589.2000 to exclude from the definition of “protein derived from mammalian tissues” tallow containing no more than 0.15 percent insoluble impurities and tallow derivatives as specified in § 589.2001(b)(6). FDA also received several comments related to other requirements in § 589.2000.

(Comment 68) Three comments stated that salvaged pet foods, including distressed pet food, should be prohibited in cattle feed.

(Response) Pet food containing prohibited mammalian protein is prohibited from use in ruminant feed by the 1997 ruminant feed rule. Pet food products sold or intended for sale as distressed or salvage items must be labeled with the statement “Do not feed to cattle or other ruminants” if they contain or may contain prohibited mammalian protein (see § 589.2000(d)(4)). This final rule further reduces the risk that cattle could be exposed to the BSE agent through pet food because it requires the removal of certain cattle-derived risk materials from all animal feed.

(Comment 69) Two comments requested that the current feed rule be revised to exempt firms that handle retail pet food from recordkeeping requirements.

(Response) The 1997 ruminant feed rule requires firms to maintain records sufficient to track products containing prohibited mammalian protein. Exempting retail pet food distributors from recordkeeping requirements would diminish the ability of the agency to trace feed or feed ingredients that are adulterated under the 1997 ruminant feed rule. The agency intends to issue guidance that addresses what constitutes records sufficient to track prohibited protein associated with the sale of retail pet food.

(Comment 70) One comment suggested that the current rule be revised to require feed labels that

clearly, concisely, and accurately inform users about the source of animal protein ingredients in feeds. The comment said that requiring new feed ingredient definitions such as “non-ruminant derived animal proteins,” “ruminant derived animal proteins,” and “non-mammalian derived animal proteins” would be helpful.

(Response) Section 589.2000 requires that feed products that contain or may contain prohibited mammalian protein be labeled with the caution statement “Do not feed to cattle or other ruminants.” Part 501 (21 CFR part 501) contains most of the labeling requirements for animal feed. Under § 501.4, ingredients must be listed on the product label by their common or usual name. Section 501.110 provides for the use of collective terms, such as “animal protein products,” in lieu of listing each ingredient by its common or usual name. For FDA recommendations regarding the common or usual names for animal feed ingredients, see Compliance Policy Guide 7126.08. In response to the FDA Amendments Act of 2007, FDA intends to develop new regulations on processing and ingredient standards and ingredient definitions for all animal feed, and updated labeling standards for pet food.

III. Description of the Final Rule

A. Definitions

Section 589.2001(a)(1) is being added to the final rule, and it sets forth the purpose of new § 589.2001, which is to prohibit the use of certain cattle origin materials in the food or feed of all animals to further reduce the risk of the spread of BSE within the United States.

To address the BSE risk, § 589.2001(b)(1) defines cattle materials prohibited in animal feed (CMPAF) to include the following: (1) The entire carcass of BSE-positive cattle; (2) the brains and spinal cords of cattle 30 months of age and older; (3) the entire carcass of cattle not inspected and passed for human consumption that are 30 months of age or older from which brains and spinal cords were not effectively removed or otherwise effectively excluded from animal feed; and (4) mechanically separated beef and certain tallow that is derived from materials prohibited by this rule. The definition of CMPAF does not include tallow derivatives or certain tallow that contains no more than 0.15 percent insoluble impurities. This definition differs from the proposed rule in that the entire carcass from BSE-positive cattle has been added to the definition. This was done to clarify that all materials from such animals are

prohibited from use in animal feed. Further, the regulations were revised to exclude from the definition of CMPAF certain cattle that have not been inspected and passed for human consumption. Under the proposed rule, cattle that were not inspected and passed for human consumption were excluded from the definition of CMPAF if their brains and spinal cords were removed. The final rule was revised to indicate that such cattle are not considered CMPAF if the animals were shown to be less than 30 months of age, regardless of whether the brain and spinal cord have been removed. The regulations have also been revised to exclude from the definition of CMPAF certain cattle materials that originate from a country that has been designated by FDA as exempt from the requirements of this rule based on its BSE risk status. This exclusion is being added in response to comments and because the agency has determined that it is not necessary for all BSE-related restrictions to apply to animal feed regardless of a country's BSE status. Epidemiological evidence indicates that the BSE epidemic in the United Kingdom (U.K.) was a result of consumption of animal feed contaminated by the BSE agent. The spread of BSE outside the U.K. has been attributed to the export of BSE-contaminated feed from the U.K. to other countries prior to the realization of the role of feed in transmitting the disease and the subsequent restrictions on such trade. FDA acknowledges that a country may not have engaged in commercial trade in animal feed with the U.K. or other affected countries, and it may have had preventive measures in place for a length of time adequate to make remote the chance that BSE is present in that country.

Such a country may be able to demonstrate to FDA that its BSE case history, risk factors, and measures to prevent the introduction and transmission of BSE make certain BSE-related restrictions unnecessary with respect to cattle materials from that country. Allowing cattle materials from such a country to be used in non-ruminant animal feed manufactured from, processed with, or otherwise containing CMPAF is consistent with OIE's recommendation that other prohibited materials from negligible risk countries not be restricted. The process for seeking designation to be covered by this exclusion is set forth in § 589.2001(f).

In its application, the requesting country will be expected to provide information to FDA on its BSE case history, including whether cattle in that

country have tested positive for BSE, and, if so, the circumstances and the country's response. In addition, FDA will review information that addresses the extent to which the requesting country has identified and taken into account relevant risk factors such as the following:

- Possible presence of BSE in indigenous and/or imported cattle;
- Geographic origin of imported cattle;
- Materials used in the production of ruminant feed and feed ingredients; and
- Importation of ruminant feed and feed ingredients.

FDA will consider information relating to the possible presence of BSE in indigenous and imported cattle in the requesting country as well as the requesting country's production and importation of ruminant feed and feed ingredients. With respect to imported cattle, relevant information includes the identification of any countries where imported cattle were born or raised and the dates any cattle were imported. With regard to ruminant feed, FDA will consider, among other things, how ruminant feed was produced in the requesting country, including what animal origin materials were allowed to be included. FDA will also consider whether ruminant feed and feed ingredients were imported, and if so, the source countries and dates of import.

In addition to reviewing risk factors such as those identified previously, FDA will assess how the requesting country has addressed and managed any identified BSE risks through the implementation of appropriate measures to prevent the introduction and transmission of BSE. FDA will consider how long such preventive measures have been in place and whether they have been effectively carried out. Examples of preventive measures include the following:

- A prohibition on the use of ruminant feed that might carry a risk of transmitting the BSE agent;
- A prohibition on the import of cattle and cattle-derived products that might carry a risk of transmitting the BSE agent;
- Surveillance systems for BSE in cattle populations with appropriate examination of brain or other tissues collected for surveillance in approved laboratories;
- Mandatory notification and examination of all cattle showing signs consistent with BSE; and
- Protocols or other written procedures for investigating potential cases of BSE, including ability to trace former herdmates of BSE-positive animals.

As part of its evaluation of a requesting country's feed restrictions, FDA will consider factors including whether appropriate feed restrictions are in place and the adequacy of enforcement of those restrictions (e.g., the frequency of facility inspections and level of compliance). FDA also will consider a requesting country's import controls for cattle material. Such consideration will include whether the country effectively monitors and controls potential pathways of cattle materials and other potentially infective materials into its country from other countries for which such controls are necessary.

In addition, FDA will consider the requesting country's surveillance and monitoring efforts with respect to BSE. For example, FDA will evaluate the level at which the country performs surveillance and monitoring, whether tissue samples are collected and examined at approved laboratories, and whether recognized diagnostic procedures and methods are used, such as those procedures and methods provided in the OIE Manual of Diagnostic Tests and Vaccines for Terrestrial Animals (Ref. 15).

FDA also will consider whether the requesting country has an ongoing program for notification and investigation of all cattle showing signs consistent with BSE. In evaluating such a program, FDA will consider, among other factors, whether notification and investigation is mandated, whether veterinarians, producers, and others involved in cattle production have been provided sufficient information about BSE, such as through an awareness program, and whether there are additional measures in place to stimulate reporting of suspect cattle, such as compensation or penalties.

FDA will consider a requesting country's written procedures for investigating potential cases of BSE. Such a consideration will include whether the country has written procedures for the investigation of suspect animals and whether the country has the investigative capability to follow up positive findings by tracing former herdmates of animals determined to be BSE positive. Finally, FDA also will consider any other information relevant to determining whether the country should be designated under § 589.2001(f).

FDA and the USDA agencies, APHIS and FSIS, have different regulatory responsibilities with respect to preventing BSE and ensuring food safety. Therefore, FDA cannot rely on the evaluations of APHIS and FSIS in making a determination on country

designations. FDA will, however, consult with APHIS and FSIS as part of its evaluation process. In addition, FDA will take into consideration available risk assessments of other competent authorities in conducting its evaluation. Although it is not required, a previous BSE evaluation by USDA, OIE, or by another government or another competent authority, will be helpful to FDA in its review and may decrease the time needed for FDA to make a determination.

Upon completion of its review, FDA will provide written notification of its decision to the requesting country, including the basis for the decision. FDA may impose conditions in granting a request for designation. Further, any designation granted under § 589.2001(f) will be subject to future review by FDA to ensure that the designation remains appropriate. As part of this process, FDA may ask designated countries to confirm that their BSE situation and the information submitted by them in support of their original application remain unchanged. Further, FDA may revoke a country's designation if FDA determines that it is no longer appropriate.

FDA will provide further information on its evaluation process, the scope of the review, and the types of supporting information that it would find helpful in reviewing a country's submission at the time of the request.

Section 589.2001(b)(2) defines cattle not inspected and passed for human consumption as cattle that did not pass antemortem inspection by the appropriate regulatory authority. This term includes nonambulatory disabled cattle. Nonambulatory disabled cattle are cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions. The definition of cattle not inspected and passed for human consumption was revised to add the word "ante-mortem" to clarify that cattle referred to in this definition are those that did not pass (or were not subjected to) antemortem inspection.

Section 589.2001(b)(3) defines mechanically separated beef as a finely comminuted meat food product, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses.

Section 589.2001(b)(4) defines renderer to mean any firm or individual that processes slaughter byproducts, animals unfit for human consumption, or meat scraps. The term includes

persons who collect such materials and subject them to minimal processing, or distribute them to firms other than renderers (as defined in this paragraph) whose intended use for the products may include animal feed, industrial use, or other uses. The term includes renderers that also blend animal protein products.

Section 589.2001(b)(5) defines tallow to mean the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues.

Section 589.2001(b)(6) defines tallow derivative to mean any product obtained through initial hydrolysis, saponification, or transesterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or transesterification may be applied to obtain the desired product.

The definitions in § 589.2001(b)(3), (b)(4), (b)(5), and (b)(6) are unchanged from the proposed rule.

B. Requirements

Section 589.2001(c)(1) provides that no animal food or feed ingredient shall be manufactured from, processed with, or otherwise contain CMPAF. Section 589.2001(c)(2) provides new requirements for renderers that handle CMPAF. Section 589.2001(c)(3) provides new requirements for renderers that handle any cattle material.

1. Requirements for Renderers That Receive, Manufacture, Process, Blend, or Distribute CMPAF

Section 589.2001(c)(2) of the final rule has been revised to include requirements for renderers that intend to render for use in animal feed cattle not inspected and passed for human consumption. If such cattle are to be rendered for animal feed, the renderer must ensure that the brain and spinal cord are effectively removed or otherwise effectively excluded from material rendered for use in animal feed. If such cattle are to be rendered without brain and spinal cord removal, the renderer must ensure that such animals are less than 30 months of age. In addition, written procedures must be maintained specifying the procedures used to ensure compliance with these requirements.

As provided in the proposed rule, § 589.2001(c)(2) of the final rule also requires that renderers that handle CMPAF use separate equipment or containers to handle such material once it has been separated from other cattle materials. This requirement is intended

to ensure that equipment used to manufacture, process, blend, store, or transport CMPAF or products that contain or may contain CMPAF do not serve as a source of cross-contamination.

In addition, § 589.2001(c)(2) requires renderers that handle CMPAF or products that contain or may contain CMPAF to: (1) Label the prohibited materials in a conspicuous manner with the statement "Do not feed to animals"; (2) mark the prohibited material with an agent that can be readily detected on visual inspection, and (3) establish and maintain records sufficient to track the prohibited materials to ensure such material is not introduced into animal feed, and make the records available for inspection and copying by FDA. These requirements are intended to ensure that CMPAF do not enter the animal feed chain and thus have no opportunity for inclusion in animal food or feed. FDA believes that such material must be both labeled and marked to ensure that it does not enter the feed channels, since without such measures this material would be indistinguishable from other cattle materials. Marking the material will provide a readily detectable method on visual examination by which all persons in the animal feed chain can be made aware that the product is prohibited material or contains prohibited material. Marking also will serve as a way to make the status of the material known if, for some reason, the label "Do not feed to animals" is separated from the product.

2. Requirements for Renderers That Receive, Manufacture, Process, Blend, or Distribute Any Cattle Materials

Section 589.2001(c)(3) requires that renderers that handle any cattle materials shall: (1) Establish and maintain records sufficient to demonstrate that material rendered for use in animal feed was not manufactured from, processed with, or does not otherwise contain, CMPAF; (2) make copies of records available for inspection and copying by FDA; and (3) be in compliance with requirements under § 589.2000 regarding animal proteins prohibited in ruminant feed. These requirements are unchanged from the proposed rule.

C. Recordkeeping and Access Requirements

Section 589.2001(c)(2)(v) requires that renderers that receive, manufacture, process, blend, or distribute CMPAF establish and maintain records sufficient to demonstrate that such material was not introduced into animal feed and make them available to FDA

for inspection and copying. Furthermore, § 589.2001(c)(3) requires that renderers that receive, manufacture, process, blend, or distribute any cattle materials establish and maintain records sufficient to demonstrate that material rendered for use in animal feed was not manufactured from, processed with, or does not otherwise contain CMPAF. Such records shall be considered sufficient to meet this requirement if they include documentation that establishments supplying cattle materials to the renderers have adequate procedures in place to effectively exclude cattle materials prohibited in animal feed. The exclusion of CMPAF by establishments supplying cattle materials to renderers must be demonstrated either by certification or other documentation provided by the supplier or by another method acceptable to FDA such as third-party certification. Certification or other documentation provided by the supplier is acceptable provided such records include a description of the supplier's segregation procedures, documentation that the supplier confirms that such procedures are in place prior to supplying any cattle material to the renderer, and records of the renderer's periodic review of its suppliers' certification or other documentation. Copies of all records established and maintained by renderers must be made available for inspection and copying by FDA.

In the preamble to the October 2005 proposed rule (70 FR 58570 at 58581), FDA explained that these recordkeeping requirements were intended to ensure that no CMPAF would enter the feed channel. At that time, the agency explained that it did not believe it was necessary for persons other than renderers that are involved in the manufacture or processing of feed or feed ingredients to maintain records documenting the exclusion of CMPAF. The agency went on to state its belief that requiring the maintenance of such records at all manufacturing and processing points downstream would be redundant and provide little additional information of value. FDA, however, sought comments on the need to require that records be maintained by persons other than renderers. The agency did not receive any comments on this point. Therefore, FDA is requiring that such records be established and maintained by renderers for the reasons explained in the preamble to the proposed rule.

FDA also sought specific comments on what types of records would be appropriate for satisfying the recordkeeping requirements and whether further detail would be needed

in the regulation regarding specific record requirements. FDA received one comment asking whether written statements from slaughter and processing establishments would be acceptable to FDA as evidence that CMPAF has been removed. Several comments stated that slaughter plants should be required to verify that raw materials sent for rendering into animal feed are free of CMPAF. In addition, a few comments stated that the records should be detailed enough to allow trace forward and trace back as part of any investigation of prohibited cattle materials and asked that FDA provide guidance on proper recordkeeping. As discussed above, FDA has provided additional details about the recordkeeping requirements for renderers. Furthermore, as discussed in section II of the preamble, the agency plans to issue guidance, as needed, to assist renderers in complying with the recordkeeping and other requirements.

Section 589.2001(e) provides that the records required by this final rule be maintained for a minimum of 1 year. The 1-year record retention period is consistent with the existing requirements for ruminant feeds in § 589.2000(h). We believe that, for the purposes of the recordkeeping requirements, 1 year is appropriate in light of the time that the products will be in the animal feed production and distribution systems. Extending the record retention period would have little practical value in determining the source of BSE in an animal. In reaching this conclusion, the agency considered the potentially long time period from ingestion of the BSE agent in feed to manifestation of clinical signs and lesions and the lack of a reliable estimate for the latency period.

D. Changes to § 589.2000—Animal Proteins Prohibited in Ruminant Feed

Section 589.2000(a)(1) has been amended to add language that excludes, from the definition of protein derived from mammalian tissues, tallow containing no more than 0.15 percent insoluble impurities and tallow derivatives as specified in § 589.2001(b)(1)(v). As discussed in the preamble to the proposed rule, § 589.2000 previously did not include tallow in the definition of protein derived from mammalian tissues. However, in light of concerns about protein impurities present in tallow, FDA has included tallow in the definition of protein derived from mammalian tissues unless it contains no more than 0.15 percent insoluble impurities.

IV. Analysis of Economic Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts, and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before finalizing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product.

FDA finds that the final rule constitutes an economically significant regulatory action as defined in section 3(f)(1) of Executive Order 12866 because the sum of the recurring costs and capital costs that could be incurred in 1 year rounds to \$100 million. We base this conclusion on both a study of the impacts on industry of the final rule (conducted for FDA by the Eastern Research Group (ERG), a private consulting firm (Ref. 16)) and the discussion in the remainder of this section. Under the requirements of the Regulatory Flexibility Act (RFA), the agency has determined that the regulation will have a significant impact on a substantial number of small entities. Therefore, the agency has prepared a final regulatory flexibility analysis in accordance with the RFA (5 U.S.C. 604). The analysis can be located in section IV.H of this document. This final rule imposes no mandates on government entities, and does not require the expenditure of over \$122 million in any 1 year by the private sector. As such, further analysis of anticipated costs and benefits is not required by the Unfunded Mandates Reform Act.

A. Summary of Final Regulatory Impact Analysis

The existing rule, which provides the baseline for this analysis, prohibits the use of certain protein derived from mammalian tissues in ruminant feeds. This final rule expands this restriction to prohibit certain cattle-derived risk materials in all animal feeds. The final rule, which is very similar to the proposed rule, would define those CMPAF to include the brain and spinal cord of all cattle 30 months of age or older slaughtered for human consumption, as well as the brain and spinal cord of cattle not inspected and passed for human consumption 30 months of age or older, the entire carcass of cattle not inspected and passed for human consumption 30 months of age or older unless the brain and spinal cord have been effectively removed or effectively excluded from animal feed, as well as other materials. The final rule makes a notable change from the proposed rule by not defining as CMPAF the brain and spinal cord from cattle under 30 months of age that are not inspected and passed for human consumption. FDA has also revised the final rule to clarify that the records established and maintained by renderers that receive cattle materials to be rendered for use in animal feed must include certification or other documentation from the supplier, or other documentation acceptable to FDA, that material supplied to the renderer does not include CMPAF. For the purposes of this final rule, the term “cattle not inspected and passed for human consumption” includes non-ambulatory disabled cattle. The final rule prohibits tallow derived from BSE-positive cattle from use in animal feed and prohibits tallow derived from other CMPAF from use in animal feed unless it contains no more than 0.15 percent insoluble impurities. The final rule also prohibits mechanically separated (MS) beef derived from any of the CMPAF from use in animal feed. Additional provisions of the final rule would require renderers that handle CMPAF to use separate equipment or containers to handle this material once it has been separated from other cattle materials. Such renderers would also be required to follow certain procedures for labeling and marking CMPAF and recordkeeping and records access.

The benefits of the final rule include the elimination of the vast majority of the risk not addressed by the 1997 ruminant feed ban of spreading BSE to other cattle from intentional or unintentional use of non-ruminant feed for ruminants or cross-contamination of

ruminant feed with non-ruminant feed or ingredients intended for non-ruminant feed. The final rule would effectively remove from use in non-ruminant feeds those cattle tissues that account for approximately 90 percent of potential BSE infectivity (Ref. 17). Although the animal and public health benefit associated with the additional BSE risk reduction is paramount, the U.S. economy may also benefit from regained market access in countries that remain fully or partially closed to U.S. beef and beef products to the extent that the final rule persuades foreign governments that more U.S. beef products are safe to import. Although we are unable to quantify the effects of this final rule on removing restrictions to foreign markets, the benefits are potentially large because the economy as a whole loses an annual surplus equal to about \$58 million from the remaining restrictions.

This final rule that prohibits the use of these materials in animal food or feed would impose four types of costs: Disposal costs, the opportunity cost of the MBM and tallow not produced, direct costs of new equipment and re-allocated labor, and feed substitution costs. Total compliance costs of the final rule are estimated to range from about \$64.4 to \$80.9 million per year annualized over 10 years assuming a 7-percent discount rate; at a 3-percent discount rate, total compliance costs are estimated at \$64.0 to \$80.5 million per year.

Compliance costs include those imposed by the rule's prohibition on the use of certain tissues from cattle 30 months of age or older slaughtered for human food and cattle 30 months of age and older not inspected and passed for human consumption in any animal feed as well as the cost to substitute other feed ingredients for those foregone from further processing of CMPAF. First, we discuss the brain and spinal cord ban as direct costs to the affected firms (including disposal costs, where applicable) and the social cost of the ban on the raw materials used in feed product inputs. Then, we discuss the feed substitution costs. Table 1 of this

document shows a summary of these costs.

The ban on the use of certain cattle materials in all animal feed from cattle 30 months of age and older slaughtered for human consumption and cattle 30 months of age and older not inspected and passed for human consumption would require renderers that process either materials from cattle 30 months of age and older slaughtered for human consumption or cattle not inspected and passed for human consumption 30 months of age and older to separate the CMPAF from the remaining offal. Renderers may require slaughter facilities to separate such materials as a condition of collection. We estimate the one-time capital costs of such a requirement for slaughterers at about \$2.1 million (Table 1, line 2) (or \$299,000 annualized at 7 percent over 10 years and \$246,000 annualized at 3 percent over 10 years). We estimate that the annual cost of the additional labor to separate this CMPAF from other cattle offal at about \$972,000 (Table 1, line 3) (including maintenance on new equipment). Although compliance costs of these activities will be borne initially by slaughterers, a portion of the costs are likely to be passed along to cattle producers and consumers. For renderers, average annualized capital investment and labor costs for CMPAF separation and segregation are estimated at about \$7.0 million (Table 1, lines 9 and 10).

Our analysis does not project a specific disposal route for CMPAF due to the variability of State and municipal laws for disposal of organic wastes. As it did for the proposed rule, our analysis of the final rule estimates a \$12 per 100 lbs (hundredweight (cwt)) of CMPAF disposal cost (including any transportation costs) from slaughter and rendering establishments. We estimate annual disposal costs for CMPAF from independent renderers at about \$11.3 million (Table 1, line 11) and from slaughterers at about \$3.4 million (Table 1, line 23). We expect that the disposal costs for slaughter CMPAF are immediately passed on to animal producers as lower prices for animals

delivered to slaughter. Additional disposal costs to animal producers for other animals that would no longer be rendered as a result of this rule will range from \$24.7 million to \$35.7 (Table 1, line 22) million annually. We estimate the social cost of the loss of MBM sales to range from \$0.8 to \$1.0 (Table 1, lines 4 and 14) million and the social cost from lost tallow sales to range from \$0.7 to \$0.8 million (Table 1, lines 5 and 15). These costs include the lost value from CMPAF from cattle 30 months of age and older slaughtered for human consumption, cattle not inspected and passed for human consumption 30 months of age and older, as well as calves, cattle under 30 months not inspected and passed for human consumption and other species that would no longer be rendered as a result of this rule. We judge the social cost of the loss of hide value resulting from this rule to range from \$9.2 million to \$13.7 million (Table 1, line 12) annually. The estimated cost of both creating and executing procedures for the aging of animals at greater or less than 30 months of age is \$2.4 million (Table 1, lines 6 and 13) annually. To the extent some slaughter establishments already have aging procedures in place to comply with FSIS' SRM rule, this amount may be an overestimate.

The final rule, as in the proposed rule, requires that tallow derived from certain CMPAF contain no more than 0.15 percent insoluble impurities. Even though the estimate of CMPAF is much larger in the final rule, because the amount handled directly by independent renderers would remain relatively small, we concluded that it would not be economical for renderers or tallow manufacturers to further process into tallow the brains and spinal cords from all cattle that have their brains and spinal cords removed while complying with the additional equipment separation and tallow testing and purification requirements. We therefore did not include any additional cost for this provision.

TABLE 1.—TOTAL COSTS (\$ MILLIONS) ¹

Line	Cost item	One-time cost	Annual costs	Annualized costs ²
1	Slaughter Facilities .....	.....	.....	.....
2	Capital investments	\$2.1	.....	\$0.30
3	Labor .....	.....	\$0.97	0.97
4	Social cost of lost MBM .....	.....	0.04	0.04
5	Social cost of lost tallow .....	.....	0.03	0.03
6	Creating/Performing cattle aging procedures .....	.....	1.10	1.10
7	Subtotal—Slaughter Facilities	2.1	2.14	2.44
8	Renderer Facilities .....	.....	.....	.....

TABLE 1.—TOTAL COSTS (\$ MILLIONS) ¹—Continued

Line	Cost item	One-time cost	Annual costs	Annualized costs ²
9	Capital investments	20.25	3.04	5.92
10	Labor		1.09	1.09
11	Disposal of CMPAF from cattle > 30 months		11.30	11.30
12	Value of cattle hides		9.16–13.69	9.16–13.69
13	Creating/Performing cattle aging procedures		1.28	1.28
14	Social cost of lost MBM		0.80–0.98	0.80–0.98
15	Social cost of lost tallow		0.64–0.78	0.64–0.78
16	Plant modification for tallow purification			
17	Slaughter and renderer marking of CMPAF		0.02–0.06	0.02–0.06
18	Slaughter and renderer recordkeeping/labeling	0.30	0.21	0.27
19	Subtotal—Renderer Facilities	20.55	28.20–33.09	31.14–36.04
20	Animal Producer			
21	Disposal of cattle > 30 months not inspected and passed, all other animals		24.70–35.70	24.70–35.70
22	Disposal of slaughter cattle CMPAF		3.38	3.38
23	Feed substitution		2.92–3.51	2.92–3.51
24	Subtotal—Animal Producers		31.0–42.59	31.0–42.59
25	Final Rule Total Costs	22.65	61.34–77.82	64.58–81.06

¹ Totals may not sum due to rounding.

² Annualized cost equal to annual cost plus one-time costs at 7 percent over 10 years. Using a 3-percent rate, annualized costs equal \$63.99–\$80.48 million.

B. Cost Effectiveness of Final Rule and Alternatives

Compared with the final rule, we do not offer any alternative that would impose greatly lower costs. The only feasible lower-cost alternative that would reduce the risk of cross contamination would be to require separate facilities or equipment to produce ruminant and non-ruminant feed.

Alternative 1—Dedicated Facilities and Equipment

This alternative would strengthen FDA's 1997 feed rule by preventing cross contamination of feed ingredients for ruminants with mammalian proteins currently prohibited from ruminant feed. To prevent cross contamination, this alternative would require dedicated equipment in those facilities producing or handling feed or feed ingredients for ruminants and mammalian proteins currently prohibited from ruminant feed. In the analysis of the alternatives to the proposed rule, ERG estimated that only independent renderers and feed mills would incur compliance costs for this dedicated facilities or equipment (70 FR 58593). It should be noted, however, that this requirement for dedicated facilities and equipment differs from the dedicated equipment requirement of the SRM ban (Alternative 3 in this document). Since the dedicated facilities and equipment option is analyzed here as a separate alternative (i.e. not as part of the SRM ban), the tonnage of rendered ruminants would not be reduced (without the SRM

ban), and the resulting transportation costs would be larger than had the SRM ban been included as part of this alternative.

To dedicate facilities, independent renderers would invest about \$8 million in one-time costs and feed mills would invest about \$43.2 million in one-time costs. Annualized over 10 years at 7 percent, capital investment for dedicated facilities would equal about \$7.3 million, or about \$1.1 million for independent renderers and about \$6.2 million for feed mills. ERG forecast that this alternative would have little effect on MBM production, but would force firms to spend more to transport MBM because they could no longer backhaul ruminant feed in trucks used to transport feed containing mammalian proteins currently prohibited in ruminant feed (70 FR 58593 to 58594). In the analysis for the proposed rule, ERG estimated that dedicated equipment would increase transportation costs by \$8 million to \$16 million for renderers and \$14.2 million to \$28.4 million for feed mills (70 FR 58594). Accounting for ERG's revised fuel costs (Ref. 16), the estimated costs for dedicated transportation equipment range from \$14.6 million to \$29.3 million annually for renderers and from \$22.5 million to \$45.0 million annually for feed mills. The total estimated annualized compliance costs of this alternative range from \$44.4 million to \$81.6 million.

This alternative addresses the problem of animal feed being cross-contaminated with prohibited mammalian protein in firms that

manufacture animal feeds and also handle prohibited mammalian protein by requiring such firms to have dedicated facilities or equipment for animal feeds. The compliance costs of this alternative are similar to the costs of the final rule. In contrast to the final rule, however, this alternative would allow CMPAF with the highest BSE infectivity to remain in the animal feed supply, allowing potential exposure to BSE infectivity when cattle consume feed intended for other species through cross-contamination or misfeeding. We conclude, therefore, that the final rule more effectively reduces the risk from cross-contamination and misfeeding than this alternative to require dedicated facilities or equipment. Given the general similarity in compliance costs, we therefore judge this alternative to be less cost-effective than the final rule.

Alternative 2—The Proposed Rule

The proposed rule would require that the brain and spinal cord from all cattle 30 months of age or older slaughtered for human consumption, and from all cattle not inspected and passed for human consumption of any age to be defined as CMPAF. The main difference between the proposed rule and the final rule is that the proposed rule would also define as CMPAF the brain and spinal cord of cattle under 30 months of age that were not inspected and passed for human consumption. Compared with the final rule, this alternative produces more tissue for disposal by deadstock renderers, increasing the compliance costs for independent renderers.

However, these costs would be offset somewhat because, under the proposed rule, deadstock renderers would not need to determine the age of the animal. The annualized compliance costs for independent renderers would range from \$34.9 million to \$41.5 million. Similar to the final rule, livestock producers would likely pay higher prices for feed substitutes and on-farm disposal of deadstock. Annualized compliance costs for livestock producers would range from \$36.4

million to \$51.9 million. Slaughterers would incur about \$2.5 million in annualized costs. Table 2 of this document shows that, in total, the estimated annualized compliance costs for this alternative range from \$73.8 million to \$95.9 million and exceed the annualized compliance costs of the final rule.

Although this regulatory action would prohibit more material from animal feed than would the final rule, it would only add the brain and spinal cord of cattle

not inspected and passed for human consumption under 30 months of age to the list of prohibited cattle material. Scientific evidence indicates that the probability that the brain and spinal cord from cattle under 30 months of age contains BSE infectivity is extremely low (Ref. 18). Consequently, this alternative is less cost-effective than the final rule because it cost \$9.2 to \$14.8 million more without a commensurate reduction of risk.

TABLE 2.—SUMMARY OF THE COMPLIANCE COSTS OF THE PROPOSED RULE ¹

Cost item	One-time costs (\$ million)	Annual costs (\$ million)		Annualized costs ² (\$ million)	
		Low estimate	High estimate	Low estimate	High estimate
Capital investments	26.2	.....	.....	3.7	3.7
Labor .....	.....	8.4	8.4	8.4	8.4
Loss of net revenue .....	.....	12.8	19.4	12.8	19.4
Disposal costs .....	.....	44.9	59.9	44.9	59.9
Marking .....	.....	0.0	0.1	0.0	0.1
Recordkeeping/Labeling	0.2	0.1	0.1	0.1	0.1
Feed substitution .....	.....	3.8	4.4	3.8	4.4
Total costs	26.3	70.0	92.1	73.8	95.9

¹ Numbers may not sum due to rounding.

² Costs are annualized over 10 years at 7 percent.

Alternative 3—The SRM Ban

The third alternative we considered would prohibit the use of the full list of specified risk material (SRM) from animal feed and require the use of dedicated equipment by renderers. The scope of this alternative is similar to Canada's 2006 enhanced feed rule and is the most restrictive regulatory action we considered.¹ This alternative expands the list of prohibited material and would substantially increase the amount of prohibited material generated by regulatory action. It also requires that renderers have dedicated equipment used to process or transport protein prohibited from being fed to ruminants and to process or transport protein not prohibited from being fed to ruminants.

In practice, some tissues that are not defined as SRM would be difficult to separate and are treated as SRM. Canada made a similar distinction in its enhanced feed rule. Thus, in addition to the material prohibited in the final rule, this alternative would prohibit from all animal feed: The skull, eyes, trigeminal

ganglia, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months of age and older, and the tonsils and distal ileum of all cattle.

As shown in Table 3 of this document, the estimated annualized costs of this alternative range from \$332.0 million to \$344.7 million. Slaughterers would incur annualized costs of about \$19.5 million in lost revenues and increased labor and capital costs. Independent renderers would incur from \$42.9 million to \$55.6 million in annualized costs of lost revenues and increased labor and capital costs. Animal producers would incur about \$12.7 million annually in feed substitution costs. Disposal costs for animals that would no longer be rendered as a result of the SRM ban and the disposal costs for slaughter SRM would account for the majority of the estimated annualized costs and equal about \$257 million. Because most

slaughterers can immediately pass disposal costs back to cattle producers by adjusting the prices they pay for slaughter animals, cattle producers would likely incur the entire cost of SRM disposal in the short run. ERG estimated that over time, markets would adjust to the impacts of an SRM ban and about 50 percent of the total incremental costs of this alternative would be passed on to consumers as higher beef prices, 38 percent of the total incremental costs would be passed back to cattle producers as lower cattle prices and 12 percent of the total incremental costs would be incurred by processors.

Although this option would increase the material removed from animal feed when compared with the first alternative, the incremental reduction in the potential risk would not be commensurate with the costs as shown in Table 3 of this document. Thus, this regulatory alternative would be much less cost-effective than either the final rule or the proposed rule.

¹ The enhanced Canadian feed ban exempts feed mills from the requirement for dedicated

equipment. Although ERG included feed mills in its

analysis of the SRM ban, we have excluded these costs from our analysis.

TABLE 3.—COMPLIANCE COSTS OF A FULL SRM BAN¹

Cost item	One-time costs (\$ million)	Annual costs (\$ million)		Annualized costs ² (\$ million)	
		Low estimate	High estimate	Low estimate	High estimate
Capital investments	37.8	.....	.....	5.4	5.4
Labor .....	.....	12.7	12.7	12.7	12.7
Loss of net revenue .....	.....	35.8	35.8	35.8	35.8
Transportation .....	.....	7.9	20.5	7.9	20.5
Disposal costs .....	.....	257.0	257.0	257.0	257.0
Marking .....	.....	0.6	0.6	0.6	0.6
Recordkeeping/Labeling	0.2	0.1	0.1	0.1	0.1
Feed substitution .....	.....	12.7	12.7	12.7	12.7
Total compliance costs	38.0	326.6	339.3	332.0	344.7

¹ Numbers may not sum due to rounding.² Costs are annualized over 10 years at 7 percent.

Summary of Regulatory Alternatives

Table 4 of this document shows the annualized and incremental costs of each regulatory alternative considered. The safeguards put in place by the 1997 ruminant feed rule have substantially

reduced the potential risk that tissues infected with the agent that causes BSE could get into ruminant feed. The final rule further reduces the possible risk of cross contamination of ruminant feed with prohibited material. As explained

previously, we have determined that the final rule is the most cost-effective action for reducing the potential risk that animal feed or feed ingredients intended for ruminants could contain the agent that causes BSE.

TABLE 4.—COSTS OF ALTERNATIVE POLICIES

Alternative	Annualized costs ¹ (\$ million)		Incremental annualized costs (from previous alternative) (\$ million)	
	Low estimate	High estimate	Low estimate	High estimate
Separate facilities and equipment for renderers and feed mills	44.4	81.6		
Final rule	64.6	81.1	20.2	(0.5)
Proposed rule	73.8	95.9	9.2	14.8
Full SRM ban; separate facilities and equipment for renderers	332	344.7	258.2	248.8

¹ Costs are annualized over 10 years at 7 percent.

C. Need for Regulation

Executive Order 12866 directs agencies to assess the need for any significant regulatory action and to provide an explanation of how the regulation will meet that need. Comments on the October 2005 proposed rule did not address the accuracy of the theoretical argument FDA put forth in the preamble to the October 2005 proposed rule related to private incentives and market failure (70 FR 58570 at 58587). Therefore, FDA retains this argument here in the final rule. In this instance, FDA concludes that private incentive systems for both suppliers and purchasers in markets for cattle, rendering, and ruminant feed may inadequately address the risk of BSE. This market failure is a result of inadequate information being available to buyers of potentially infective animal feed. Because of the risk of cross contamination during feed production and the risk of inadvertently feeding non-ruminant feed to ruminants on an integrated farm, buyers of ruminant and non-ruminant feed would likely value a

decrease in risk of BSE transmission if the market were able to provide it. Buyers, however, have little information about the BSE infectivity of feed because the costs to them of ascertaining infectivity are very high and higher than the costs to the feed producers. As a result, buyers may unknowingly buy feed contaminated with BSE because of the presence of CMPAF.

The potential market failures created by the continued use of materials that this final rule would eliminate are the same as described in the 1997 ruminant feed rule. If feed purchasers could easily identify the risk of the infective agent associated with products from specific suppliers, they could more easily reduce these risks by refusing to buy feed products derived from ruminants known to have consumed processed CMPAF. Feed purchasers, however, are unlikely to obtain the information they need due to the long incubation period for BSE, which could lead to a suboptimal level of risk prevention by purchasers during the incubation period. Moreover, ruminant producers

have no way of knowing whether a particular batch of feed or feed ingredients intended for ruminants is free of potentially infective proteins due to the possibility of CMPAF being introduced through cross-contamination with feed or feed ingredients intended for non-ruminants.

D. Benefits

FDA received few comments on the proposed rule that focused on the benefits section. One comment stated that the proposal was unnecessary because it addressed only a very small risk. FDA agrees that the risk is low but reiterates, as in the proposed rule, that by requiring removal of the highest risk cattle-derived materials from use in any animal feed, the final rule further reduces BSE risks not already addressed by the 1997 feed ban.

The purpose of the final rule is to further strengthen existing safeguards against BSE in the United States. Reduced risk of BSE among cattle also reduces human risk of vCJD, which is believed to be caused by consumption

of beef products contaminated with the BSE agent. The final rule also increases the potential for exports by reducing foreign governments' concerns about the safety of U.S. beef. In this section, we first address the reductions in the risk of BSE to cattle in the United States and the corresponding protection of human health from the major provisions of the proposal. We then summarize the available evidence about the likely effect of this final rule on U.S. exports of beef and other livestock products.

1. Risk Reduction

FDA estimates that banning CMPAF from use in any animal feed would effectively remove about 90 percent of any remaining potential infectivity from possible spread through the feed system. To derive this estimate of the risk reduction from the ban on CMPAF, we assume that the number of new BSE cases is proportional to the amount of all infectious material included in feed. Given this assumption, we estimate the percentage reduction in the risk of new BSE cases as the percentage reduction in infectious material. A 1999 report by the Scientific Steering Committee of the European Union suggests that the brain and spinal cord constitute 89.7 percent of the total infective load in a case of BSE. This rule would prohibit use in all animal feed of these tissues from all cattle 30 months of age or older. Brain and spinal cord taken from cattle under 30 months of age would not be defined as CMPAF, however, because the probability is extremely low that tissues from cattle of this age would contain BSE infectivity. Thus, banning CMPAF from animal feed would effectively remove about 90 percent of total infectivity from animal feed. The absolute level of animal health risk reduced by this rule would depend on the number of infected animals in the United States and the extent to which cattle are exposed to infected material.

The potential human exposure to infectious materials from consuming beef is already small, because USDA and FDA prohibit the use of certain cattle materials, including SRMs, from human food. The 2005 Harvard Risk Assessment that USDA's Food Safety and Inspection Service made available to the public in July 2006 estimates that interim measures implemented by FSIS on January 12, 2004, and finalized on July 13, 2007, reduce potential human exposure to BSE infectivity by 99.6 percent (see 69 FR 1862 and 72 FR 38700).

Assessing the public health implications from estimates of the human exposure to the BSE agent is difficult because there is no agreed-

upon relationship between human exposure to cattle ID₅₀s (ID₅₀ is the amount of infective material that would result in a case of BSE in 50 percent of the cattle that consumed it) and vCJD cases. During the 1980s and 1990s, in the absence of preventive control measures, millions of ID₅₀s may have been available for consumption by residents of the United Kingdom, because each cow with clinical symptoms of BSE contains an average of about 7,800 ID₅₀s. While the United Kingdom totaled over 183,000 cases of BSE (Ref. 19) through January 21, 2007, the cumulative number of definitive or probable vCJD cases identified in the United Kingdom as of February 2007 was 165 (Ref. 20). Thus, the experience of the United Kingdom suggests that the BSE agent is many times less infective in humans than in cattle.

2. Increased Export Potential

A second major category of benefits largely accrues to U.S. cattle producers and reflects the potential for increased exports of U.S. beef and beef products to countries that have acted to curtail exports since the discovery of the infected cow in Washington State in December 2003. USDA assessed this category of benefits in the FSIS SRM interim final rule that it issued in January 2004. In its assessment, USDA concluded that "the 2004 beef export demand forecast has been reduced by 90 percent" (Ref. 21). Foreign trade data shows that from 2003 to 2004, the quantity of beef, veal, and beef variety meat exported by the United States decreased by about 75 percent, whereas the value of these exports declined by about 80 percent (Ref. 22). According to USDA data, total U.S. exports of beef, veal, and variety meats amounted to \$3.9 billion in sales in 2003, and exports of live cattle resulted in an additional \$63 million. USDA reports that the value of total beef and veal exports for 2006 amounted to \$2 billion. In 2006 prices, the decline in export value comes to \$2.2 billion (= (\$3.85 billion * 1.09 [price adjustment]) - \$2 billion). The quantity exported fell from 1,274,110 metric tons in 2003 to 653,205 metric tons in 2006. Some export markets disappeared almost overnight: Exports of U.S. beef to Japan fell from 375,452 metric tons in 2003 to 517 metric tons in 2004; exports to South Korea fell from 246,595 metric tons in 2003 to 144 metric tons in 2004. Exports have increased since 2006 but remain below 2003 levels.

Numerous foreign governments have cited perceived weaknesses in the 1997 feed ban as a justification for not fully opening their markets to U.S. beef and

beef products. The preventive measures contained in this final rule may increase the likelihood that foreign governments ease some restrictions on imports of U.S. beef products and cattle.

We cannot estimate the trade benefits of this final rule. We can estimate the net effect on social surplus of the continuing restrictions on beef exports, as well as the potential gain from removing those restrictions. To do so, we use a standard economic model of the effects of export restrictions on consumer and producer surplus. The closing of export markets, all else being the same, leads to a fall in exports and a rise in domestic consumption as more beef is sold on the domestic market (Ref. 23). The forced sale to U.S. consumers increases consumer surplus and decreases producer surplus. Over time, the quantity produced in the domestic economy falls as well, as producers respond to the restrictions. If the trade restrictions on U.S. beef are removed, beef exports will increase, domestic consumption will decrease, and domestic production will increase. Once all adjustments are made to the withdrawal of the restrictions, we estimate the gain in social surplus to be about \$105 million per year, with a range of \$80 million to \$120 million.

We estimate the effects of the export restrictions using changes in beef prices and exports. Price changes in the U.S. market, however, are dominated by seasonal and trend effects, fluctuations in feed costs, and a host of other factors. These complications make it difficult to use actual beef price changes to estimate the effect of diminished exports on price. As an alternative to direct estimates of price changes, we impute the price effect by estimating the decline in domestic price needed to clear the market if beef intended for export is instead sold on the domestic market. Again, we do not estimate the actual change in price but the imputed contribution of the increased quantity of beef on average price. Our imputed price change draws on the price elasticity of demand for beef, which is the percentage change in the quantity of beef demanded divided by the percentage change in price. The estimates in the literature show the mean price elasticity of demand for beef is about -1.086, although the variance of the estimates is high (Ref. 24).

To estimate the continued effect of the export restrictions and the potential gains from their removal, we assume that in their absence, the proportion of U.S. production exported would return to the 2003 level, 9.6 percent (Ref. 25). In 2006, the shortfall in beef exports compared with 2003 accounted for

about 5.2 (= 0.096 – 0.044) percent of 2003 beef production (Ref. 25). If we assume that the price elasticity of U.S. beef supply is about 0.5, removing the trade restriction would lead to responses on the supply about one-half as large as on the demand side, so domestic consumption would decline by 3.7 percent (= $0.035 / (1 - 0.044 - 0.017)$). With a price elasticity of –1.086 and a 3.7 percent decline in quantity demanded, we estimate the imputed price effect to be a rise of about 3.4 percent (= 3.7 percent/1.086).

The rise in social surplus can be approximated using the rise in price and the average value of exports in 2003 and 2006. We estimate this gain to be about \$105 million (= $\frac{1}{2} * (\$4.2 \text{ billion} + \$2.0 \text{ billion}) * 3.4 \text{ percent}$). This social surplus represents the continuing annual loss from the restrictions and the annual gain from their removal.

The estimated gain in social surplus is highly sensitive to the assumptions made about the responses of domestic beef consumers and producers to the removal of export restrictions. Our base estimate of the gain in social surplus assumes that in the long-run, the changes in consumption are about twice as large as the change in production (the price elasticity of supply is about half as large as the price elasticity of demand in absolute value). If increased U.S. beef production accounts for one-half of the response to the removal of trade restrictions (the price elasticity of supply is about the same as the price elasticity of demand in absolute value), the gain in social surplus is about \$80 million per year. By contrast, if reduced consumption of beef in the United States accounts for three-fourths of the response to the removal of trade restrictions (the price elasticity of supply is about one-third the price elasticity of demand in absolute value), the gain in social surplus is about \$120 million per year.

The estimates we present here are all based on a simplified model of the effects of trade restrictions. The estimates represent the gains from removing all remaining restrictions on beef exports, which will increase the world demand for U.S. beef. The estimates do not represent the gains from this final rule. The gains from this final rule would be estimated based on any relaxation of trade restrictions resulting from the rule. If other public and private policies reduce trade restrictions, then the potential gains from this rule would be correspondingly reduced. New safety events, such as more BSE cases, would also reduce the potential effects of this final rule on trade. We also expect that as time

passes, the effects measured here will dissipate to be dominated by other changes in the world and domestic markets for beef. The social surplus estimated here would only be the short-term benefit of this final rule if publication of this rule leads directly to the return of U.S. beef to its status in world markets before the discovery of the infected cow in Washington State in December 2003, assuming that no other policies or events intervene.

E. Costs

FDA has examined the numerous public comments that addressed the analysis of impacts section published with the proposed rule. Furthermore, FDA contracted with ERG to update the analysis it prepared for the proposed rule, taking into account the comments and data provided during the public comment period, as well as any other new or amended provisions that FDA made to the final rule. This section summarizes the ERG report on the final rule, responds to comments on the costs of the proposed rule, and describes the composition, size, and scale of economic activity for the various affected industry sectors that would be impacted by the final rule.

The feasible regulatory alternatives to the final rule include the following: (1) Separate facilities and equipment for renderers and feed mills; (2) the proposed rule, which would prohibit the use of brain and spinal cord from cattle 30 months of age and older slaughtered for human consumption as well as from all cattle not inspected and passed for human consumption from animal feed; and (3) a full SRM ban in animal feed and separate facilities and equipment for renderers. The ERG report also includes estimates of impacts on small entities in the sectors that are impacted to a significant degree to fulfill requirements of a regulatory flexibility analysis.

In the development of its final report on the brain and spinal cord prohibition, ERG reviewed the public comments to the rule that concerned the economic impacts of the proposed rule, focusing closely on the data and analysis included in a report prepared for and submitted by the National Renderers Association. ERG utilized the services of industry consultants and other contractors for their technical expertise, including contracting with an agricultural engineering firm to generate capital cost estimates for independent rendering operations. Additionally, ERG prepared and administered a small survey to independent renderers with additional questions about their operations, including logistics of animal

pick-up services, days of operation, decomposition of deadstock, and their ability to comply with the rule.

1. Public Comments on Costs

One of the most comprehensive comments to the proposed rule was prepared by Informa Economics for the National Renderers Association entitled “Economic Impacts of Proposed Changes to Livestock Feed Regulations” (Ref. 26). It concluded that the economic impact on renderers would far exceed the impacts that FDA estimated in the proposed rule, resulting in a significant economic burden of \$127.7 million annually in direct economic impacts. Many of the individual comments or criticisms of our analysis of the proposed rule contained in the Informa report reflected other public comments from other individuals, companies, associations, and State governments. We have assembled similar comments together and will address them throughout the summary of the latest ERG analysis.

Approximately \$113 million of the \$127.7 million (about 88 percent) of the direct costs in the 2005 Informa report represent the estimated deadstock collection fees that would be paid by livestock producers for picking up those deadstock that would still be rendered under the proposed rule. The Informa analysis assumes that the average individual pick-up fees that would be charged across the four cattle categories represent the costs that renderers would incur to remove the CMPAF from cattle not inspected and passed for human consumption, as well as costs to handle, process, and dispose of the material. The assumption, however, leads to an estimate of costs that represents not the expected marginal fee increases from the proposed rule, but rather the total pick-up fee that the animal producer would pay. Using only the marginal pick-up fee per cwt that would be imposed by this rule reduces the total cost from \$112.7 million to \$62.9 million. The remainder of the original \$112.7 million in fees (\$49.8 million) represents costs that are currently incurred by the animal producers and are therefore not compliance costs of this rule. Further, the other 12 percent of the total direct costs represent the market value of the tallow and MBM that would be foregone due to this rule. Accounting for only the social costs of these lost revenues, estimated at the renderer’s net income rate of 5.65 percent (use of net income as social cost is explained later in this document), reduces the \$15.7 million to only about \$0.89 million, a reduction of about \$14.81 million.

This adjustment in estimated pick-up fee and MBM and tallow social cost losses reduces Informa's total direct costs to about \$63.1 million. This figure is actually below our final rule estimate of \$64 million to \$81 million, which includes a cost reduction from the exemption from the definition of CMPAF for cattle under 30 months not inspected and passed for human consumption. If, however, we were to include the upper end of the range of marginal fee increases from the Informa report (Informa's \$112.7 million cost represents only the lower bound of the data it presented), the range of the total direct costs from the Informa report (after accounting for the changes mentioned previously) would be \$63.1 million to \$113.53 million.

The Informa report also concludes that additional indirect costs for slaughter facilities to handle and dispose of CMPAF (which is not calculated separately in the report) and capital investments made by renderers to handle, process and dispose of CMPAF would likely result in a total cost exceeding \$150 million annually. We agree that slaughtering facilities will incur additional capital costs, and ERG has increased its estimate from \$676,000 in the proposal to about \$1.27 million annually in the final rule. The capital investments for renderers that are detailed in the Informa report (amounting to an annualized total of \$11.3 million) are based on an assumption that 26 renderers would actually install additional equipment to render the CMPAF for disposal, which is 50 percent of the number that replied that they might consider installing such equipment. Those 26 rendering operations in question, however, would also have been included in the survey's question on the expected increase in pick-up fees. The increase in pick-up fees, therefore, would account for these additional capital costs if they were indeed anticipated. The previously mentioned modifications to Informa's calculations result in a significantly lower total cost for the final rule. Additionally, we disagree with Informa's conclusion that, due to State and local prohibitions against its disposal in landfills, there is a high likelihood that all CMPAF would need to be rendered prior to disposal, although we agree that there is some uncertainty about the disposal methods that will be used throughout the United States.

Various other comments focused on the general subject of increased costs to slaughterers and other meat processors for disposal of byproducts, the reduction in the value of the slaughtered

animals, and the reduction in the profitability of renderers. Although almost none of these comments contained additional data to support these conclusions, ERG performed additional analyses of the relevant industries that largely support the main concerns expressed in these comments.

Other comments stated that increased costs would be passed on to farmers. We agree that some compliance costs will be immediately passed on to farmers; ERG therefore concluded that animal producers would incur \$28.1 million to \$39.1 million in annual costs for alternative disposal of CMPAF from cattle slaughtered for human consumption and cattle not inspected and passed for human consumption (Table 1, lines 21 and 22). Other comments requested that we offer other economic incentives or remuneration in order to compensate renderers for converting operations to alternative disposal methods or for the cost of disposal, as has occurred in Europe. We did not consider subsidies as a policy option because FDA does not have this authority. Furthermore, the use of subsidies would not change the total social costs of the final rule, but rather transfer the costs to others. Likewise, the social cost does not change, as one comment suggested, if the number of cattle available for USDA's BSE testing program decreases because the renderer refuses to waive pick-up fees. In this case, the social cost is transferred to the general public.

We also received some comments that made claims about costs to individual States, such as the claim that the proposed rule would impose \$10 million in costs on California dairy farmers, feedlots, and beef cattle producers. While we cannot verify this estimate without additional data necessary to support such claims, we agree that the costs of this final rule will be proportionally heavier in states with large populations of affected cattle.

One comment stated that removal of brain and spinal cord would reduce processing ability by 40 percent to 50 percent, without providing supporting information. Another comment stated that FDA should focus on removal of SRMs from 4D and antemortem condemned animals greater than 30 months, the cost of which would be from \$64 million to \$76 million, according to some industry estimates that were not disclosed. Without supporting information, we cannot respond directly to these comments. The ERG report, however, takes into account a number of public comments and changed many of its assumptions due to these public comments.

In general, this final rule, which prohibits certain cattle-derived risk materials from all animal food or feed, would impose four types of costs: Disposal costs, lost revenue measuring the value of the MBM and tallow not produced, direct costs of new equipment and re-allocated labor, and feed substitution costs.

2. Disposal Costs

For the proposed rule, ERG identified and discussed five options for disposal of CMPAF. These included landfilling of the CMPAF without rendering, rendering for disposal, disposal through alkaline hydrolysis digesters, incineration, and composting. The analysis concluded that landfilling would likely be one of the methods used to dispose of CMPAF, and that rendering for disposal would be unlikely due to the relatively small amount of CMPAF. The disposal cost estimate of the proposal was set at \$12/cwt, based on discussions with industry members and ERG's other report on alternative regulatory options, including a full SRM prohibition. ERG concluded that the per cwt disposal cost would be higher than the full SRM prohibition disposal cost due to the lower volume of CMPAF for the brain and spinal cord prohibition as well as the uncertainty in disposal methods and unfamiliarity with some of the disposal methods in the industry. At this \$12/cwt rate, disposal costs of the proposed rule for CMPAF from slaughter and render facilities were estimated at \$7.72 million.

ERG also calculated the disposal costs of cattle not inspected and passed for human consumption that would no longer be rendered as a result of the proposed rule. This ban was expected to result in an increase in the number of on-farm disposals. For its analysis of the proposed rule, ERG estimated that 17 percent of cattle not inspected and passed for human consumption were currently rendered. In addition, ERG had predicted that an additional 0.6 percent of all cattle not inspected and passed for human consumption (or 3.5 percent of all cattle not inspected and passed for human consumption that are currently rendered) would no longer be rendered due to the proposed rule. These animals were estimated to result in an increase in capital and labor costs for on-farm burial of about \$1.02 million.

We received numerous public comments concerning the estimates on the rendering of cattle not inspected and passed for human consumption. Some were more specific than others, but the prevailing theme was that we had

significantly underestimated the number of cattle not inspected for human consumption that are currently rendered. In particular, the Informa report questioned the accuracy of the estimate that only 17 percent of cattle not inspected and passed for human consumption are currently rendered. In fact, FDA had included in the proposal a discussion of the uncertainty of its own estimate along with Informa's previous estimate of this number at about 42 percent, and also incorporated this 42-percent estimate as the high end of the range of cost estimates for the proposal, where appropriate. Accepting Informa's 2004 estimate that 42 percent of cattle not inspected and passed for human consumption were rendered, we modified the proposal's disposal cost estimate for CMPAF from cattle slaughtered for human consumption and cattle not inspected and passed for human consumption that would continue to be rendered, from \$7.72 million to a range of \$7.72 million to \$9.97 million. Similarly, we modified the proposal's disposal cost estimate for cattle not inspected and passed for human consumption that would no longer be rendered as a result of the proposed rule from \$1.02 million to a range of \$1.02 million to \$2.5 million.

In its analysis of the final rule, the ERG report uses the Informa survey data of renderers (conducted for its November 2005 report) and USDA data, which show that about 45 percent of cattle not inspected and passed for human consumption are currently rendered. We therefore base our cost estimates for the final rule solely on the 45 percent figure, and do not include those based on the former range of 17 percent to 42 percent.

We also received many comments concerning the ERG estimate that about 26,000 cattle not inspected and passed for human consumption (or 0.6 percent of all cattle not inspected and passed for human consumption) would no longer be rendered as a result of the rule. Informa's 2005 results showed that renderers replied that, in total, about 67 percent of cattle not inspected and passed for human consumption that are currently rendered would no longer be rendered due to the proposed rule. That is, 45 percent times 67 percent = 30 percent of all cattle not inspected and passed for human consumption due to either renderer refusal to accept the animal or the producer's refusal to pay a higher pick-up fee, would no longer be rendered. The final ERG report, relying on estimates it received from deadstock renderers and estimated price elasticities of deadstock to renderers, projects that pick-up charge increases

would range from 25 percent to 50 percent for all cattle under 30 months and 100 percent to 150 percent for cattle 30 months of age or older. We note that one comment stated that California renderers would increase their pick-up fees by 50 percent. These higher pick-up fees, coupled with expected closures of rendering plants handling about 10 percent of these cattle, support ERG's revised estimate that 29.4 percent to 44.8 percent of currently rendered cattle not inspected and passed for human consumption will no longer be rendered as a result of this rule. We accept this estimate as well and include it in this analysis. The Informa estimate of 67 percent may overstate the probability of an animal no longer being rendered because some of the carcasses that one renderer says will no longer be picked up by his company may still be picked up by another renderer. As a result of this and other changes in the final report, we estimate that the total amount of CMPAF would range from 610 million to 733 million lbs, a significant increase from the 64 million lbs estimated in the proposed rule.

Due to many public comments that FDA underestimated disposal costs in the proposed rule, ERG re-analyzed its methodology and assumptions concerning disposal in its report for the final rule. It reviewed various disposal technologies and a range of estimated costs for each based on literature compiled by researchers at Kansas State University, National Agricultural Biosecurity Center Consortium. The Kansas State University report presents a most likely representative estimate of costs, although it was derived from a graphic figure in the source document and thus contains some uncertainty. It also identified another disposal method that ERG had not considered in the proposed rule, namely that cattle would be left to decompose in the field or range without any additional treatment of the carcass. Some comments reflected the overall conclusions of the Kansas State University report, stating that incineration and composting are currently prohibitively expensive or complicated. One comment stated that burying CMPAF could be very expensive if a minimum of 4 hours rent for a backhoe is required, giving further support to the conclusion that when possible, these cattle would likely be left to decompose in the field. Several other comments questioned the availability of landfills for disposal of CMPAF. Another comment asked that we consult cost data in the 2004 publication on carcass disposal technologies by the National

Agricultural Biosecurity Center Consortium. Table 7 in that publication shows disposal costs per ton for various carcass disposal methods. For both burial and landfilling, it presents cost estimates that are below the estimates ERG uses in its analysis of this final rule (Ref. 27).

Although many other comments questioned what they perceived to be low total disposal costs published in the proposed rule, the 2005 Informa survey reported an average disposal cost estimate of \$11.51/cwt among those firms that indicated they would accept the CMPAF. Additionally, the Kansas State study reported 7 disposal options greater than \$12/cwt and 4 options lower than \$12/cwt. Accordingly, ERG has retained the overall average of \$12/cwt disposal cost for CMPAF (from brain and spinal cord removal) from independent rendering operations for the final rule. Some comments questioned the economic feasibility of using dedicated trucks to transport CMPAF to disposal or for further processing. We have in fact included these costs in our totals because in its analyses of disposal costs, ERG included the transportation costs in the \$12 per cwt estimate. Further, the Informa survey of renderers (reporting that renderers expect disposal costs would average \$11.51 per cwt.) based its questions on CMPAF as defined by the proposed rule, which would require separate transportation trucks or compartments. Based on this \$12/cwt rate, we estimate that CMPAF disposal costs of the final rule for slaughter facilities will be \$3.4 million (Table 1, line 22).

Disposal costs for CMPAF removed at independent renderers are estimated using the same \$12/cwt estimate used in the proposal (we explained the \$12/cwt figure and public comments in detail earlier in the document). The Informa report and many other comments remarked that much more than just the brain and spinal cord would need to be removed from those cattle not inspected and passed for human consumption that were not too decomposed to undergo separation. Furthermore, comments stated that a significant number of them would be too decomposed to separate the brain and spinal cord. For both the proposed and final rule, ERG judged that from 1.3 lbs to 53.0 lbs of CMPAF would be removed from cattle 30 months of age or older, but for the final rule it also included an allowance for the number of cattle 30 months of age or older not inspected and passed for human consumption that are picked up but that are too decomposed to undergo tissue separation. The Informa claim

that 54 percent of these animals being too decomposed to undergo tissue separation added significant weight to the volume of CMPAF that would be prohibited. Based on the aggregate weight of CMPAF removed, ERG estimated disposal costs at \$11.3 million for the CMPAF that is removed by independent renderers and for the cattle not inspected and passed for human consumption that are picked up by renderers but are too decomposed to undergo tissue separation.

For the disposal of the additional cattle not inspected and passed for human consumption that are no longer picked up for rendering, ERG adjusted the \$12/cwt disposal cost for those carcasses that are likely to be buried on the farm. For on-farm burial, the most likely representative cost listed in the Kansas State University report was \$6/cwt. ERG increased this to an estimated \$8/cwt to account for those farms where burial is less economical or less viable due to the absence of available land. The cattle carcasses were then distributed among the following four types: Calves, feedlot, cattle 30 months of age or older, and cattle under 30 months. For its disposal cost calculations, ERG used only the incremental social cost, which is the difference between the disposal method and the existing charge for renderer pick-up cost (per cwt) as developed in the Informa report. For cattle 30 months of age or older not inspected and passed for human consumption, ERG calculated the incremental cost per cwt at \$4.65 (\$8.00/cwt minus the current \$3.35/cwt); for cattle under 30 months ERG calculated the incremental cost at \$5.49 (\$8.00/cwt minus the current \$2.51/cwt). For feedlot cattle, whose full disposal cost remains at \$12/cwt because it is unlikely they would be buried at the producer site, ERG calculated the incremental cost at \$10.24/cwt (\$12.00/cwt minus the current \$1.76/cwt). For calves, ERG assumed current pick-up charges to increase by \$4.00/cwt, noting that their current reported pick-up fee exceeds \$12/cwt. As a result, we estimate total disposal costs for the additional cattle not inspected and passed for human consumption to range from \$22.0 million to \$33.0 million annually.

To account for the additional tonnage of non-cattle species that died at the animal producer establishment and would no longer be rendered as a result of this rule as suggested by some comments, ERG added an additional 10 percent of the cost of the midpoint in the range of total disposal costs for the combined calves, feedlot, cattle 30 months of age or older, and cattle under

30 months (\$2.7 million) (Table 1, line 21 adds \$2.7 million to the disposal cost range of \$22.0 to \$33.0 million). We acknowledge additional uncertainty in this 10-percent estimate as we lack the data to present a more robust estimate. In sum, we find that the total disposal costs for slaughter establishments (\$3.4 million), renderers (\$11.3 million), cattle not inspected and passed for human consumption that would no longer be picked up by renderers (\$22.0 million to \$33.0 million), and other non-cattle species (\$2.7 million) will range from \$39.4 million to \$50.4 million.

3. Lost Value of CMPAF and Hides

For the proposed rule, ERG had calculated that the 64 million lbs. of CMPAF from both slaughter operations and from those cattle not inspected and passed for human consumption that would no longer be rendered would have yielded about 10,800 lbs. of MBM and 4,400 lbs. of tallow. Using historical byproduct prices, ERG had estimated the value of the MBM and tallow at \$1.0 million and \$0.8 million. Accepting the 2004 Informa estimate of a larger number of cattle currently rendered, we had included in the proposed rule an upper estimate of lost revenues of MBM at \$1.7 million and tallow at \$1.2 million.

The final rule differs from the proposed rule in that it exempts certain cattle-derived risk materials (brain and spinal cord from cattle under 30 months not inspected and passed for human consumption) from the definition of CMPAF. The final rule continues to prohibit the use of CMPAF in all animal feeds to prevent BSE.

Both ERG's 2004 report (relied upon for our analysis of the proposed rule) and the Informa report included the foregone revenues from MBM and tallow that would have been produced from the CMPAF as costs of the rule. This approach, however, overstates the true social cost of the rule because it includes value added from the use of capital and labor at rendering facilities that would not be used if the CMPAF goes to disposal without further rendering. A better estimate of social cost would include only the lost value attributable to the now-prohibited raw materials, or the difference in total cost between final products made with MBM or tallow from the CMPAF and the total cost of final products made with alternative raw materials. A more accurate estimate of the social cost of the rule would be the net income that would otherwise have been generated from the processing of CMPAF into MBM and tallow. For the final rule, ERG has estimated renderer average net

income for both MBM and tallow at 5.65 percent of their foregone sales, based on 2002 Census of Manufacturers data. Marginal net income may be more appropriate because it takes into account the existence of fixed costs. The lack of detailed revenue and cost data for those independent renderers affected by the rule, however, prevents us from estimating the cost functions necessary for a measure of marginal net income. The significance of the difference between marginal and average net income is not likely to be large in this case, since the supplies of raw materials are highly elastic and the amount affected is a small fraction of all ingredients. Industry data show that 18 percent of cattle 30 months of age or older are slaughtered for human consumption, thus requiring CMPAF removal. Consequently, ERG estimated the CMPAF removed at slaughterhouses to be about 28 million lbs. Using industry data on byproduct yields as well as historical averages prices for MBM and tallow of \$180/ton and \$360/ton, ERG estimated the value of this foregone MBM at \$0.6 million and tallow at \$0.5 million. Using a 5.65 percent net income rate, ERG estimated the social cost of the foregone MBM and tallow from slaughtered cattle at \$64,000 per year (Table 1, lines 4 and 5).

Additionally, ERG estimated the value of the MBM and tallow foregone from the carcasses of the cattle not inspected and passed for human consumption that would no longer be collected by renderers as a result of this rule (and would likely be disposed of on the farm or elsewhere). This reduction in rendering would include those cattle not rendered due to the reduced quantity demanded for rendering services of cattle not inspected and passed for human consumption caused by the substantial expected increase in pick-up charges. In addition, fewer cattle will be rendered due to a number of rendering plant closures. Using various price elasticities of demand, ERG's calculations forecast a 29.4 percent to 44.8 percent reduction in the number of cattle not inspected and passed for human consumption that are picked up for rendering. Using industry averages of animal weights for cattle of different ages, ERG calculated the total weight of animals that would no longer be picked up for rendering at 489 million lbs to 719 million lbs. Applying the yield rates of MBM and tallow for whole carcasses (25 percent for MBM, 10 percent for tallow) results in MBM revenue losses ranging from \$11.0 million to \$16.2 million, and tallow

revenue losses from \$8.8 million to \$12.9 million. Additional MBM and tallow revenue losses are estimated at \$3.1 million and \$2.5 million, respectively, for animals that were picked up by the renderer but were too decomposed to undergo tissue separation. Based on a 5.65 percent annual net income rate for both MBM and tallow, the resulting net income losses would range from \$1.4 million to \$1.8 million (Table 1, lines 14 and 15). Adding these losses to the net income loss from CMPAF derived from slaughterhouses results in total net income losses of \$1.5 million to \$1.8 million annually.

ERG also calculated the social cost of the hides that would be lost due to an increase in the number of cattle not inspected and passed for human consumption that would no longer be rendered as a result of this rule. The same assumptions and calculations that form the basis for the 29.4-percent to 44.8-percent increase in cattle not inspected and passed for human consumption that would no longer be rendered as a result of this rule apply to loss of cattle hide value as well. ERG has taken the reduction in each of the four individual cattle categories (the total reduction ranges from 29.4 percent to 44.8 percent over all calves, feedlot, cattle 30 months of age or older, and cattle under 30 months), and applied the average market value of the hide for each to estimate the total hide value lost due to this rule at \$9.16 million to \$13.69 million. In this case, ERG concludes that the social cost would include almost the entire market value of the hide because the only value added to the process is a very small amount of labor required for hide removal. Because this value was not calculated and subtracted from the average market values, the previously mentioned total may slightly overestimate the social costs.

4. Direct Costs

In the proposed rule we reported five categories of direct costs, including: (1) Capital and labor costs for slaughtering and rendering, (2) the tallow restriction, (3) MS beef restriction, (4) marking costs, and (5) labeling and recordkeeping costs. For the final rule, we address these same costs as well as the cost of (6) creating procedures for training on, and actual administration of, the age determination process for cattle.

a. *Capital and labor costs for slaughtering and rendering.* This final rule will result in cattle slaughter operations that separate CMPAF and arrange for its disposal separate from

other cattle offal. FSIS' regulations at 9 CFR 310.22 prohibit SRMs for use as human food but do not prohibit these materials from being rendered into MBM and tallow for use in feed for non-ruminant animals. Under this final rule, CMPAF from slaughterhouses (which are a small subset by volume of SRMs) could not be used in any animal feeds. Therefore, slaughterers would need to use separate offal lines for offal of non-prohibited material-origin and offal of CMPAF-origin.

For the proposed rule, we relied on the previous ERG report to project that slaughterers would incur annualized capital and labor costs that totaled \$676,000 (\$597,000 in annual labor costs plus \$555,000 in capital costs annualized at 7 percent over 10 years). These costs included the additional offal bins that all slaughterers were expected to require, the modified procedures and processes for the larger slaughterers, and additional labor to segregate the CMPAF. Comments on the proposed rule did not offer specific costs for slaughterers but generally maintained that slaughterers would be affected.

For the final rule, ERG revised its estimated number of USDA-inspected plants upward to 1,545 from 689, but revised the estimated number of cattle having CMPAF removed at slaughterers down from 100 percent to about 18 percent due to the change in approach whereby only cattle 30 months of age or older would have CMPAF removed at slaughter. ERG estimated the resulting one-time capital expenditures of the final rule at \$2.10 million (or \$299,000 annualized at 7 percent over 10 years). With the addition of maintenance costs of about \$315,000 and labor costs of \$656,000, ERG estimated the total annualized slaughter costs for capital and labor at about \$1.27 million (Table 1, lines 2 and 3), representing a small increase from the proposed rule.

In the proposed rule, we concluded that renderers would also incur additional capital and labor costs to handle CMPAF segregation from cattle not inspected and passed for human consumption. ERG projected equipment purchases and installation at a one-time cost of \$3.1 million (or \$442,000 at 7 percent over 10 years), as well as additional labor costs of \$1.4 million annually. We used this cost as the low end of the range of costs, and used a figure 2.46 times greater as the upper end based on the 2004 Informa assertion that 42 percent of cattle not inspected and passed for human consumption were currently rendered, compared with ERG's previous finding of this number at 17 percent. The proposed rule's

estimate for both renderer capital and labor costs was \$1.9 million to \$4.6 million annually. Numerous public comments addressed the capital and labor costs to renderers. In general, the comments stated that FDA greatly underestimated the cost to renderers of removing brain and spinal cord from cattle not inspected and passed for human consumption.

For the final rule, ERG reassessed the conclusions in its analysis of the proposed rule using the information provided in the 2005 Informa Economics report and presents final rule estimates that are substantially larger. ERG now estimates that there are 70 deadstock renderers, including 25 very small renderers that were likely not included in the Informa survey's result of 45 deadstock renderers. The estimated number is, however, a decrease from the proposed rule's estimate of 141 independent renderers because it is now accepted that deadstock renderers are a small subset of independent renderers, and non-deadstock renderers would not incur these additional capital and labor costs.

ERG contracted with an engineering firm to estimate the renovation of deadstock rendering facilities in order to remove CMPAF. The engineering firm created a detailed capital cost estimate for a deadstock renderer handling 150 animals per day at about \$600,000. ERG used this estimate as well as results of its discussions with other deadstock renderers to produce capital cost estimates across the range of deadstock renderers by size. The capital costs on a per plant basis have increased substantially for this final rule, most notably to account for the planning and construction of a separate structure for the removal of CMPAF. Whereas ERG had estimated one-time costs for capital improvements for renderers at \$3.1 million for the proposed rule (or \$442,000 annualized at 7 percent over 10 years), it estimated if all renderers initiated such renovations, the one-time costs for capital improvements for the final rule would be \$32.2 million (or \$4.6 million annualized at 7 percent over 10 years). The engineering estimates did not include a specific cost for construction permits, as one comment suggested would be needed, but the cost of construction permits would likely amount to a small part of the separate contingency costs that were included at \$54,000 per rendering facility.

ERG also increased its estimate of deadstock renderer labor costs on a per plant basis, due to further discussions with rendering facility managers. Whereas ERG estimated the additional

labor required for the proposed rule to range from 0.04 to 2.21 employees, it estimated the range for the final rule at 0.17 to 8.00 employees. Due to the estimated reduction in the number of rendering plants that would undertake such renovations and additional hiring, ERG concluded that total labor costs would only increase by \$1.4 million to \$1.7 million. ERG also found that an additional maintenance cost estimated at 15 percent of aggregate capital costs would add another \$4.8 million annually. Several comments on the proposed rule mentioned efficiency losses for renderers due to slower line speeds. We agree with the comment that this may be a possibility and have included additional labor costs, which would tend to offset those efficiency losses.

Public comments and industry discussions with ERG indicate that many facilities would not undertake the capital improvements and additional labor necessary to renovate facilities and change their operating procedures. In its analysis of the final rule, ERG adjusted the total costs to account for the number of deadstock renderers that would not undergo these renovations, assuming that the expected decline in the percentage of renderers would equal the percentage reduction in material sent to rendering. To do this, ERG relied on renderers' predictions (through direct discussions with renderers as well as in public comments) that they would require very large increases in pick-up fees. Some predicted that the pick-up fees would more than double. As a result, ERG estimated that the increase in fees would range from 100 percent to 150 percent for cattle 30 months of age or older, and 25 percent to 50 percent for all other cattle. Using estimated price elasticities ranging from 0.25 for feedlot cattle to 0.6 for calves (Informa also suggests an inelastic demand for rendering services by many livestock producers), ERG calculated the total reduction in raw material going to rendering at 29.4 percent to 44.8 percent, including an additional 10 percent reduction for facilities that abandon deadstock rendering. The 29.4 percent reduction in raw material going to rendering represent a decrease of 549,000 from the current total number of 1,870,000 cattle rendered ($549,000/1,870,000 = 29.4$ percent). This decrease is the combined decrease in numbers of calves, feedlot cattle, cattle 30 months or older, and cattle under 30 months. The number of calves going to rendering will decrease by 216,000, or 25 percent from the current number, 865,000 calves ($865,000 \times 25 \text{ percent} = 216,000$).

The 25 percent decrease includes a 15 percent decrease due to increased pick-up fees (0.6 elasticity times 25 percent increased pick-up fees) plus a 10 percent further reduction in non-cattle rendering due to plant closures. The number of feedlot cattle going to rendering will decrease by 27,000, or 6.3 percent from the current number, 424,000 feedlot cattle ($424,000 \times 6.3 \text{ percent} = 27,000$). The 6.3 percent is the result of a 0.25 elasticity times a 25 percent increase in pick-up fees. The number of cattle 30 months of age or older going to rendering will decrease by 281,000, or 60 percent from the current number, 469,000 cattle 30 months of age or older ($469,000 \times 60 \text{ percent} = 281,000$). The 60 percent decrease includes a 50 percent decrease due to increased pick-up fees (0.5 elasticity times 100 percent increased pick-up fees) plus a 10 percent further reduction in non-cattle rendering due to plant closures. The number of cattle under 30 months of age going to rendering will decrease by 25,000, or 22.5 percent from the current number, 111,000 cattle under 30 months of age ($111,000 \times 22.5 \text{ percent} = 25,000$). The 22.5 percent decrease includes a 12.5 percent decrease due to increased pick-up fees (0.5 elasticity times 25 percent increased pick-up fees) plus a 10 percent further reduction in non-cattle rendering due to plant closures.

The total reduction in cattle equals 29.4 percent of the currently rendered number of cattle ($549,000/1,870,000 = 29.4$ percent). The upper end of the range (44.8 percent) was calculated by the same method using the upper end range of factors. Using the midpoint of this 29.4-percent to 44.8-percent range, ERG predicted that about 37.1 percent of the renderers will not undergo these necessary capital renovations, thereby reducing the \$32.2 million one-time cost to \$20.25 million and the \$11.2 million in annualized capital, maintenance, and labor costs to \$7.0 million (Table 1, lines 9 and 10). Additionally, the number of cattle 30 months of age or older going to rendering would be reduced by 60 percent to 85 percent, thereby reducing the disposal costs to \$11.3 million. Without the adjustment for these two factors, the annualized capital, operating, maintenance, and disposal costs for deadstock operators would be estimated at \$52.4 million, not \$18.4 million.

b. *Tallow restriction.* The final rule would prohibit entirely the use of tallow derived from BSE-positive cattle and prohibit the use of certain other CMPAF-derived tallow unless it contains less than 0.15 percent insoluble impurities, as did the

proposed rule. For the proposed rule, we concluded that it would not be economical for renderers or tallow manufacturers to further process the separated brains and spinal cords and other tissues from those cattle undergoing tissue separation into tallow while complying with the additional equipment separation and tallow testing and purification requirements. We therefore did not include any additional cost for this provision. We received one comment that stated that the capital investment for dedicated equipment to be used to produce tallow (that would then need to meet the purity requirements) would be substantial. We agree with this comment. The final rule contains an estimate of a much larger volume of CMPAF than the original estimate for the proposed rule.

However, the amount of CMPAF that is handled directly by renderers is still a relatively small amount (because most is either on-farm disposal or other disposal of cattle not inspected and passed for human consumption), which would still not be economical to further process, due to the same equipment separation and tallow testing/purification requirements in this final rule. We have, therefore, not included additional costs for this provision. This analysis previously accounted for the net income lost on the value of this tallow and MBM.

c. *MS beef restriction.* In the proposed rule, we predicted that there would not be any costs for the provision that would prohibit the use of MS beef in animal feeds if the brain and spinal cord of cattle 30 months of age or older or the brain and spinal cord of all cattle not inspected and passed for human consumption has not been previously removed from the cattle material used to make MS beef. ERG's previous analysis concluded that the brain and spinal cord are already removed from the carcasses of dead cattle at the "4D" plants (independent renderers that collect dead and downer cattle and process the carcasses for red meat to be used for pet food manufacturers, zoos, and other animal feeding operations) that process them.

The ERG report maintains that all or almost all 4D plants already remove the brain and spinal cord. To the extent that a small percentage of 4D plants might not remove these materials, we agree that there could be some additional compliance costs to this final rule but believe them to be small due to the small number of establishments. As such, we have slightly revised our previous conclusion that there would not be additional compliance costs as a

result of the MS beef provision of the final rule.

d. *Marking costs.* The final rule, like the proposed rule, would require that renderers that handle CMPAF or products containing CMPAF mark this material or product so that it can be identified by visual inspection. For the proposed rule, ERG used various assumptions to characterize the cost of adding marker dyes to this material. It concluded with an estimate ranging from \$1,700 to \$13,000 annually for total industry compliance. Public comments on the proposed rule did not address the marking cost estimate.

For the final rule, ERG used the same assumptions to calculate its estimate of marking costs, resulting in the same marking ranging from \$0.11 to \$0.78 per ton of CMPAF. In this case, though, ERG included as an upper bound estimate of marking costs the tonnage of MBM and tallow from cattle not inspected and passed for human consumption that would not be rendered for non-ruminant feed as a result of this rule. In effect, ERG has allowed for the possibility that the additional cattle that would not be rendered for feed as a result of this rule would be rendered for disposal instead. Taking this possibility into account provides for a worst-case scenario for marking costs. We now estimate the final rule marking costs to range from \$18,000 to \$64,000 annually, a relatively large increase from those of the proposal but a very small part of total compliance costs.

e. *Labeling, recordkeeping, certification, and access costs.* The proposed rule would require that renderers that handle CMPAF or products that contain CMPAF ensure that the CMPAF are not used in animal feed. The proposed requirements included labeling for products with CMPAF that states "Do not feed to animals," the establishment and maintenance of records sufficient to track CMPAF to ensure the materials are not introduced into animal feed, and making such records available to FDA. ERG judged that the proposed labeling requirements would impose only modest compliance costs since the labeling requirements (applying primarily to bulk shipments) could be incorporated into current labeling practices. ERG estimated total industry costs at about \$62,000 annually (one-time costs of \$101,000 annualized at 7 percent over 10 years plus annual costs of \$48,000). We did not receive any substantive public comments concerning the labeling and recordkeeping costs.

For the final rule, ERG increased the hours needed for label design,

production, and review, but did not revise hourly estimates for recordkeeping modification and review. In total, we estimate this labeling and recordkeeping provision to cost industry about \$90,000 annually (a \$165,000 one-time cost annualized at 7 percent over 10 years plus \$67,000 in annual costs). Additionally, the final rule has been revised to clarify that a renderer's records must either include (1) certification or other documentation from the supplier that material supplied to the renderer does not include CMPAF, provided that it includes a description of the segregation procedures used, documentation that the supplier confirms that its segregation procedures are in place prior to supplying any cattle material to the renderer, and records of the renderer's periodic review of the suppliers' certification or other documentation; or (2) documentation of another method, acceptable to FDA, such as third party certification, for verifying that suppliers have effectively excluded CMPAF.

Based on the levels of effort estimated for the 2007 dietary supplement cGMP final rule (72 FR 34752) requiring certification of procedures, FDA projects that the initial certification or other documentation of the suppliers' procedures will require a 20-hour effort by a management level employee of an independent renderer. The Bureau of Labor Statistics (BLS) provides data on employee costs for management occupations classified within the North American Industrial Classification System (NAICS) code 311600—the animal slaughtering and processing industry (BLS data on individual occupations within NAICS code 311613—rendering and meat product processing, is not available). We have adjusted the BLS wage data, including a 40 percent increase for benefits and adjusting for inflation in employment costs. FDA estimates the initial certification or other documentation of suppliers to an independent renderer to cost about \$1,030 (annualized at \$250 per year over 10 years at a 7 percent discount rate). FDA estimates that the periodic review of the certification or other documentation to take 8 hours annually, resulting in a \$412 annual cost. FDA expects daily recordkeeping to amount to 5 minutes per day for an administrative support employee. Using the BLS data, this recordkeeping cost is estimated at about \$460 annually. Total annualized certification or other documentation costs per independent renderer establishment are estimated at about \$1,125.

FDA projects that the initial certification or other documentation of the internal system of a packer/renderer will require 6 hours for a management level employee. An additional 3 hours is expected to be expended each year for periodic review of the internal certification or other documentation. Packer/renderers will also be expected to incur recordkeeping costs estimated at about 5 minutes per day. Using the same BLS wage data as above, FDA projects annualized certification or other documentation costs per packer/renderer establishment to be about \$690. The total annualized costs of the new recordkeeping costs associated with the certification or other documentation of suppliers (slaughterers) for the estimated 125 independent renderers and 50 packer/renderers handling CMPAF is estimated at about \$175,000.

f. *Animal age determination.* The final rule does not include in the definition of CMPAF cattle not inspected and passed for human consumption under 30 months of age. FDA originally included these cattle in the definition of CMPAF because of European surveillance data suggesting that cattle not inspected and passed for human consumption pose a higher risk for BSE, and due to concerns that processes were currently not established in the rendering industry for verifying the age of such cattle through inspection. However, FDA received comments on the feasibility of aging such cattle and on the relatively low risk reduction achieved by excluding such cattle. FDA considered these comments, surveillance data indicating the current risk of BSE to U.S. cattle is very low, the strong feed protection provided by the existing ruminant feed rule, and the added secondary level of protection provided by the other provisions of this final rule. Based on these factors, FDA concluded that it was not necessary to include in the definition of CMPAF cattle not inspected and passed for human consumption that are under 30 months of age.

The ERG report concludes that, in the absence of a national cattle identification system, deadstock renderers will need to make the judgments regarding age on an animal-by-animal basis. Compliance costs for such a system would include administrative costs for the creation of procedures for employees to judge the age of animals, and training costs for educating employees on these procedures, as well as annual labor costs for the employees that administer the age determination process.

ERG assumed that the cost of procedure development, normally a

one-time cost, would likely be revised annually as the industry moves toward a national cattle identification system. Additionally, ERG estimates that annual training times for non-clerical workers will be 4 hours for deadstock renderers and 2 hours for non-deadstock independent renderers. In addition, 1 hour per year of supervisor time for employee training will be required for deadstock renderers and 0.5 hour for non-deadstock independent renderers. The total estimated costs to renderers of annual procedure development and updating and annual employee training will amount to about \$491,000. For large slaughterers that also perform their own rendering, ERG estimated the costs of procedure development and employee training for slaughter animal age identification at \$1.10 million annually. To the extent some slaughterers already have aging procedures in place to comply with FSIS' SRM rule, this may be an overestimate.

For the age determinations, ERG judged that the rendering truck drivers would make the actual age determinations at the animal producer site by reviewing the paperwork or using the dentition method. ERG judged that this procedure would not add to the total time an employee spends at each pick-up site. It therefore did not include additional compliance costs for the rendering truck driver. Review of these determinations and paperwork would be made at the rendering facility by supervisory personnel. ERG estimated total annual labor costs for the in-plant reviews of the age determination at about \$790,000. Total annual costs for renderer age determination efforts are estimated at \$1.28 million (\$491,000 plus \$790,000).

5. Feed Substitution Costs

For the proposed rule, we included in the compliance costs the incremental cost for the feed ingredients that would be needed to replace the MBM in non-ruminant animal feeds. Animal feed producers would be expected to substitute more costly protein sources for the MBM that was previously manufactured from CMPAF. In the analysis of the 1997 final rule prohibiting the use of mammalian proteins (with exceptions) from use in ruminant feeds, we calculated the cost to substitute MBM in a typical cattle ration. Assuming a \$20 per ton price difference between MBM and a substitute feed ingredient, in this case soybean meal, we estimated that the reformulated cattle ration would cost an additional \$31.76 per ton (including other ingredients). However, the prices of MBM and equivalent substitutes vary

constantly based on weather, global markets, slaughter rates, and other factors. We have no other information on the types of rations or feed formulations that will be affected by this final rule. Consequently, we accept the cattle ration example as a conservative estimate of the long-term cost of feed substitution.

Accordingly, for the October 2005 proposed rule, we inflated the unit cost from \$31.76 per ton to \$38.33 per ton to account for inflation through 2005 and determined the tonnage of MBM that would no longer be processed from the CMPAF. Multiplying this total, 15.6 million lbs, by \$38.33 per ton resulted in about \$300,000 in feed substitution costs for the proposed rule. Accounting for the high end of the range of animals currently rendered (as noted in the 2004 Informa report) led to an upper end cost of about \$450,000.

We received one comment that the removal of ruminant proteins from non-ruminant feed may increase the price of other protein sources, but it did not address the method used to account for feed substitution costs. We received many comments concerning the total amount of cattle byproducts that would no longer be made available for further processing for use in non-ruminant feeds. As noted previously in the section on disposal costs, ERG concluded that a much larger amount of cattle byproducts would no longer be available for this use. In total, the ERG calculations imply that the amount of MBM foregone from slaughterer and renderer CMPAF, as well as MBM that could have been produced from cattle not inspected and passed for human consumption that will no longer be rendered due to this rule, will range from 76,100 tons to 91,500 tons; a significant increase from the 7,800 tons estimated for the proposed rule. Based on the incremental feed substitution cost of \$38.33 per ton of MBM, we estimate that long-term total feed substitution costs for the final rule will range from \$2.92 million to \$3.51 million annually.

F. Government Costs

For the proposed rule, we concluded that there may be an increase in Federal fund expenditures for inspection activities, but did not expect it to be significant. The total number of establishments inspected was not expected to change substantially, as all establishments that would be inspected for compliance under § 589.2001 are already subject to § 589.2000 or other Federal rules. The additional materials that would be included as CMPAF may result in an increase in the number of

inspections or the length of time necessary to inspect an establishment. We did not estimate the additional costs that would be required because we judged that the additional resources would not be substantial. ERG judged that no new rendering facilities would be constructed or dedicated to rendering for disposal due to the proposed rule, and thus our inspection activities would not noticeably increase.

Country Designation

The final rule contains a provision that was not included in the proposed rule. This provision exempts CMPAF from designated countries from the prohibition on its use in animal feed. A foreign country seeking this designation will submit a written request to FDA that includes (1) information about the country's BSE case history, (2) risk factors, (3) measures to prevent the introduction and transmission of BSE, and (4) any other information relevant to determine how cattle materials from the country will be defined under 21 CFR 589.2001(b)(1). FDA will respond to a country's request in writing and may specify certain conditions when granting a request. Country designations will be subject to future review by FDA and can be revoked if a review shows that BSE-related restrictions are necessary.

a. *Number of countries affected.*

Although we do not know how many countries will submit a request to FDA for a designation under § 589.2001(f), we can use information from OIE and USDA to estimate the number of requests that might be submitted to the Center for Veterinary Medicine. According to the requirements of the OIE Terrestrial Animal Health Code (16th edition 2007), OIE officially recognizes five countries as having a "negligible BSE risk," including Australia, Argentina, New Zealand, Singapore, and Uruguay. In addition, OIE recognizes Iceland and Paraguay as "provisionally free" from BSE. According to OIE recommendations, SRM removal is not a condition for importing fresh meat or meat products from a negligible risk country. Allowing animal feeds or animal feed ingredients containing CMPAF to be imported from designated countries is consistent with the lack of any restrictions on SRMs from negligible risk countries in the OIE guidelines.

In addition to the countries recognized by OIE, a country exporting a large quantity of cattle products into the United States may submit a request for country designation to FDA. Table 1 presents data from USDA's Foreign Agricultural Service showing countries

that exported cattle products to the United States in 2006. Comparing the seven countries officially recognized by OIE as having a negligible BSE risk or being provisionally free of BSE and the countries listed in Table 5, approximately nine countries might submit a request. Because we are uncertain about the actual number of requests, for this analysis we estimate that 10 countries could submit a request to FDA to be exempted from CMPAF restrictions applicable to animal feed. Our estimate is not intended to suggest that all of these countries would qualify for a designation under § 589.2001(f).

TABLE 5.—BOVINE PRODUCT IMPORTS TO THE UNITED STATES (2006)

Exporting country	Percentage of imported bovine products
Canada	31
Australia	28
New Zealand	17
Uruguay	9
Brazil	7
Argentina	2
Nicaragua	2
Mexico	1
Costa Rica	1
Other Countries	2

Source: USDA, Foreign Agricultural Service, HS 6-Digit Imports. Report for bovine product codes generated January 28, 2008 at <http://www.fas.usda.gov/ustrdscrips/USReport.exe>.

b. *Cost of designation provision.* We make certain assumptions concerning the effort to prepare and submit a request for country designation in preparation of these costs estimates. Because a country that submits a request to be designated as exempt from certain BSE-related restrictions for animal feed may also petition USDA for exclusion from USDA's BSE-related requirements, we assume that a country wishing to submit a request to FDA to be designated as exempt from CMPAF restrictions has already completed a risk assessment and put risk management strategies into place. Whether these risk assessment and mitigation strategies are sufficient for a country to be so designated by FDA will be determined on a case-by-case basis. Moreover, we assume a request would include other technical information on the country's BSE status, a detailed outline of risk mitigation strategies, and information on the country's cattle-derived products that are exported to the United States. We assume that a foreign government employee earning the wage equivalent of a GS-14 step 1 would spend about 80 hours to collect and prepare this information for each country submitting a request for country designation at an

estimated cost of \$5,395.20 (80 hours × \$67.44 per hour including overhead). The request will also be reviewed by government managers before being submitted to the FDA. Assuming it takes a foreign government executive 40 hours to review the request, at a wage equivalent to a GS-15 step 3, it would cost approximately \$3,384.80 (40 hours × \$84.62 per hour including overhead) to review the request. Thus, the total cost to each country to prepare and submit a request to FDA to be considered for this designation would be about \$8,780. Once the request is received by FDA, we estimate that it will take approximately 80 hours to review each request, at a cost of approximately \$3,700 (80 hours × \$45.65 per hour for an employee rated as a GS-13 step 7). Thus, as shown in Table 6, the total cost of an initial request is approximately \$12,480. The estimated annual total for 10 requests would be \$124,800, with FDA incurring about 29 percent of these costs and foreign governments incurring the remaining 71 percent.

TABLE 6.—TOTAL COST OF THE INITIAL REQUEST AND REVIEW

Collect information, Prepare and Submit the Request to FDA	\$8,780
FDA Review per Request	3,700
Cost per Country	12,480
Total Cost for 10 Countries	124,800

Countries that successfully request to be designated as exempt from CMPAF restrictions applicable to animal feed will be subject to annual review by FDA to ensure that their designation remains appropriate. As part of this process, FDA may ask designated countries to confirm that both their BSE status and the information submitted by them in support of their original application remain unchanged. FDA may revoke a country's designation if FDA determines that it is no longer appropriate.

FDA has not yet determined the method by which the agency will conduct these annual reviews. One possible method would be for FDA to send a letter to designated countries asking whether there has been a change in their status or circumstances relative to their BSE history, surveillance, import activities, or other relevant criteria, and then compare any changed information with the information in the original submission. The OIE requires that countries whose BSE status has been officially recognized "should annually confirm during the month of

November whether their status and the criteria by which their status was recognized have remained unchanged." In some cases, the FDA reviewer might rely on this information, if available, in conducting a future review of the country's designation.

For this analysis, we assume it will take FDA and the designated country about one-third the time and effort as the original request for country designation. Thus, if the total cost to submit the request and have it reviewed by FDA was \$12,480, the annual review of the country designation by FDA and the submitting country will cost about \$4,200 (see Table 7).

TABLE 7.—COST OF ANNUAL REVIEW OF COUNTRY DESIGNATION

Submission of Additional Information by the Designated Country	\$3,000
FDA Review of Information ..	1,200
Cost per Designated Country	4,200
Total Cost for Review (10 Countries)	42,000

It is likely that those countries that currently export to the United States a significant amount of cattle-derived material that contains CMPAF will be most interested in submitting a request for country designation. It is also possible that new markets for cattle-derived products containing CMPAF could develop, providing an incentive for other countries to submit a request to FDA to be designated as exempt from CMPAF restrictions in animal feed. For this analysis, we do not attempt to forecast either new markets for cattle-derived products containing CMPAF or the frequency and costs of future requests for country designations.

G. Sensitivity Analysis

For the proposed rule, we presented alternative ranges of costs that could be expected due to the uncertainty in certain cost factors. Specifically, we showed that total compliance costs would increase substantially (from a range of \$14 million to \$24 million to a range of \$20 million to \$36 million) if the number of cattle not inspected and passed for human consumption that would no longer be rendered as a result of this rule (or 3.4 percent of all cattle not inspected and passed for human consumption) increased to about 11.6 percent of all cattle not inspected and passed for human consumption. This increase would be due to the much greater weight of the entire cattle carcass that would be disposed of compared with the weight of CMPAF from an

average cow slaughtered for human consumption or cow not inspected and passed for human consumption that had its CMPAF separated at the deadstock rendering facility.

Public comments on the method used by both ERG and FDA have previously been presented. The common perception in comments, summarized here again, is that the analysis of the proposed rule considerably underestimated the number of cattle not inspected and passed for human consumption that would no longer be rendered. We have also previously shown that additional data, public comments, and discussion with industry and association members have led to an updated analysis that presents a significantly greater number of those animals that would no longer be rendered due to this final rule. The sensitivity analysis included in the ERG report on the final rule attempts to identify the most influential factors of the analysis, and the range of costs associated with varying the key assumptions. ERG finds the disposal cost rate for CMPAF to be particularly influential because it represents a large fraction of total costs. Specifically, its analysis shows that a 33-percent increase or decrease in the disposal cost per cwt of CMPAF results in a respective \$18.1 million increase or decrease in the lower bound of total costs and a \$23.7 million increase or

decrease in the upper bound of total costs. The price of MBM and tallow does not have much effect on total costs. Similarly, the level of renderer capital costs do not appear to be significant because the amortization over 10 years results in a small annual cost compared to disposal costs. The elasticity estimates appear to have a more significant effect on total costs. A reduction in price elasticity of 50 percent from the low estimate for each ruminant category would reduce the lower bound of total compliance costs by about 22 percent, while an increase in elasticity by 50 percent from the high estimate for each ruminant category would result in a 15 percent increase in the upper bound of total compliance costs.

H. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires an agency to prepare a regulatory flexibility analysis if a rule is expected to have a significant impact on a substantial number of small entities. The discussion in this section of the final rule, as well as data and analysis contained in this rule's regulatory impact analysis, and section three of the ERG report, constitutes our final regulatory impact analysis in compliance with section 604 of the Regulatory Flexibility Act.

The Regulatory Flexibility Act requires that we present a succinct

statement of a rule's objectives. As stated previously in this analysis and unchanged from the proposed rule, the intent of this rule is to strengthen the safeguards designed to prevent the spread of BSE in U.S. cattle, as well as to reduce further any risk posed to humans from the agent that causes BSE.

Other requirements of the Regulatory Flexibility Act are a description of the small entities that would be impacted by the final rule, an estimate of the number of small entities to which the rule would apply, a description of the projected reporting, recordkeeping (see Section VI. Paperwork Reduction Act of 1995) and other compliance costs of the rule and the reason why any other significant alternatives considered by the agency were rejected.

The ERG analysis concentrates on the effects of the rule on small renderers and small slaughterers, and to a lesser extent on small dairy farms. Slaughterers are classified in the North American Industrial Classification System (NAICS) under code 311611—Animal (Except Poultry) Slaughtering, and renderers are classified under NAICS code 311613—Rendering and Meat Byproduct Processing (see Table 8). The Small Business Administration (SBA) classifies both slaughterers and renderers with less than 500 employees as small businesses.

TABLE 8.—TOTAL AND NUMBER OF AFFECTED ESTABLISHMENTS, BY SIZE IN SLAUGHTERING AND RENDERING

Employment size group	NAICS 311611 (slaughterers and renderers)		NAICS 311613 (rendering)	
	Total number of establishments	Estimated number of cattle slaughtering establishments ^a	Total number of establishments in 2002 census	Establishments affected by principal deadstock restrictions ^b
1 to 4	1,132	1,132	30	0
5 to 9	229	229	25	0
10 to 19	131	124	41	25
20 to 49	134	7	72	22
50 to 99	64	14	46	19
100 to 249	66	6	13	3
250 to 499	40	13	4	1
500 to 999	20	7	0	0
More than 1,000	53	13	0	0
Total	1,869	1,545	231	70

^a Cattle slaughterer distribution derived from federal and state slaughterer establishment count in USDA/NASS (2006). Establishments arrayed across size classes assuming that slaughter rates coincide with employment sizes. State slaughterers were assumed to be small and were added to the small size categories to match but not exceed the Census count of establishments. The distribution should be considered approximate.

^b The employment size class of deadstock renderers was estimated by ERG and should be considered to be approximate.
Source: ERG Report, Table 3–1, Page 3–2.

The number of cattle slaughtering and rendering establishments expected to be impacted by the CMPAF ban is 1,545 and 231, respectively. The majority of the impacts on renderers are expected to

be incurred by the 70 deadstock renderers. Using both Census and USDA data, ERG distributed the slaughtering establishments across the size classes of establishments using the same

proportions as those presented in the total number of establishments. This distribution shows that almost 99 percent of slaughtering establishments would qualify as small businesses.

According to SBA data, over 97 percent of all slaughtering firms would be considered small businesses, which would take into account multi-establishment firms. The SBA data also reports that 83 percent of all rendering firms would be considered small businesses. ERG concluded that it is likely that all 70 deadstock renderers have less than 500 employees and thus are considered small businesses. In summary, the number of affected small businesses in both sectors would be substantial.

As in its analysis of the proposed rule, ERG used its Small Business Impact Model (SBIM) to predict net income and closure impacts on both slaughtering and rendering firms (Appendix A of the ERG report contains a technical explanation of the SBIM). The model, which assumes a partial cost pass-through of costs for slaughterers (animal producers would incur the disposal costs), predicts modest impacts on cattle slaughtering due to the small minority of cattle slaughtered for human consumption that are 30 months of age or older. The model predicts costs for the small slaughterers to range from under \$100 for the smallest establishments slaughtering less than 1,000 animals per year to about \$7,100 per establishment for those slaughtering 300,000 to 500,000 cattle annually. Compliance costs as a percent of net income would range from less than 0.1 percent to 2.1 percent for the small slaughter businesses. For all slaughterers, regardless of size, costs are expected to be significantly below 1 percent of revenues.

Costs for the deadstock renderers were estimated through the SBIM with two separate scenarios: One in which disposal costs are included and one in which they are not included. Disposal costs are not included under one scenario to reflect the likelihood that increased pick-up charges to animal producers will mostly offset the additional disposal costs. In this case, compliance costs for the smallest establishment ranged from an estimate of \$97,000 to \$122,000 (\$153,000 to \$180,000 including disposal costs). Compliance costs for the larger establishments ranged from \$2.01 million to \$2.57 million (\$3.23 million to \$3.79 million including disposal costs). Compliance costs as a percent of net income ranged from 41 percent to 81 percent across all deadstock renderer sizes (from 65 percent to 100 percent including disposal costs). The total number of rendering establishments expected to close (assuming only disposal costs are transferred to animal producers), using a net income

assumption of 5.65 percent, ranged from 12 to 16 facilities. If these disposal costs are not transferred, the model forecasts 23 to 28 closures. Although all renderers contacted by ERG that were contemplating investing in capital to remove brain and spinal cord expected to charge substantially more in pick-up fees to recover these costs, some rendering plant closures are likely to result from this rule (Ref. 16, Section 3.3).

Small farms will incur compliance costs for the disposal of those animals that are no longer rendered due to either the increase in renderer pick-up fees or the termination of deadstock rendering services. ERG prepared a baseline enterprise dairy budget to demonstrate the relative size of the impacts of the final rule on a small (120-cow) dairy farm with about \$300,000 in revenues. The SBA defines small dairy and beef cattle producers as those with revenues under \$750,000, and USDA data shows the average dairy farm has about 110 dairy cows (Ref. 28). The expected incremental compliance costs (from the ERG model) for disposal of the annual number of dead dairy cows and calves (assumed to be disposed of off-site at \$12/cwt and \$4/cwt, respectively) on an operation of this size is about \$700, using the individual disposal rates for over 30-month cattle and calves. Compliance costs of an operation of this size are estimated at 0.25 percent of revenues and 2.63 percent of net income.

The effect of the annual feed substitution costs on small non-ruminant animal operations is also expected to be minimal. The \$2.9 to \$3.5 million in additional costs would not be significant when spread over the thousands of non-ruminant animal producers that currently use ruminant protein in animal feeds.

The Regulatory Flexibility Act requires agencies to analyze regulatory alternatives that would minimize any significant impact of a rule on small entities. For an analysis of the regulatory alternatives to this final rule, see section IV.B of this document.

V. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

SBREFA (Pub. L. 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of \$100 million or more; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse

effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with SBREFA, OMB has determined that this final rule is a major rule for the purpose of congressional review.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that were submitted to OMB for review under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520).

The title, description, and the respondent description of the information collection provisions are shown below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Substances Prohibited From Use in Animal Food or Feed

Description: This final rule (§ 589.2001) prohibits the use of certain cattle origin materials in the food or feed of all animals. These materials include the following: (1) The entire carcass of BSE-positive cattle; (2) the brains and spinal cords from cattle 30 months of age and older; (3) the entire carcass of cattle not inspected and passed for human consumption that are 30 months of age or older from which the brains and spinal cords were not effectively removed or otherwise effectively excluded from animal feed; (4) mechanically separated beef that is derived from cattle materials prohibited by the rule; and (5) tallow that is derived from BSE-positive cattle and tallow that is derived from certain other materials prohibited by the rule unless such tallow contains no more than 0.15 percent insoluble impurities. These measures will further strengthen existing safeguards designed to help prevent the spread of BSE in U.S. cattle. FDA has revised the final rule to include a statement of this purpose (§ 589.2001(1)).

As discussed in section I of this document, FDA has revised the final rule to include a statement of purpose for the rule, specifically, to prohibit the use of certain cattle origin materials in the food or feed of all animals to help prevent the spread of BSE in U.S. cattle. The final rule was also revised to require renderers to establish and maintain written procedures on aging animals to ensure that such animals are less than 30 months old if they are to be rendered for use in animal feed without brain and spinal cord removal.

Further, in response to concerns about ensuring effective removal of brain and spinal cord from animals 30 months of age or older, FDA has revised the final rule to require the establishment and maintenance of written procedures for ensuring that brain and spinal cord are effectively removed or effectively excluded from animal feed. As discussed in section I of this document, FDA has determined that it is the responsibility of the renderer to ensure that materials rendered for use in animal feed do not contain CMPAF. Therefore, the agency has explained in the final rule that a renderer's records must either include certification or other documentation from the supplier that material supplied to the renderer does not include CMPAF, or documentation of another method, acceptable to FDA, such as third-party

certification, for verifying that suppliers have effectively excluded CMPAF. Also, FDA is adding a provision to this rule so that it may designate a country as not subject to the CMPAF requirements of this rule (§ 589.2001(b)(1)(vi)). A country seeking such a designation must submit a written request and include information about the country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other information relevant to determining whether the country should be subject to the requirements regarding CMPAF as discussed in greater detail in section I of this document. These are new collection of information requirements that have been added to the previous burden estimate set forth in the proposed rule.

FDA believes that it has maximized the practical utility of this collection of information by not prohibiting certain cattle materials in animal food or feed, as long as the agency can be assured, through the establishment of written procedures, that brain and spinal cord were effectively removed or effectively excluded from animal feed or that the material was from cattle less than 30 months of age. FDA believes it has minimized the burden to the rendering industry by not specifying the procedures to be followed so as to provide the latitude to establish procedures that can most efficiently be incorporated into rendering operations.

Description of Recordkeeping for Respondents: Rendering facilities, medicated feed manufacturers and distributors, livestock feeders.

TABLE 9.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR section	Number of recordkeepers	Annual frequency per record-keeper	Total annual records	Hours per recordkeeper	Total hours	Operation and maint. costs
589.2001(c)(2)(vi) and (c)(3)(i)	175	1	175	20	3,500	\$59,500
589.2001(c)(2)(ii)	50	1	50	20	1,000	17,000
589.2001(c)(3)(i)(A)	175	1	175	26	4,550	80,580
Total .....	.....	.....	.....	.....	9,050	157,080

The estimated recordkeeping burden is derived from agency resources and discussions with affected industry. As discussed in the Paperwork Reduction Act section of the October 2005 proposed rule (70 FR 58570 at 58598), the recordkeeping requirement in § 589.2001(c)(2)(vi) will apply to the limited number of renderers that will handle CMPAF. FDA estimates that no more than 50 of the approximately 175 (based on current data) total independent rendering firms will be involved in the handling of this material. Although the agency may consider the distribution records needed to comply with this regulation "usual and customary" and thus not subject to the PRA, FDA believes there will be a burden associated with setting up a system to ensure such records are sufficient to address the recordkeeping requirement. Likewise, although FDA may consider the records necessary to comply with § 589.2001(c)(3)(i) as "usual and customary" and not subject to PRA burden accounting, FDA is including a burden estimate to cover establishment of a system to ensure that existing receipt, manufacturing, and certification records adequately address this requirement. FDA estimates that the recordkeeping burden associated with

§ 589.2001(c)(3)(i) would apply to the balance of the rendering firms not handling CMPAF. FDA solicited public comment on the estimated recordkeeping burden associated with § 589.2001(b)(2)(iv) (§ 589.2001(c)(2)(vi) in the final rule) and § 589.2001(b)(3)(i) (§ 589.2001(c)(3)(i) in the final rule) of the proposed rule, but no comments were received. It was estimated that the operation and maintenance cost per renderer for complying with the records requirements of either of these sections would be \$340.

As discussed previously, FDA has revised the final rule to require the maintenance of certain written procedures if cattle not inspected and passed for human consumption are to be rendered for use in animal feed. The recordkeeping burden associated with the requirement to maintain written procedures (§ 589.2001(c)(2)(ii)) will apply to only those renderers that choose to render for use in animal feed cattle not inspected and passed for human consumption. Based on the expertise of FDA's compliance staff who are knowledgeable about industry practices, FDA estimates that no more than 50 of the approximately 175 total independent rendering firms will be involved in the handling of this

material. Furthermore, FDA estimates that the recordkeeping burden for this new requirement is similar to the burden that was previously estimated for § 589.2001(c)(2)(vi) and § 589.2001(c)(3)(i). Therefore, FDA estimates that the cost per renderer for compliance with the new requirement for establishing and maintaining written procedures will be \$340 per renderer, hence the new figure of \$17,000 as shown in Table 9 of this document. Table 9 also reflects the estimated 26 hours each renderer will need to satisfy the requirement under which renderers must maintain records from their supplier, certifying that materials provided were free of CMPAF.

Description of Respondents for Reporting: As discussed earlier, the final rule includes a new provision that exempts CMPAF from designated countries from the prohibition on its use in animal feed (§ 589.2001(b)(1)(vi)). A foreign country seeking this designation will submit a written request to FDA that includes a variety of information about the country's BSE status (§ 589.2001(f)). As discussed in section IV, FDA estimates that 10 countries could submit a request to FDA to be exempted from the CMPAF restrictions. FDA estimates the burden for this

information collection as shown in Table 10:

TABLE 10.—ESTIMATED ONE-TIME AND RECURRING REPORTING BURDEN¹

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
§ 589.2001(b)(1) ²	10	1	10	80	800
§ 589.2001(f)	10	1	10	26.4	264
Total one time burden .....	.....	.....	.....	.....	800
Total recurring burden .....	.....	.....	.....	.....	264

¹ There are no capital costs or operating costs associated with the collection of information under this final rule.

² One-time burden.

One-Time Reporting Burden

There will be a one-time burden to countries that apply to FDA seeking to be designated as not subject to restrictions applicable to CMPAF. We estimate that each country that applies for an exclusion will spend 80 hours putting information together to submit to FDA. Table 10 row 1 of this document presents the one-time burden expected for countries that apply for the exclusion.

Recurring Burden

Countries that successfully petition FDA to be designated as exempt from certain BSE-related restrictions applicable to animal feed will be subject to future review by FDA to ensure that their designation remains appropriate. As part of this process, FDA may ask designated countries from time-to-time to confirm that their BSE situation and the information submitted by them in support of their original application remains unchanged. We assume it will take FDA and the designated country undergoing a review in the future about one third the time and effort it did when the information was submitted. Table 10 row 2 of this document presents the expected recurring burden.

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register**, announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless that agency displays a currently valid OMB control number.

VII. Environmental Impact

In the "Environmental Impact" section of the preamble to the October 6, 2005, proposed rule (70 FR 58570), FDA stated that it had carefully

considered the potential environmental impact of this action and had determined that the proposed action would not have a significant impact on the human environment and that an environmental impact statement was not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, were placed on display in the public docket (Docket No. 2002N-0273).

As discussed in section IV of the preamble to this final rule, the agency received many comments to the proposed rule that addressed the environmental effects of the proposed action, noting that the volume of material that would not be allowed in animal feed was much larger than originally estimated. As a result, FDA decided to perform a new environmental assessment that took into account the new information submitted in response to the proposed rule. Following a review of this new assessment, FDA again has made a finding of no significant impact. The evidence supporting that finding, contained in the new environmental assessment, may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. For ease of reference, the "Summary of Environmental Consequences" is reproduced below:

"The EA has examined the environmental consequences of prohibiting the use in animal feed of brain and spinal cord from cattle over 30 months of age, and the carcasses of dead stock cattle that were either not age verified or from which brain and spinal cord were not removed. Our assessment indicates that, under this final rule, approximately 670 million pounds of cattle byproducts that would normally be recycled in animal feed will

be diverted to other forms of disposal. In most areas of the country, this change in disposal patterns is not expected to have a large impact on the environment. In some areas of the country, however, adverse environmental impacts could be expected unless new disposal capacity is developed. To allow time for development of new methods of disposal, the agency is delaying implementation of this regulation for 12 months. We assume that disposal of the materials prohibited in animal feed by the final rule will be disposed of in accordance with local, State, and Federal laws and regulations."

FDA received several comments on the proposed rule that addressed environmental concerns surrounding the residual effects of disposal of cattle byproducts. The comments and the agency's responses are set forth in the following paragraphs.

(Comment 71) Several comments said that FDA did not conduct an adequate environmental impact analysis for the proposed rule and improperly made a finding of no significant impact. Another comment said that the environmental assessment failed to consider alternative methods of disposal other than landfilling and rendering. A number of comments said that FDA underestimated the environmental impact resulting from improper composting and landfilling.

(Response) In comments to the proposed rule, FDA received new information indicating that some of the assumptions used in the economic analysis may have been incorrect, especially those assumptions related to disposal of deadstock. The agency modified the assumptions based on this new information and considered all other relevant comments in completing a re-analysis of both the economic and environmental impacts of the proposed rule. After completing a new environmental assessment, the agency still concludes that the environmental

impact is not significant, see revised environmental assessment in the public docket (Docket No. 2002N-0273).

(Comment 72) Several comments said that animal and human health risks from non-feed disposal of deadstock are greater than the risks reduced by the proposed regulation. In contrast, one comment stated that, since the majority of cattle mortalities today are disposed of by means other than rendering and since this disposal does not appear to be causing disease outbreaks, the comment questioned the assertion by some that on-farm and alternative disposal will degrade public and animal health. Another comment stated that health concerns resulting from the proposed rule are being exaggerated for the purpose of preventing the rule from being finalized.

(Response) The agency received no data in support of either position on the effects of non-feed disposal of CMPAF on animal or human health.

(Comment 73) Several comments asked why FDA is not concerned about environmental exposure to the BSE agent through indiscriminant disposal of deadstock if the BSE infectious dose is really 10 mg or less and the agent remains infectious in soil.

(Response) The agency believes that, based on the extremely low prevalence of BSE in this country and the absence of evidence that BSE is transmitted through soil and water, the risk of BSE transmission through exposure to the BSE agent in the environment is very low.

(Comment 74) Several comments said that landfilling and burial will create problems of odor control, ground and surface water contamination, and disease caused by conventional pathogens. Other comments stated that the soil and geologic conditions in certain states are particularly unsuitable for carcass burial.

(Response) FDA believes that odors and pathogens should not be significant problems when carcasses are properly buried, and in particular, when carcasses are landfilled. The agency acknowledges, however, that soil or geologic conditions in some parts of the country may not permit carcasses to be properly buried. In such areas, alternative disposal methods should be identified. The agency intends to allow sufficient time before the rule becomes effective to allow for the arrangement of disposal methods that are appropriate for local conditions.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles in Executive Order 13132. FDA has

determined that the final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

IX. References

The following references have been placed on display in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web site addresses after this document publishes in the **Federal Register**.)

1. Scientific Steering Committee, European Commission, "Opinion of the Scientific Steering Committee on the Human Exposure Risk (HER) via Food With Respect to BSE," adopted on 10 December 1999, http://europa.eu.int/comm/food/fs/sc/ssc/out67_en.pdf.
2. U.S. Food and Drug Administration, Center for Veterinary Medicine, Summary of FDA Inspectional Findings and Recalls Involving the Ruminant Feed Ban Regulation (21 CFR 589.2000) Conducted in Fiscal Years 2004-2007, April 2008.
3. "An Estimate of the Prevalence of BSE in the United States," U.S. Department of Agriculture, July 20, 2006, APHIS/USDA Internet page http://www.aphis.usda.gov/peer_review/content/printable_version/BSE_Prevalence_scientific_doc_after.pdf.
4. GAO Report No. 05-101, "Mad Cow Disease: FDA's Management of the Feed Ban Has Improved, but Oversight Weaknesses Continue to Limit Program Effectiveness," February 2005.
5. "Bovine Spongiform Encephalopathy (BSE) Ongoing Surveillance Plan," U.S. Department of Agriculture, Animal and Plant Health Inspection Service, July 20, 2006, http://www.aphis.usda.gov/newsroom/hot_issues/bse/downloads/BSE_ongoing_surv_plan_final_71406%20.pdf.
6. Hunter, N., J. Foster, A. Chong, *et al.*, "Transmission of prion diseases by blood transfusion," *Journal of General Virology*, 83: 2897-2905, 2002.
7. Brown, P., L. Cervenakova, L.M. McShane, *et al.*, "Further studies of blood infectivity in an experimental model of transmissible spongiform encephalopathy, with an explanation of why blood components do not transmit Creutzfeldt-Jakob disease in humans," *Transfusion*, 39:1169-1178, November/December, 1999.
8. Scientific Steering Committee, European Commission, "The Implications of the Recent Papers on Transmission of BSE by Blood Transfusion in Sheep (Houston, *et al.*, 2000; Hunter, *et al.*, 2002)," adopted by the scientific steering committee at its meeting of September 12 and 13, 2002, http://europa.eu.int/comm/food/fs/sc/ssc/out280_en.pdf.
9. Scientific Steering Committee, European Commission, "Opinion on the Safety of Ruminant Blood With Respect to TSE Risks," adopted on April 13 and 14, 2000, http://ec.europa.eu/food/fs/sc/ssc/out74_en.pdf.
10. Buschmann, A., and M. Groschup, "Highly Bovine Spongiform Encephalopathy-Sensitive Transgenic Mice Confirm the Essential Restriction of Infectivity to the Nervous System in Clinically Diseased Cattle," *The Journal of Infectious Diseases*, 192:934-42, September 1, 2005.
11. Bradley, R., "Bovine Spongiform Encephalopathy (BSE)—the Current Situation and Research," *European Journal of Epidemiology*, 7:532-544, 1991. Anderson, R.M., *et al.*, "Transmission Dynamics and Epidemiology of BSE in British Cattle," *Nature*, 382:779-788, 1996.
12. Comer, P.J., and P.J. Huntly, "Exposure of the Human Population to BSE Infectivity Over the Course of the BSE Epidemic in Great Britain and the Impact of Changes to the Over Thirty Month Rule," *Over Thirty Month Rule (OTMR) Review Paper*, June 2003.
13. Scientific Steering Committee, European Commission, report of March 26 and 27, 1998, updated June 24 and 25, 2001, "Safety of Tallow Derived from Ruminant Tissues."
14. OIG Report No. 50601-10-KC [Bovine Spongiform Encephalopathy (BSE) Surveillance Program (Phase II) and Controls Over BSE Sampling, Specified Risk Materials, and Advanced Meat Recovery Products (Phase III)], January 2006.
15. World Organization for Animal Health, Manual of Diagnostic Tests and Vaccines for Terrestrial Animals 2004 (updated 2006). Accessed online at http://www.oie.int/eng/normes/mmanual/A_summary.htm.
16. "Economic Impacts of FDA Regulatory Changes Due to Risk of Bovine Spongiform Encephalopathy" (Final Report), Contract No. 223-03-8500, Task Order Number 8, Eastern Research Group, Inc., Lexington, MA, March 15, 2007.
17. European Union Scientific Steering Committee, Opinion of December 10, 1999, of the Scientific Steering Committee on "The Human Exposure Risk (HER) via Food With Respect to BSE," p. 11, 2001.
18. Scientific Steering Committee, European Commission, "Update of the Opinion on TSE Infectivity Distribution in Ruminant Tissues (initially adopted by the

- Scientific Steering Committee at its meeting of 10–11 January 2002 and amended at its meeting of 7–8 November 2002),” http://ec.europa.eu/food/fs/sc/ssc/out296_en.pdf.
19. United Kingdom, Department for Environment, Food and Rural Affairs, 2007, <http://www.defra.gov.uk/animalh/bse/statistics/bse/yrbirth.html>.
 20. United Kingdom, Department of Health, Monthly Creutzfeldt Jakob Disease Statistics, August 7, 2006, <http://www.gnn.gov.uk/environment/fulldetail.asp?releaseID=219257&newsarealID=2>.
 21. “Preliminary Analysis of Final Rules and an Interpretive Rule to Prevent the BSE Agent from Entering the U.S. Food Supply,” U.S. Department of Agriculture, April 7, 2004, <http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OA/news/2004/bserregs040704.htm>.
 22. USDA, Foreign Agricultural Service, U.S. Trade Internet System, FAS Agricultural Export Commodity Aggregations, Jan-Dec Annual Value and Quantities for the Total World Export of Beef & Veal (FR/CH/FZ and PREP/PRES), and Beef Variety Meats. Query generated March 27, 2008. Data source: Dept of Commerce, U.S. Census Bureau, Foreign Trade Statistics. (<http://www.fas.usda.gov/ustrade/USTExFAS.asp?QI=>).
 23. Mathews, Kenneth H., Jr., Monte Vandemeer, and Ronald Gustafson, “An Economic Chronology of Bovine Spongiform Encephalopathy in North America,” Economic Research Service, USDA, June 2006 (<http://www.ers.usda.gov/Publications/LDP/2006/06Jun/LDPM14301/>).
 24. Economic Research Service, USDA, “Beef—United States Elasticities,” (<http://www.ers.usda.gov/Data/Elasticities/>).
 25. Economic Research Service, USDA, “U.S. Beef and Cattle Industry: Background Statistics and Information; U.S. Cattle and Beef Industry, 2002–2007,” (<http://www.ers.usda.gov/news/BSECoverage.htm>).
 26. “Economic Impacts of Proposed Changes to Livestock Feed Regulations,” Informa Economics, December 2005.
 27. “Carcass Disposal: A Comprehensive Review,” National Agricultural Biosecurity Center Consortium Carcass Disposal Working Group for the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Chapter 9—Economic and Cost Considerations, p. 18, August 2004.
 28. National Agricultural Statistics Service, U.S. Department of Agriculture, Agricultural Statistics 2006, p. VIII–3.

List of Subjects in 21 CFR Part 589

Animal feeds, Animal foods, Food additives, Incorporation by reference.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the Food and Drug

Administration, 21 CFR part 589 is amended to read as follows:

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

■ 1. The authority citation for 21 CFR part 589 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371.

■ 2. Section 589.2000 is amended by revising paragraph (a)(1) and by adding paragraphs (c)(4) and (e)(3) to read as follows:

§ 589.2000 Animal proteins prohibited in ruminant feed.

(a) * * *

(1) *Protein derived from mammalian tissues* means any protein-containing portion of mammalian animals, excluding: Blood and blood products; gelatin; tallow containing no more than 0.15 percent insoluble impurities and tallow derivatives as specified in § 589.2001; inspected meat products which have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings); milk products (milk and milk proteins); and any product whose only mammalian protein consists entirely of porcine or equine protein.

* * * * *

(c) * * *

(4) Renderers shall comply with all applicable requirements under § 589.2001.

* * * * *

(e) * * *

(3) Renderers shall comply with all applicable requirements under § 589.2001.

* * * * *

■ 3. Section 589.2001 is added to read as follows:

§ 589.2001 Cattle materials prohibited in animal food or feed to prevent the transmission of bovine spongiform encephalopathy.

(a) *Purpose*—The purpose of this section is to prohibit the use of certain cattle origin materials in the food or feed of all animals to further reduce the risk of the spread of bovine spongiform encephalopathy (BSE) within the United States.

(b) *Definitions*—(1) *Cattle materials prohibited in animal feed* include:

(i) The entire carcass of BSE-positive cattle;

(ii) The brains and spinal cords of cattle 30 months of age and older;

(iii) The entire carcass of cattle not inspected and passed for human

consumption as defined in paragraph (b)(2) of this section that are 30 months of age or older from which brains and spinal cords were not effectively removed or otherwise effectively excluded from animal feed;

(iv) Mechanically separated beef as defined in paragraph (b)(3) of this section that is derived from materials specified in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section; and

(v) Tallow as defined in paragraph (b)(5) of this section that is derived from materials specified in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section.

(vi) Cattle materials prohibited in animal feed do not include:

(A) Tallow derivatives as defined in paragraph (b)(6) of this section;

(B) Tallow as defined in paragraph (b)(5) of this section that is derived from materials specified in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section and that contains no more than 0.15 percent insoluble impurities. Insoluble impurities must be measured by the method entitled “Insoluble Impurities” (AOCS Method Ca 3a–46), American Oil Chemists’ Society (AOCS), 5th Edition, 1997, incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or another method equivalent in accuracy, precision, and sensitivity to AOCS Official Method Ca 3a–46. You may obtain copies of the method from the AOCS (<http://www.aocs.org>), 2211 W. Bradley Ave., Champaign, IL 61821. Copies may be examined at the Center for Food Safety and Applied Nutrition’s Library, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(C) Materials as defined in paragraphs (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) (other than mechanically separated beef from the carcass of a BSE-positive cattle), and (b)(1)(v) of this section from cattle from a country that has been designated under paragraph (f) of this section.

(2) *Cattle not inspected and passed for human consumption* means cattle that did not pass antemortem inspection by the appropriate regulatory authority. This term includes nonambulatory disabled cattle. Nonambulatory disabled cattle are cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured

vertebral column, or metabolic conditions.

(3) *Mechanically separated beef* means a finely comminuted meat food product, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses.

(4) *Renderer* means any firm or individual that processes slaughter byproducts, animals unfit for human consumption, or meat scraps. The term includes persons who collect such materials and subject them to minimal processing, or distribute them to firms other than renderers (as defined in this paragraph) whose intended use for the products may include animal feed, industrial use, or other uses. The term includes renderers that also blend animal protein products.

(5) *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues.

(6) *Tallow derivative* means any product obtained through initial hydrolysis, saponification, or transesterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or transesterification may be applied to obtain the desired product.

(c) *Requirements.* (1) No animal feed or feed ingredient shall be manufactured from, processed with, or otherwise contain, cattle materials prohibited in animal feed as defined in paragraph (b)(1) of this section.

(2) Renderers that receive, manufacture, process, blend, or distribute cattle materials prohibited in animal feed as defined in paragraph (b)(1) of this section, or products that contain or may contain cattle materials prohibited in animal feed, shall take the following measures to ensure that materials prohibited as defined in paragraph (b)(1) of this section are not introduced into animal feed:

(i) Exclude from use in animal feed the entire carcass of cattle not inspected and passed for human consumption as defined in paragraph (b)(2) of this section if:

(A) The brain and spinal cord are not effectively removed from such cattle or the brain and spinal cord from such cattle are not otherwise effectively excluded from animal feed; and

(B) Such cattle are 30 months of age or older.

(ii) If renderers remove brain and spinal cord from cattle not inspected and passed for human consumption, or separate such animals based on whether or not they are 30 months of age or older, renderers must maintain adequate written procedures specifying how these processes are carried out.

(iii) Once cattle materials prohibited in animal feed have been separated from other cattle materials, provide for measures to avoid cross-contamination;

(A) Use separate equipment while handling cattle materials prohibited in animal feed; or

(B) Use separate containers that adequately prevent contact with animal feed, animal feed ingredients, or equipment surfaces;

(iv) Label the cattle materials prohibited in animal feed and products that contain or may contain cattle materials prohibited in animal feed in a conspicuous manner as follows: "Do not feed to animals";

(v) Mark the cattle materials prohibited in animal feed and products that contain or may contain cattle materials prohibited in animal feed with an agent that can be readily detected on visual inspection; and

(vi) Establish and maintain records sufficient to track cattle materials prohibited in animal feed to ensure such material is not introduced into animal feed, and make the records available for inspection and copying by the Food and Drug Administration.

(3) Renderers that receive, manufacture, process, blend, or distribute any cattle materials shall take the following measures to ensure that materials prohibited as defined in paragraph (b)(1) of this section are not used in animal feed:

(i) Establish and maintain records sufficient to demonstrate that material rendered for use in animal feed was not manufactured from, processed with, or does not otherwise contain, cattle materials prohibited in animal feed and make copies of all records available for inspection and copying by the Food and Drug Administration. With respect to cattle materials obtained from establishments which have segregated cattle materials prohibited in animal feed, such records must demonstrate that establishments supplying cattle materials to the renderers have adequate

procedures in place to effectively exclude cattle materials prohibited in animal feed; and these records shall be considered sufficient to meet this requirement if they include either:

(A) Certification or other documentation from the supplier that material supplied to the renderer does not include cattle materials prohibited in animal feed; such certification or documentation is acceptable, provided that it includes a description of the segregation procedures used, documentation that the supplier confirms that its segregation procedures are in place prior to supplying any cattle material to the renderer, and records of the renderer's periodic review of the suppliers' certification or other documentation; or

(B) Documentation of another method acceptable to FDA, such as third-party certification, for verifying that suppliers have effectively excluded cattle materials prohibited in animal feed.

(ii) Comply with all applicable requirements under § 589.2000 regarding animal proteins prohibited in ruminant feed.

(d) *Adulteration and misbranding.* (1) Failure of a renderer to comply with the requirements in paragraphs (c)(2)(i) through (c)(2)(iii), (c)(2)(v) and (c)(2)(vi), or (c)(3)(i) of this section will render the animal feed or feed ingredients adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the act).

(2) Animal feed or feed ingredients that are not in compliance with paragraph (c)(1) of this section are adulterated under section 402(a)(2), 402(a)(3), or 402(a)(5) of the act.

(3) Animal feed or feed ingredients that are not in compliance with the labeling requirements of paragraph (c)(2)(iv) of this section are misbranded under section 403(a)(1) or 403(f) of the act.

(4) Failure of a renderer to comply with the requirements in paragraph (e) of this section will render the animal feed or feed ingredients adulterated under section 402(a)(4) of the act.

(e) *Inspection; records retention.* Records required to be made available for inspection and copying by the Food and Drug Administration, as required by this section, shall be kept for a minimum of 1 year.

(f) *Process for designating countries.* A country seeking designation must send a written request to the Director, Office of the Center Director, Center for Veterinary Medicine, at the address designated in § 5.1100 of this chapter. The request shall include information about that country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE,

and any other information relevant to determining whether the cattle materials from the requesting country do or do not meet the definitions set forth in paragraph (b)(1) of this section. FDA shall respond in writing to any such request and may impose conditions in granting any such request. Any grant by FDA of such a request under this paragraph will be subject to future

review by FDA and may be revoked if FDA determines that the granted request is no longer appropriate.

Dated: April 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 08–1180 Filed 4–23–08; 8:45 am]

BILLING CODE 4160–01–P



Federal Register

**Friday,
April 25, 2008**

Part VII

Department of Housing and Urban Development

**Notice of Funding Opportunity (NOFA)
for Fiscal Year 2007 Demonstration
Program for Elderly Housing for
Intergenerational Families**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5170-N-01]

Notice of Funding Opportunity (NOFA) for Fiscal Year 2007 Demonstration Program for Elderly Housing for Intergenerational Families

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: Purpose of Program: This funding opportunity is available for a demonstration program to provide assistance for intergenerational dwelling units for intergenerational families in connection with the supportive housing program under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). The purpose of the program is to expand the supply of intergenerational dwelling units for very low-income grandparent(s) or relative(s) heads of household 62 years of age or older raising a child.

Overview Information

A. Federal Agency Name: Department of Housing and Urban Development.

B. Funding Opportunity Title: Demonstration Program for Elderly Housing for Intergenerational Families.

C. Announcement Type: Initial announcement.

D. Funding Opportunity Number: FR-5170-N-01; the OMB Approval Number is 2502-0571.

E. Catalog of Federal Domestic Assistance Number: 14.317.

Demonstration Program for Elderly Housing for Intergenerational Families.

F. Dates: The application deadline is on or before July 2, 2008. Applications must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. Please be sure to read the General Section for electronic application submission and receipt requirements.

G. Optional, Additional Overview Content Information:

1. Purpose of the Program. The purpose of this program is to provide assistance for a demonstration program to expand the supply of intergenerational dwelling units for very low-income grandparent(s) or relative(s) heads of households 62 years of age or older raising a child who is not more than 18 years of age or not more than 19 years of age and also attending school. The family must meet the age requirements to be eligible for an intergenerational dwelling unit.

2. Available Funds. Funding is available for \$3.96 million to develop housing for intergenerational families.

3. Types of Funds. Capital Advance funding is available under this NOFA to cover the cost of expanding the supply of intergenerational housing. In addition, Project Rental Assistance Contract (PRAC) funds are available for Section 202 Capital Advance projects that are funded under this program to cover the difference between the HUD-approved operating costs of the project and the tenants' contribution toward rent (30 percent of their adjusted monthly income). PRAC funds are available to cover the difference between the HUD-approved operating costs of the project and the tenants' contribution toward rent (30 percent of their adjusted monthly income) for private nonprofit owners of Section 202/8 projects for intergenerational dwelling units provided:

a. Through development of buildings or projects comprised solely of intergenerational units; or

b. Through the development of an annex or addition to an existing project assisted under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), that contains intergenerational dwelling units, including through the development of elder cottage housing opportunity units that are small, freestanding, barrier free, energy efficient, removable dwelling units located adjacent to a larger project or dwelling. (Converted units that already receive either Section 8 or PRAC will not be eligible for PRAC assistance under this NOFA).

4. Eligible Applicants. Only private nonprofit owners of a Section 202 project interested in applying for funding under this program should carefully review the detailed information listed in this NOFA.

5. Eligible Activities. This program provides funding to private nonprofit owners of a Section 202 project to use only for expanding the supply of intergenerational dwelling units.

6. Match Requirements. None required.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description. This funding opportunity is available for a demonstration program to provide assistance for intergenerational dwelling units for intergenerational families in connection with the supportive housing program under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). Repayment of the funding is not required as long as the housing remains

available for occupancy by very low-income intergenerational families for 40 years in the case of a new building or annex and 20 years in the case of reconfigured units in an existing project.

For those projects eligible to receive PRAC funds, the funds are used to cover the difference between the tenants' contribution toward rent (30 percent of adjusted income) and the HUD-approved cost to operate the project. The PRAC funds may also be used to provide supportive services and to hire a service coordinator in those projects selected for assistance. The supportive services must be appropriate to the category or categories of residents to be served.

B. Authority. The Demonstration Program for Elderly Housing for Intergenerational Families is authorized by Living Equitably: Grandparents Aiding Children and Youth Act of 2003 or the LEGACY Act of 2003 (Pub. L. 108-186, Title II, Dec. 16, 2003; 117 Stat. 2688). The Department of Housing and Urban Development Appropriations Act, 2006 (Pub. L. 109-115, approved Nov. 30, 2005) provided \$3.96 million for a Section 202 Demonstration Program for Elderly Intergenerational Families pursuant to section 203 of Public Law 108-186.

C. Calculation of Fund Reservation. If selected, you will receive a fund reservation that will consist of:

1. Demonstration Program Funds. The reservation for funds is based on a formula that takes the development cost limit for the appropriate building type (elevator, non-elevator, and unit size), multiplies it by the number of units of each size (including a unit for a resident manager, if applicable), then multiplies the result by the high-cost factor for the geographical area. For retrofitting existing units, the funds will be available for the costs of physical conversion of the units and related community and service space. The development cost limits can be found in this NOFA.

2. PRAC Funds. The initial PRAC award covers 3 years. The amount awarded is determined by multiplying the number of revenue units for intergenerational families by the appropriate operating cost standard times three. **Note:** PRAC funds will only be awarded to those Section 202 Capital Advance projects that are currently eligible to receive PRAC funds and to Section 202/8 projects for intergenerational dwelling units provided through development of buildings or projects comprised solely of intergenerational units or through the development of an annex or addition to

an existing project assisted under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), that contains intergenerational dwelling units, including through the development of elder cottage housing opportunity units that are small, freestanding, barrier free, energy efficient, removable dwelling units located adjacent to a larger project or dwelling.

D. Definitions. For purposes of this notice:

1. Covered Family. A family that:
 - a. includes a child; and
 - b. has a head of household who is 62 years of age or older who is:
 - (1) A grandparent of the child who is raising the child; or
 - (2) a relative of the child who is raising the child.
2. Elderly Person. The term "elderly person" is defined as a household composed of one or more persons, at least one of whom is 62 years of age or older at the time of initial occupancy.
3. Intergenerational family. A covered family that has a head of household who is an elderly person, as defined above.
4. Intergenerational dwelling unit. A qualified dwelling unit that is reserved for occupancy only by an intergenerational family.
5. Child. An individual who is not older than 18 years of age or not older than 19 years of age and also attending school.
6. Grandparent. With respect to a child, an individual who is a grandparent or step-grandparent of the child by blood or marriage, regardless of the age of such individual. In the case of a child who was adopted, the term includes an individual who, by blood or marriage, is a grandparent or step-grandparent of the child as adopted.
7. Relative. With respect to a child, an individual who is not a parent of the child by blood or marriage and is a "relative" of the child by blood or marriage regardless of the age of the individual. In the case of a child who was adopted, the term "relative" includes an individual who, by blood or marriage, is a relative of the family who adopted the child.
8. Raising a child. With respect to an individual, the individual:
 - a. Resides with the child; and
 - b. Is the primary caregiver for the child: (1) Because the biological or adoptive parents of the child do not reside with the child or are unable or unwilling to serve as the primary caregiver of the child; and (2) regardless of whether the grandparent or other relative has a legal relationship to the child (such as guardianship or legal custody) or is caring for the child

informally and has no such legal relationship with the child.

9. General Section. HUD's Fiscal Year 2008 Notice of Funding Availability (NOFA); Policy Requirements and General Section to the FY2008 SuperNOFA for HUD's Discretionary Programs; Notice, published March 19, 2008 (73 FR 14882).

II. Award Information

A. Available Funds. The Department of Housing and Urban Development Appropriations Act, 2006 (Pub. L. 109-115, approved Nov. 30, 2005) provided \$4 million for a Section 202 Demonstration Program for Elderly Intergenerational Families, pursuant to section 203 of Public Law 108-186, to expand the supply of intergenerational dwelling units. For projects eligible to receive PRAC funds, the funds are available to cover the difference between the tenants' contribution toward rent and the HUD-approved cost to operate the project. As the result of the rescission, \$3.96 million is available for distribution under this NOFA.

B. Number of Awards. HUD anticipates awarding two to four project awards.

C. Amount of Award. The maximum amount of award is \$2 million.

D. Type of Assistance Instrument. The Agreement Letter, when fully executed, stipulates the terms and conditions for the fund reservation award, as well as the submission requirements following the fund reservation award. The duration of the fund reservation award for the funding is 18 months from the date of issuance of the fund reservation.

E. Use Agreement. The applicant must enter into a Use Agreement to operate the project only as rental housing for very low-income elderly intergenerational families for not less than 40 years for a new building or annex and for an additional 20 years for existing units converted to intergenerational units. If the project is to be located on a site not subject to an existing mortgage to HUD, a first mortgage for a term of 40 years will be required. All Use Agreements must be recorded.

F. Anticipated Start and Completion Date. Immediately upon your acceptance of the Agreement Letter, you are expected to begin work toward the submission of a Firm Commitment application, which is the next application submission stage. You are required to submit a Firm Commitment Application to HUD Headquarters within 180 days from the date of the Agreement Letter. Initial closing and start of construction of the project are expected to be accomplished within the

duration of the fund reservation period, as indicated in the above paragraph regarding the Type of Assistance Instrument. Final closing is expected no later than 6 months after completion of the project construction.

III. Eligibility Information

A. Eligible Applicants. Only private nonprofit owners of Section 202 projects may apply for assistance under this NOFA.

B. Cost Sharing or Matching. No cost sharing or matching is required; however, you are required to provide evidence that you have sufficient funds available that together with the assistance funds, will be sufficient for initial closing and project completion.

The owner makes a commitment by signing form HUD-92041, Sponsor's Conflict of Interest Resolution. The Sponsor will make a commitment by signing form HUD-92042, Sponsor's Resolution for Commitment to the Project.

C. Other

1. Eligible Uses of Funds

a. Funds are available only to private nonprofit owners of Section 202 projects to use in expanding the supply of intergenerational dwelling units. These units must be provided:

(1) By designating and retrofitting, for use as intergenerational dwelling units, existing dwelling units that are located within a project assisted under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(2) Through development of buildings or projects comprised solely of intergenerational dwelling units; or

(3) Through the development of an annex or addition to an existing project assisted under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), that contains intergenerational dwelling units, including through the development of elder cottage housing opportunity units that are small, freestanding, barrier free, energy efficient, removable dwelling units located adjacent to a larger project or dwelling.

b. For those projects eligible to receive PRAC funds, the funds will be available to cover the difference between the HUD-approved operating costs and the amount the residents pay (each resident pays 30 percent of adjusted income), as well as the HUD-approved cost to operate the project.

c. A portion of the PRAC funds (not to exceed \$15 per unit/per month) may be used to cover some of the cost of any supportive services for residents. The balance of the cost for services must be

paid from sources other than the demonstration program funds or PRAC funds. Also, the cost of employing a service coordinator for the project is an eligible use of PRAC funds. Section 202 projects receiving Congregate Housing Services assistance under Section 802 of the National Affordable Housing Act are not eligible to use demonstration program funds or PRAC funds for supportive services or for the cost of a service coordinator.

2. Threshold Requirements for Funding Consideration. In addition to the threshold criteria outlined in the General Section, the following threshold requirements must be met. (See Section V.B.2. of this NOFA and Section III.C.2. and 3 of HUD's Fiscal Year 2008 Notice of Funding Availability (NOFA); Policy Requirements and General Section to the FY2008 SuperNOFA for HUD's Discretionary Programs; Notice.)

a. Nonresponsive Application. Your application will be considered nonresponsive to this NOFA and will not be accepted for processing if the following threshold requirements are not met:

(1) You must be an eligible applicant.

(2) You must have a DUN and Bradstreet Universal Data Numbering System (DUNS) number. The DUNS number must be included in the data entry field labeled "organizational DUNS" on the form SF-424.

Instructions for obtaining a DUNS number can be found at either <http://www.hud.gov/offices/adm/grants/duns.cfm> or in the General Section.

(3) To have qualified dwelling units for purposes of this notice, each unit:

(a) Shall not have fewer than two separate bedrooms but no more than four separate bedrooms;

(b) Be equipped with design features appropriate to meet the special physical needs of elderly persons, as needed; and

(c) Be equipped with design features appropriate to meet the special physical needs of young children, as needed.

(4) You request less than the minimum of 5 units.

(5) You submit a substantially deficient application. (A majority of the required exhibits are not submitted with your application, particularly, but not limited to, those exhibits which are not curable.)

(6) You request more than \$2 million in funding.

(7) You request assistance for an ineligible activity as defined in this program NOFA. (Please refer to Part IV.E.2.)

(8) You submit paper copies of the application, and you have not received approval from HUD for a waiver of the electronic submission requirements or

you submit less than the required number of paper copies indicated in your waiver notification.

b. Other Criteria.

(1) You must have the experience to develop and operate intergenerational dwelling units.

(2) You must have sufficient funds available to reach initial closing and complete the project.

(3) Your application must contain acceptable evidence of the following:

(a) Evidence of Site Control. You must provide evidence of site control as described in section IV.B.2.c.(1)(iv)(d)(i) of this NOFA.

(b) Historic Preservation. You are required to send to the State/Tribal Historic Preservation Officer (SHPO/THPO) a letter that attempts to initiate consultation with that officer and requests the officer's review of your determinations and findings with respect to the historical significance of your proposed project. A sample letter to the SHPO/THPO that you may adapt for your use, if you so choose, is available on HUD's Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. You must include: (1) A copy of your letter to the SHPO/THPO in your application and a statement that you have not received a response letter(s) from the SHPO/THPO, or (2) a copy of the response letter(s) received from the SHPO/THPO.

(c) Contamination. HUD must determine if a proposed site contains contamination, such as hazardous waste, petroleum, or petroleum products, and, if so, HUD must be satisfied that it is eliminated to the extent necessary to meet nonsite-specific federal, state, or local health standards. You must assist HUD by doing the following:

(i) Phase I Environmental Site Assessment (ESA). You must undertake and submit a Phase I ESA, prepared in accordance with the ASTM Standard E 1527-05, as amended, using the table of contents and report format specified at Appendix X4 thereto, completed or updated as specified at Section 4.6 thereto no earlier than 180 days prior to the application deadline date. The Phase I ESA must be completed and submitted with the application. Therefore, it is important that you start the Phase I ESA process as soon after publication of this NOFA as possible.

Note: A Phase I ESA that is not properly updated, does not use the report format specified at Appendix X4 of ASTM Standard E 1527-05, or that is prepared in accordance with an older version of ASTM E 1527 will result in a technical rejection of your application.

To help you choose an environmentally safe site, HUD invites you to review the documents "Choosing an Environmentally Safe Site" and "Supplemental Guidance, Environmental Information," which are available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

(ii) Phase II ESA. If the Phase I ESA indicates the possible presence of contamination and/or hazards, you must decide whether to continue with this site or choose another site. Should you choose another site, the same Phase I ESA process identified above must be followed for the new site. However, if you choose to continue with the original site on which the Phase I ESA indicated contamination or hazards, you must undertake a detailed Phase II ESA by an appropriate professional. In order for your application to be considered for review under this funding competition, the Phase II must be received by Aretha Williams, Director, Grant Policy and Management Division, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, on or before August 1, 2008.

(iii) Clean-up. If the Phase II ESA reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to HUD Headquarters. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable federal, state, and/or local agency with jurisdiction over the site. In order for your application to be considered for review under this funding competition, this information must be received by Aretha Williams, Director, Grant Policy and Management Division, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410 on or before August 1, 2008. If the above information is not received by that date, the application will be rejected.

Note: Clean-up could be an expensive undertaking. You must pay for the cost of any clean-up and/or remediation with sources other than the demonstration program funds. If the application is approved, clean-up must be completed prior to initial closing. Completion of clean-up means that HUD must be satisfied that the contamination has been eliminated to the extent necessary to meet nonsite-specific federal, state, or local health standards, with no active or passive remediation still taking place, no capping over of any contamination, and no monitoring wells. However, it is acceptable if contamination remains solely in groundwater that is at least 25 feet below the surface.

(d) Asbestos. Asbestos is a hazardous substance commonly used in building products until the late 1970s. Therefore,

you must submit one of the following with your application:

(i) If there are no pre-1978 structures on the site or if there are pre-1978 structures that most recently consisted solely of four or fewer units of single-family housing, including appurtenant structures thereto, a statement to this effect, or

(ii) If there are pre-1978 structures on the site, other than for a site that most recently consisted of solely four or fewer units of single-family housing, including appurtenant structures thereto, a comprehensive building asbestos survey that is based on a thorough inspection to identify the location and condition of asbestos throughout any structures. In those cases where suspect asbestos is found, it would either be assumed to be asbestos or would require confirmatory testing. If the asbestos survey indicates the presence of asbestos or the presence of asbestos is assumed, and if the application is approved, HUD will condition the approval on an appropriate mix of asbestos abatement and an asbestos Operations and Maintenance Plan.

(e) Lead-Based Paint. You must comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 *et seq.*), and implementing regulations at 24 CFR part 35.

(4) There must be a market need for the number of units proposed in the area of the project location. You must provide a copy of a written assessment of the intergenerational families' housing needs in the relevant community. For the assessment, you should engage the help of local child welfare agencies, caregiver support groups, Area Agencies on Aging, and other supportive service providers working with the families.

(5) You must provide a copy of a feasibility study on the proposed project.

(6) You must provide commitment and support letters from the appropriate organizations, agencies, and businesses. The commitment and support letter(s) from the appropriate groups should:

(a) be submitted by the application submission date as part of your application for financial assistance;

(b) indicate that the intergenerational dwelling units, facilities, and supportive services to be provided are designed to meet the needs of the residents who will reside in the intergenerational dwelling units as defined in this NOFA.

(7) You are required to include a Supportive Services Plan that describes

the supportive services proposed to be provided to the anticipated occupants, including a description of the public or private funds that are expected to fund the proposed services and the manner in which the services will be provided to the proposed residents. You must not require residents to accept any supportive services as a condition of occupancy or admission.

(8) Delinquent Federal Debt. Refer to the General Section for information regarding delinquent federal debt.

3. Program Requirements. By signing the Demonstration Program application, you are certifying that you will comply with all program requirements listed in the General Section, as well as the following requirements:

a. Statutory and Regulatory Requirements. In addition to the statutory, regulatory, threshold, and public policy requirements listed in the General Section, you must comply with all statutory and regulatory requirements listed in this NOFA.

b. Existing Section 202 Developments. If you are designating and retrofitting units within an existing Section 202 project or are building an annex or addition to an existing Section 202 project:

(1) Your project must meet HUD's Uniform Physical Conditions Standards at 24 CFR part 5, subpart G;

(2) The project's most recent management review rating must be rated as satisfactory or above;

(3) The project's most recent Real Estate Assessment Center (REAC) physical inspection report for the project must be 60 or above;

(4) The project must be well maintained;

(5) The project must not have a recent history of mortgage defaults; and

(6) The project owner must not have any material adverse financial or managerial actions or omissions with regard to any project that is federally assisted and/or financed with a loan or capital advance from or any mortgage insured by an agency of the federal government.

c. Supportive Services Plan. HUD believes that a strong Supportive Services component is crucial to the success of your project over the next 20 years. It is critical that you develop and maintain solid relationships and partnerships with the supportive service providers in the community to ensure the provision of services for the intergenerational families. In addition, due to the amount of funds available under this NOFA for supportive services, it is vital that additional resources are found.

For purposes of this NOFA, you must develop and submit a Supportive Services Plan for the services that will be offered on-site and/or off-site. You must submit one copy of your Supportive Services Plan to each appropriate state or local service funding organization well in advance of the application deadline, for appropriate review. The state or local funding organization(s) should return the Supportive Services Plan to you with appropriate comments and an indication of any funding commitment, which you will then include with the application you submit to HUD.

d. Prohibition Against Lobbying Activities. The Byrd Amendment prohibits recipients of federal contracts, grants, or loans from using those funds for lobbying activities.

e. Economic Opportunities for Low- and Very Low-Income Persons (Section 3). You must comply with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons), and implementing regulations at 24 CFR part 135. You must ensure that training, employment, and other economic opportunities shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing and to business concerns that provide economic opportunities to low- and very low-income persons, including people with disabilities.

f. Minimum Project Size. The minimum number of units that can be applied for in one application is five units.

g. Accessibility. Your project must meet accessibility requirements published at 24 CFR 891.120, 24 CFR 891.210, and Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8, and, if your new project is new construction, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100. In addition, 24 CFR 8.4(b)(5) prohibits the selection of a site or location that has the purpose or effect of excluding persons with disabilities from the federally assisted program or activity. Refer to Section V.A. below and the General Section for information regarding the policy-priority of encouraging accessible design.

h. Conducting Business in Accordance with HUD Core Values and Ethical Standards. You are not subject to the requirements of 24 CFR parts 84 and 85, as outlined in the General Section, except that the disposition of real

property may be subject to 24 CFR part 84. However, you are still subject to the core values and ethical standards as they relate to the conflict-of-interest provisions in 24 CFR 891.130. To ensure compliance with the program's conflict-of-interest provisions, an owner's certification of compliance with the conflict-of-interest program requirements must be included in your application. The Sponsor of the Section 202 applicant project must be committed to the development of the intergenerational dwelling units. A sponsor's certification supporting the project must be provided in your application. Further, if awarded a fund reservation, the officers, directors, board members, trustees, stockholders, and authorized agents of the Sponsor and Owner entities will be required to submit to HUD individual certifications regarding compliance with HUD's conflict-of-interest requirements.

i. Fair Housing. You must comply with the requirements of the Fair Housing Act; Executive Order 11063; Title VI of the Civil Rights Act; the Age Discrimination Act of 1975; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M; and the implementing regulations at 24 CFR part 108, which require that the project be marketed to those least likely to apply. You must also comply with any other applicable federal, state, and local laws prohibiting discrimination and promoting equal opportunity, including affirmatively furthering fair housing, and other certifications listed in this application. You must comply with the Uniform Federal Accessibility Standards (24 CFR 40.7), section 504 of the Rehabilitation Act of 1973, HUD's implementing regulations at 24 CFR part 8, and the Americans with Disabilities Act of 1990.

Refer to the General Section for additional information on Fair Housing Requirements.

j. Davis Bacon. You must comply with the Davis-Bacon requirements (12 U.S.C. 1701q(j)(5)) and the Contract Work Hours and Safety Standards Act, in accordance with 24 CFR 891.155(d).

k. Ensure the Participation of Small Businesses, Small Disadvantaged Businesses, and Woman-Owned Businesses. HUD is committed to ensuring that small businesses, small disadvantaged businesses, and woman-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD's financial assistance.

l. Executive Order 13166, Improving Access to Persons with Limited English Proficiency (LEP). Successful applicants are required to take reasonable steps to

ensure meaningful access to their programs and activities by LEP persons. For further guidance on serving persons with limited English proficiency in HUD assisted programs, see "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (72 FR 2732, January 22, 2007). Applicants must seek to improve access to persons with limited English proficiency by providing materials and information in languages other than English. Make applications and other materials available in languages other than English that are common in the community, if speakers of these languages are found in significant numbers and are members of intergenerational families. For further guidance on serving persons with limited English proficiency in HUD-assisted programs, see the recent HUD LEP guidance, "Notice of Guidance to Federal Assistance Recipients Regarding—Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 68 FR 70968 (December 19, 2003).

m. Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations. HUD has undertaken a review of all policies and regulations that have implications for faith-based and community organizations, and has established a policy priority to provide full and equal access to grassroots faith-based and other community-based organizations.

n. Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grant recipient for transmitting, receiving, using, or storing information to carry out the responsibilities of these awards.

o. Participation in HUD-Sponsored Program Evaluation. As a condition of the receipt of funds under this NOFA, recipients are required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

p. Executive Order 13202. Comply with Executive Order 13202, Preservation of Open Competition and Government Neutrality toward Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

q. OMB Circulars and Governmentwide Regulations Applicable to Financial Assistance. Applicants are subject to the Administrative Requirements of OMB Circular A-133, Audits of States, Local

Governments, and Non-Profit Organizations; OMB Circular A-122, Cost Principles for Non-Profit Institutions; the administrative requirements of 24 CFR part 84; and the procurement requirements of 24 CFR 84.44.

r. National Environmental Policy Act. Your application is subject to the National Environmental Policy Act of 1969 and the applicable related federal environmental authorities (See 24 CFR part 50, as applicable). An environmental review will be completed by HUD before awarding any assistance under this program.

s. Design and Cost Standards. You must comply with HUD's Section 202 design and cost standards (24 CFR 891.120 and 891.210), the Uniform Federal Accessibility Standards (24 CFR 40.7), Section 504 of the Rehabilitation Act of 1973, and HUD's implementing regulations at 24 CFR part 8, and, for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100, and, where applicable, the Americans with Disabilities Act of 1990.

t. Ownership of Section 202 projects. Owners of a Section 202 project can apply for funding under this NOFA. The present single-purpose regulatory limitation on Section 202 owner provisions of the regulations, which restricts ownership of more than one project, is waived for applicants applying for funding under this NOFA. This waiver will apply only if your proposal for developing intergenerational dwelling units is through designating and retrofitting existing units in a Section 202 project or through building an annex or addition to an existing Section 202 project. If your proposal is for the development of buildings or projects solely of intergenerational dwelling units, you must form an Owner entity (in accordance with 24 CFR 891.205) after issuance of the demonstration program fund reservation and must cause the Owner entity to file a request for determination of eligibility and a request for demonstration program funds, and must provide sufficient resources to the Owner entity to ensure the development and long-term operation of the project, including capitalizing the Owner entity at firm commitment processing in an amount sufficient to meet its obligations in connection with the project over and above the demonstration program assistance amount.

4. Energy Efficiency

HUD has adopted a wide-ranging energy action plan for improving energy efficiency in all HUD program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency, and the Department of Energy have signed a joint partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purpose of the Energy Star partnership is not only to promote energy efficiency of the affordable housing stock, but also to help protect the environment.

Although it is not a requirement, you are encouraged to promote energy efficiency in the design and operation of your proposed project. Your application will receive one point if you describe your plans for doing so in the proposed project. You are urged especially to purchase and use Energy Star-labeled products. For further information about Energy Star, see <http://www.energystar.gov> or call 1-888-STAR-YES (1-888-782-7937) or, for the hearing-impaired, 1-888-588-9920 TTY.

IV. Application and Submission Information

Applicants are required to submit an electronic application, unless they receive a waiver of the requirement in accordance with the procedures in Section IV.C. of this NOFA. See the General Section for information on electronic application submission and timely submission and receipt requirements.

A. Addresses to Request Application Package. All information required to complete and return a valid application is included in the General Section and this NOFA, including other related documents. Applicants may download the application and instructions from the Grants.gov Web site at http://www.grants.gov/applicants/apply_for_grants.jsp. If you have difficulty accessing the information, you may call the Grants.gov Support Desk toll-free (800-518-GRANTS or 800-518-4726) or e-mail your questions to support@Grants.gov. See the General Section for information regarding the registration process or ask for registration information from the Grants.gov Support Desk.

You may request general information and copies of the General Section and NOFA (including related documents) from the NOFA Information Center (800-HUD-8929 or 800-483-8929) Monday through Friday, except on federal holidays. Persons with hearing and speech impairments may access the

above number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. When requesting information, please refer to the name of the program in which you are interested.

Before the application deadline date, HUD staff is available to provide you with general guidance and technical assistance. For technical support for obtaining or submitting the application, call Aretha Williams at (202) 708-3000 or Claire Trivedi at (202) 402-6634 (these are not toll-free numbers). HUD staff is not permitted to assist in preparing your application.

B. Content and Form of Application Submission. The exhibits to be included in your application are contained in the body of this NOFA.

Note: Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) applies to all information supplied in the application submission. Among other things, 18 U.S.C. 1001 provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than 5 years, or both.

The application consists of four parts with a total of eight exhibits. Included with the eight exhibits are prescribed forms, certifications, and resolutions. The components of the application are:

- Part 1—(Exhibit 1), Application Form for Demonstration Program for Elderly Housing for Intergenerational Families;
- Part 2—Your Ability to Develop and Operate the Proposed Project (Exhibits 2 and 3);
- Part 3—The Need for Intergenerational Housing in the Area to be Served, Site Control and Suitability of Site (including security), and Adequacy of the Provisions of Supportive Services and of the Proposed Project (Exhibits 4 and 5);
- Part 4—General Application Requirements, Certifications, and Resolutions (Exhibits 6 through 8).

The following additional information, which may assist you in preparing your application, is available on HUD's Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>:

- Letter Requesting SHPO/THPO Review;
- Choosing an Environmentally Safe Site;
- Supplement to Choosing an Environmentally Safe Site; and
- Affordable Housing for Intergenerational Families Satellite Broadcast Training May 30, 2007.

Your application must include all of the information, materials, forms, and exhibits listed below (unless you were selected for a Section 202 fund reservation within the last three funding cycles). If you qualify for this exception, you are not required to submit the information described in Exhibits 2(a), (b), and (c), which are the articles of incorporation (or other organizational documents), bylaws, and the Internal Revenue Service tax exemption, respectively. If there has been a change in any of these documents since your previous HUD approval, you must submit the updated information in your application. Headquarters will verify your previous HUD approval by checking the project number and approval status with the appropriate local HUD office based on the information submitted.

Please submit your application using the following format provided in this NOFA. For applications to be submitted electronically, in which you have created files to be attached to the electronic application, you should number the pages of the attached file and include a header that identifies the exhibit that it relates to. Please be sure to follow the file labeling and file format in the General Section.

For applicants that have received a waiver of the electronic application submission, you must number the pages of each file, narratives, and other attached files. Include the name of your organization, your DUNS number, and the exhibit number that you are responding to on the header of each document.

1. Table of Contents

- a. Part I—Application Form
 - (1) Exhibit 1: Application Form for Demonstration Program for Elderly Housing for Intergenerational Families
- b. Part II—Ability to Develop/Operate Project
 - (1) Exhibit 2: Legal Status
 - (a) Organizational Documents
 - (b) Bylaws
 - (c) IRS Tax Exemption Ruling
 - (2) Exhibit 3: Purpose/Community Ties/Experience with Intergenerational Families
 - (a) Purpose(s), current activities, etc.
 - (b) Community ties, description of area
 - (i) Links to the community
 - (ii) Efforts to involve elderly and youth
 - (c) Form HUD-27300, America's Affordable Communities Initiative/Removal of Regulatory Barriers with supporting documentation
 - (d) Sources and Uses Statement
 - (e) Other funding sources
 - (f) Section 3 requirements
 - (g) Letters of support
 - (h) Housing/Services experience
 - (i) Practical solutions
 - (j) How project will remain viable

- (i) If services are depleted
- (iii) If State-funded services change
- (iii) If need for project changes
- (k) Project Development Timeline
- (l) Past Performance
- c. Part III—Need for Intergenerational Housing, Site Requirements, Proposed Services
 - (1) Exhibit 4: Project Information
 - (a) Evidence of need for project
 - (i) Written assessment
 - (ii) Target population, demographics, and extent of their need
 - (iii) Benefit to population/community
 - (b) Feasibility Study
 - (c) Narrative project descriptions
 - (i) Building design
 - (ii) Security
 - (iii) Energy efficiency features
 - (iv) Uniform Federal Accessibility Standards
 - (d) Site control and zoning
 - (i) Site control documents
 - (ii) Freedom of site from restrictions
 - (iii) Zoning requirements
 - (iv) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR part 24 and 24 CFR 891.155(e)) (URA) site notification requirements
 - (v) Topographical/demographical description of site/area and opportunities for minorities
 - (vi) Racial composition/map of site
 - (vii) Phase I ESA
 - (viii) Asbestos statement/survey
 - (ix) SHPO/THPO requirements
 - (x) Lead-based paint
 - (2) Exhibit 5: Supportive Services Plan
 - (a) Description of services
 - (b) Other funding sources
 - (c) How services will be provided
- d. Part IV—Requirements/Certifications/Resolutions
 - (1) Exhibit 6: Staffing Plan, Tenant Selection, Residence Requirements, Written Rules and Procedures
 - (a) Staffing plan
 - (b) Tenant selection and residency
 - (c) Rules/procedures
 - (2) Exhibit 7: Required information on
 - (a) All property occupants
 - (b) Relocation costs/services
 - (c) Staff to carry out relocation
 - (d) Occupant move-outs within past 12 months
 - (e) General information notice
 - (3) Exhibit 8: Forms/Certifications/Resolutions
 - (a) SF-424, Application for Federal Assistance
 - (b) SF-424 Supplement, "Survey on Ensuring Equal Opportunities for Applicants" (Faith-Based EEO Survey (SF-424 SUPP) on Grants.gov
 - (c) HUD-2880, "Applicant/Recipient Disclosure/Update Report" ("HUD Applicant Recipient Disclosure Report" on Grants.gov)
 - (d) HUD-2991, Certification of Consistency with the Consolidated Plan
 - (e) HUD-2994-A, You Are Our Client! Grant Applicant Survey (Optional)
 - (f) SF-LLL, Disclosure of Lobbying Activities
 - (g) HUD-96010, Program Outcome Logic Model

- (h) HUD-27300, America's Affordable Communities Initiative/Removal of Regulatory Barriers, ("HUD Communities Initiative Form" on Grants.gov) and supporting documentation, if applicable
- (i) HUD-2990, Certification of Consistency with the RC/EZ/EC-II Strategic Plan (if applicable)
- (j) HUD-92041, Sponsor's Conflict of Interest Resolution (owner signs)
- (k) HUD-92042, Sponsor's Resolution for Commitment to Project
- (l) HUD-96011, "Third Party Documentation Facsimile Transmittal" (Facsimile Transmittal Form on Grants.gov). For electronic applications only, this form must be used as the cover page for faxing third party information. See the General Section
- (m) HUD-92910, Application Form for Demonstration Program for Elderly Housing for Intergenerational Families

2. Programmatic Applications Requirements

a. Part I—Application Form for Demonstration Program for Elderly Housing for Intergenerational Families

(1) Exhibit 1—Application Form for Demonstration Program for Elderly Housing for Intergenerational Families. A copy of the form HUD-92910 is available in the instructions download at http://www.grants.gov/applicants/apply_for_grants.jsp.

b. Part II—Your Ability to Develop and Operate the Proposed Project

(1) Exhibit 2—Evidence of your legal status (*i.e.*, evidence of your status as a private nonprofit organization).

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) Bylaws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches).

Note: If you received a Section 202 fund reservation within the last three funding cycles, you are not required to submit the documents described in (a), (b), and (c) above. Instead, submit the project number of the latest application and the local HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(2) Exhibit 3—Your purpose, community ties, and experience.

(a) A description of your purpose(s), current activities, including your ability to enlist volunteers and raise private and local funds, and how long you have been in existence.

(b) A description of your community support:

(i) Your ties to the community at large, including minority and elderly communities, and to the community of intergenerational families, in particular; and

(ii) Your efforts to involve the elderly and youth in intergenerational families in:

(A) Developing the application;

(B) Participating on the project's planning committee;

(C) Developing the project's operating philosophy;

(D) Reviewing the application prior to submission to HUD; and

(E) Your intent to involve them in the operation of the project.

(c) The extent that the jurisdiction in which your project will be located has undertaken efforts to remove regulatory barriers to affordable housing and how you have supported these efforts. This is an optional requirement, but to obtain up to 2 points for this policy priority you must complete the form HUD-27300, Questionnaire for HUD's Initiative on Removal of Regulatory Barriers and provide the required documentation. See Rating Factor 3 in Section V.A. below for more details.

(d) A comprehensive sources and uses statement that details all funds for development and supportive services for the proposed project, including a description of other funding sources for the project (financial assistance, donation of land, provision of services, etc.).

(e) Include all financial commitment letters with specific dollar amounts from appropriate organizations. If \$100,000 or more in funding has been secured, you will receive 5 points, provided a letter from each lender or donor confirming the funding is included with the application.

Note: Given the amount of the funds available under this NOFA, the need to collaborate and obtain funding from other sources is critical.

(f) Address how training, employment, and economic opportunities shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing and to business concerns that provide economic opportunities to low- and very low-income persons.

(g) Letters of support from agencies, organizations, businesses, and/or any other groups that will partner with you to provide on-site and/or off-site supportive services. The letters of support should indicate that the intergenerational units, facilities, and supportive services to be provided are designed to meet the needs of the residents who will reside in the intergenerational dwelling units. Their experience with intergenerational families must be described in the letters.

Any financial commitments on the part of these entities should also be included in the letter. See Section IV.B.2.b.(2)(d) and (e) above concerning secured funding. This is a critical component of your application and could determine the success or failure of your project.

(h) A description of your relevant experience with intergenerational families and their housing and supportive service needs. The description should include any rental housing projects and/or supportive services facilities that you sponsored, own and/or operate; your past or current involvement in any programs other than housing that demonstrates your management capabilities (including financial management) and experience; your experience in serving the target population (elderly, children, and intergenerational families including minorities); and the reasons for receiving any increases in fund reservations for developing and/or operating previously funded Section 202 or Section 811 projects. The description should include data on the facilities and services provided; the racial/ethnic composition of the populations served, if available; and information and testimonials from residents or community leaders on the quality of the activities. Examples of activities that could be described include housing counseling, nutrition and food services, special housing referrals, screening, and information projects.

(i) A description of the practical solutions you will implement that will enable residents of your project to meet the terms and conditions of the lease. In addition, describe the educational opportunities you will provide for the residents and how you will provide them. This description should include any activities that will enhance the quality of life for the residents. And finally, describe how your proposed project will be an improved living environment for the residents in comparison to their previous place of residence.

(j) Describe how you will ensure that your proposed project will remain viable as housing, with the availability of supportive services for the target population. This description should address the measures you would take should any of the following occur:

(i) Funding for any of the needed supportive services becomes depleted:

(ii) If, for any State-funded services for your project, the State changes its policy regarding the provision of supportive services to projects such as the one you propose; or

(iii) If the need for housing for the population you will be serving wanes over time, causing vacancies in your project.

(k) Describe your plan for completing the proposed project. Include a project development timeline that lists the major development stages for the project with associated dates that must be met in order to get the project to initial closing and start of construction within the 18-month fund reservation period, as well as the full completion of the project, including final closing. Completion of the Program Outcome Logic Model (HUD-96010) will assist you in completing your response to this Exhibit.

(l) Describe the extent to which your past performance evidences that the proposed project will result in timely development of the project.

c. Part III—The Need for Intergenerational Housing, Site Control and Suitability of Site Including Security, and Adequacy of the Provisions of Supportive Services and of the Proposed Project

(1) Exhibit 4—Need and Project Information.

(a) Evidence of Need.

(i) A brief narrative summarizing the findings from the written assessment of the intergenerational families' housing needs in the relevant community. A copy of the assessment must be included with the application. See Section III.C.2.b.(4) above. Also, a description of how information in the community's or (where applicable) the State's Consolidated Plan, Analysis of Impediments to Fair Housing Choice (AI), or other planning document that analyzes fair housing issues was used in documenting the need for the project.

(ii) Identification of the target population and their demographic characteristics and the extent of their housing needs. The target population must be surveyed and asked about their following preferences and needs:

(A) If new construction, type of building(s), e.g., high-rises, small buildings, or two flats;

(B) The number of bedrooms—at least two—for each dwelling unit;

(C) Design features;

(D) Indoor community space;

(E) Outdoor space;

(F) Types of supportive services;

(iii) A description of how the proposed project will benefit the target population and the community in which it will be located.

(b) A brief narrative summarizing the findings from the feasibility study for the proposed project. A copy of the feasibility study must be included with

the application. See III.C.2.b.(5). The study must include, but is not limited to information concerning:

(i) Site selection;

(ii) Condition of the project;

(iii) Neighborhood/location issues;

(iv) Existing residents and relocation requirements;

(v) Development design;

(vi) Preliminary building plans or plans to designate and retrofit;

(vii) Neighborhood receptivity to the proposed project;

(viii) Needs and receptivity of the target population;

(ix) Program policies and procedures;

(x) Staffing patterns;

(xi) Implementation Plan;

(c) These intergenerational dwelling units must include design features and public space that accommodate all ages being served. Each unit must have at least two separate bedrooms and be equipped with design features appropriate to meet the special physical needs of elderly persons and young children, as needed. Features in existing intergenerational housing include electrical outlet protections, handrails in the bathrooms and hallways, shower thermostats that keep the water from getting too hot, and secure outside play areas visible from the dwelling units.

The proposed design of the housing should include adequate, flexible community space that can accommodate varying uses, multiple ages being served, and the changing needs of the residents. For the comfort of all residents, the proximity of the community space to the housing units and soundproofing should be considered as part of the proposed building design. If private, individual, outside space is available, such as private porches or terraces, it should be evenly distributed among each of the units.

You must provide a description of the physical construction aspects of the intergenerational dwelling units, including the following:

(i) Narrative description of the building design, including a description of the number of units with bedroom distribution; any special design features, including any features that incorporate visitability standards and universal design, amenities, and/or commercial and community spaces; and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10 to 20 years.

Note: If the community spaces, amenities, or features exceed the project design and cost standards of 24 CFR 891.120(a) and (c), the special standards of 24 CFR 891.210, and the limitation on bedroom unit sizes as required

by the LEGACY Act of 2003, you must demonstrate your ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features;

(ii) A short narrative describing how security for the project will be designed and incorporated in your proposed project. Security may include, but is not limited to, a 24-hour front desk, cameras, and emergency buzzer systems in each dwelling unit. Twenty-four-hour security for the units is essential, as are enforcement policies for security violations.

(iii) Describe how the project will promote energy efficiency (in accordance with the requirements set forth in Section III.C.4. of this NOFA), including any plans to incorporate energy-efficiency features in the operation of the project through the use of Energy Star-labeled products and appliances and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction. This piece will serve as an assurance that the project will promote energy efficiency.

(iv) A description of the project must address how the units will conform to the accessibility requirements described in the Uniform Federal Accessibility Standards (UFAS).

(d) Evidence of site control and permissive zoning.

(i) Acceptable evidence of site control is limited to any one of the following:

(A) Deed or long-term leasehold that evidences that you have title to or a leasehold interest in the site. If a leasehold, the term of the lease must be at least 50 years with renewable provisions for 25 years, except for sites on Indian trust land, in which case the term of the lease must be at least 50 years with no requirement for extensions;

(B) Contract of sale for the site that is free of any limitations affecting the ability of the seller to deliver ownership to you after you receive and accept a notice of Demonstration Program funds. (The only condition for closing on the sale can be your receipt and acceptance of the demonstration program funds.) The contract of sale cannot require closing earlier than the Demonstration Program closing;

(C) Option to purchase or for a long-term leasehold, which must remain in effect for 6 months from the date on which the applications are due, must state a firm price binding on the seller, and be renewable at the end of the 6-month period. The only condition on which the option may be terminated is

if you are not awarded a fund reservation;

(D) If the site is covered by a mortgage under a HUD program (e.g., a previously funded Section 202 or Section 811 project or an FHA-insured mortgage), you must submit evidence of site control as described above AND evidence that consent to release the site from the mortgage has been obtained or has been requested from HUD (all required information in order for a decision on the request for a partial release of security must have been submitted to the local HUD office) and from the mortgagee, if other than HUD. Approval to release the site from the mortgage must be done before HUD Headquarters makes its selections. Refer to Chapter 16 of HUD Handbook 4350.1 REV-1, Multifamily Asset Management and Project Servicing, for instructions on submitting requests to HUD for partial release of security from a mortgage under a HUD program; or

(E) For sites to be acquired from a public body, evidence is needed that the public body possesses clear title to the site and has entered into a legally binding agreement to lease or convey the site to you after you receive and accept a notice of Demonstration Program funds. Where HUD determines that time constraints of the funding round will not permit you to obtain all of the required official actions (e.g., approval of Community Planning Boards) that are necessary to convey publicly owned sites, you may include in your application a letter from the mayor or director of the appropriate local agency indicating that conveyance or leasing of the site is acceptable without imposition of additional covenants or restrictions, and is contingent only on the necessary approval action. Such a letter of commitment will be considered sufficient evidence of site control.

(ii) Under HUD's regulations and requirements, whether you have title to the site, a contract of sale, an option to purchase, or are acquiring a site from a public body, you must provide evidence (a current title policy or other acceptable evidence) that the site is free of any limitations, restrictions, or reverts that could adversely affect the use of the site for the proposed project for the term of the mortgage (e.g., reversion to seller if title is transferred). If the title evidence contains restrictions or covenants, copies of the restrictions or covenants must be submitted with the application. If the site is subject to any such limitations, restrictions, or reverts, the application will be rejected. Purchase money mortgages that will be satisfied from demonstration

program funds are not considered to be limitations or restrictions that would adversely affect the use of the site. If the contract of sale or option agreement contains provisions that allow an applicant not to purchase the property for reasons such as environmental problems, failure of the site to pass inspection, or the property appraises at less than the purchase price, then such provisions are not objectionable and an applicant is allowed to terminate the contract of sale or the option agreement.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) that will construct the Demonstration Program project or from any other development team member.

(iii) Evidence that the project, as proposed, is permissible under applicable zoning ordinances or regulations or a statement of the proposed action required to make the proposed project permissible AND the basis for the belief that the proposed action will be completed successfully before the submission of the firm commitment application (e.g., a summary of the results of any requests for rezoning, and/or the procedures for obtaining special or conditional use permits on land in similar zoning classifications, and the time required for such rezoning, or preliminary indications of acceptability from zoning bodies, etc.).

(iv) Evidence of compliance with the URA requirement (49 CFR part 24, and 24 CFR 891.155(e)) that the seller has been provided, in writing, with the required information regarding a voluntary, arm's length purchase transaction (i.e., (1) the applicant does not have the power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement, and (2) the estimate of the fair market value of the property).

Note: A certification for this requirement is not sufficient. Therefore, evidence must be submitted to meet this requirement. This information should have been provided before making the purchase offer. However, in those cases where there is an existing option or contract, the seller must be provided the opportunity to withdraw from the agreement or transaction, without penalty, after this information is provided.

(v) Narrative describing topographical and demographical aspects of the site, the suitability of the site and area (as well as a description of the characteristics of the neighborhood), how use of the site will promote greater housing opportunities for minority intergenerational families and intergenerational families with persons with disabilities (if applicable), and how

use of the site will affirmatively further fair housing.

Note: You can best demonstrate your commitment to affirmatively furthering fair housing by describing how your proposed activities will assist the jurisdiction in overcoming impediments to fair housing choice identified in the applicable jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice, which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. The applicable Consolidated Plan and AI may be that of the community, county, or state to which input should have been provided by local community organizations, agencies in the community, and residents of the community. Alternatively, a document that addresses fair housing issues and remedies to barriers to fair housing in the community, which was previously prepared by a local planning or similar organization, may be used. Applicable impediments could include the need for improved housing quality and services for minority intergenerational families, lack of affirmative marketing and outreach to minority intergenerational families, and the need for quality elder-care services within areas of minority concentration, when compared with the type and quality of similar services and housing in nonminority areas.

(vi) A map showing the location of the site, the racial composition of the neighborhood, and any areas of racial or minority racial group concentration.

Note: For this competition, when determining the racial and ethnic composition of the neighborhood surrounding the proposed site, use data from the 2000 Census of Population. Data from the 2000 Census may be found at http://factfinder.census.gov/home/saff/main.html?_lang=en.

(vii) A Phase I Environmental Site Assessment (ESA), in accordance with the ASTM Standard E 1527-05, as amended, using the table-of-contents and report format specified at Appendix X4 thereto and completed or updated as specified at Section 4.6 thereto, must be undertaken and completed by you and submitted with the application. In order for the Phase I ESA to be acceptable, it must have been completed or updated no earlier than 180 days prior to the application deadline date. Therefore, it is important to start the site assessment process as soon after the publication of the NOFA as possible.

Note: A Phase I ESA that is not properly updated that does not use the report format specified at Appendix X4 of ASTM Standard E 1527-05, or that is prepared in accordance with an older version of ASTM E 1527 will result in a technical rejection of your application.

If the Phase I ESA indicates possible presence of contamination and/or hazards, you must decide whether to

continue with this site or choose another site. Should you choose another site, the same Phase I ESA process identified above must be followed for the new site. If you choose to continue with the original site on which the Phase I ESA indicated contamination and/or hazards, you must undertake a detailed Phase II ESA by an appropriate professional. If the Phase II Assessment reveals site contamination, you must submit, to HUD Headquarters, the extent of the contamination and a plan for clean-up of the site, including a contract for remediation of the problem(s) and an approval letter from the applicable federal, state, and/or local agency with jurisdiction over the site. The Phase II ESA and any necessary plans for clean-up do not have to be submitted with the application, but must be received by Aretha Williams, Director, Grant Policy and Management Division, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, by August 1, 2008. If it is not received by that date, the application will be rejected.

Note: You must pay for the cost of any clean-up or remediation, which can be very expensive. See Section III.C.2.b.(3)(c)(iii).

(viii) You must submit one of the following:

(A) If there are no pre-1978 structures on the site or if there are pre-1978 structures that most recently consisted of solely four or fewer units of single-family housing, including appurtenant structures thereto, a statement to this effect, or

(B) If there are pre-1978 structures on the site, other than for a site that most recently consisted of solely four or fewer units of single-family housing, including appurtenant structures thereto, a comprehensive building asbestos survey that is based on a thorough inspection to identify the location and condition of asbestos throughout any structures.

Note: In those cases where suspect asbestos is found, it would either be assumed to be asbestos or would require confirmatory testing. If the asbestos survey indicates the presence of asbestos or the presence of asbestos is assumed, and if the application is approved, HUD will condition the approval on an appropriate mix of asbestos abatement and an asbestos Operations and Maintenance Plan.

(ix) Letter to the State/Tribal Historic Preservation Officer (SHPO/THPO) and a statement that the SHPO/THPO failed to respond to you OR a copy of the response letter received from the SHPO/THPO.

(x) You must comply with the requirements of the Lead-Based Paint

Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 *et seq.*), and implementing regulations at 24 CFR part 35.

(2) Exhibit 5—Supportive Services Plan.

It is crucial to the success of your project that you collaborate with other community organizations, agencies, businesses, and/or groups to provide on-site and, when necessary, off-site comprehensive supportive services tailored to meet the needs of intergenerational families, including elderly persons and children. Because of the lack of funds available under this NOFA for supportive services, it is critical that you find ways to obtain and maintain the supportive services needed to assist the target population.

Consideration must be given to the availability of transportation for off-site services. Your application must include a comprehensive Supportive Services Plan and firm commitments for individualized case management and supportive services to be offered. A copy of the Supportive Services Plan must be submitted to the appropriate state and/or local agency as instructed in Section III.C.3.c. above.

(a) Services must be provided in accordance with the requirements of 12 U.S.C. 1701q(g).

(b) Supportive services provided through collaboration, whether provided on-site and/or off-site, must include a range of services that are tailored to meet the needs of intergenerational families, including elderly persons and children. Services will be designed with the age of the children in mind, and the fact that the children will be aging. Services for youth need to be different than services for younger children. You must ensure that services will include:

(i) Individualized case management. This case management must link residents to available services on-site and/or off-site, in addition to helping them access additional services available in the community. All projects funded under this NOFA must have sufficient case management and service coordination in place. Your plan for individualized case management must be described in the application.

(ii) Services that are determined essential for each of the populations served, which will likely include support groups, other mental health services, before- and after-school activities, tutoring, and safe and accessible transportation.

(iii) Additional services, which may include, but not be limited to, other recreational activities or opportunities

for civic engagement, provided through collaboration with outside providers.

(c) Your application must provide:

(i) A detailed description of the supportive services proposed to be provided.

(ii) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services.

(iii) The manner in which such services will be provided to such persons (*i.e.*, on-or off-site), including whether a service coordinator will facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents.

Note: You may not require residents, as a condition of admission or occupancy, to accept any supportive services.

d. Part IV—General Application Requirements, Certifications, and Resolutions

(1) Exhibit 6: Staffing Plan, Tenant Selection, Residency Requirements, and Written Rules and Procedures.

(a) A staffing plan, which includes:

(i) Number of staff and positions;

(ii) Measures to be taken to encourage staff retention. Continuity in the lives of the children and youth is particularly important for this population;

(iii) Whether the staff will reflect the population being served. For example, some intergenerational housing programs have found it effective to hire staff from the community, particularly case managers, who are relative caregivers with similar socioeconomic backgrounds.

(b) Written tenant selection procedures and residency requirements that the applicant must address the following questions (these procedures and requirements will vary based on the needs of the target population):

(i) What the caregivers will have to prove concerning their relationship to the children in order to qualify for housing?

(ii) Will the program be open to “other relatives,” such as aunts and uncles, raising children?

(iii) Will birth parents be allowed to live on the property? What are birth parent visitation rights?

(c) A description of the written rules and procedures to be developed for the following:

(i) Handling family crises, such as a caregiver’s sickness, hospitalization, or death.

(ii) Assisting grandparents and other relatives with a secondary permanency plan for the child.

(iii) Handling security issues, including screening residents, how

visitors’ identities will be verified, determining whether guests have been barred from visiting by court order, and safeguarding against intrusions from outsiders (both those uninvited and those invited by other residents).

(iv) Monitoring and prohibiting illegal and inappropriate behavior, and evicting residents who are involved in such activities.

(v) Determining whether a curfew for youths will be in place.

(vi) Identify how these rules and procedures will be communicated to tenants and enforced.

(2) Exhibit 7: A statement that:

(a) Identifies all persons (families, individuals, businesses, and nonprofit organizations) by race/minority group, and their status as owners or tenants occupying the property on the date of submission of the application.

(b) Indicates the estimated cost of relocation payments and other services.

(c) Identifies the staff organization that will carry out the relocation activities.

(d) Identifies all persons that have moved from the site within the past 12 months and the reason for such moves.

(e) Indicates that all persons occupying the site have been issued the appropriate required General Information Notice and advisory services information, receipt required, either at the time the option to acquire the property is executed, or at the time the application is submitted.

Note: If any of the relocation costs will be funded from sources other than the demonstration program funds, you must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (*i.e.*, cost of site acquisition, relocation, construction, and other project costs).

(3) Exhibit 8: Standard Forms, Certifications, and Resolutions. You are required to submit completed copies of the following forms, which are available at http://www.grants.gov/applicants/apply_for_grants.jsp.

(a) Form SF-424, Application for Federal Assistance, including a DUNS number, an indication of whether you are delinquent on any federal debt, and compliance with Executive Order 12372 (a certification that you have submitted a copy of your application to the state agency Single Point of Contact (SPOC) for state review. If the SPOC requires a review of your application, you must include in your application a copy of the cover letter sent to the SPOC.

Note: For intergenerational housing purposes, in Item 14, Areas Affected by Project, of SF-424, provide the names of the city, county, and state where the project will be located.

(b) SF-424 Supplement, Survey for Ensuring Equal Opportunity for Applicants (“Faith Based EEO Survey (SF-424 SUPP)” on Grants.gov). Although the information on this form will not be considered in making funding decisions, it will assist the federal government in ensuring that all qualified applicants have an equal opportunity to compete for federal funding.

(c) Form HUD-2880, Applicant/Recipient Disclosure/Update Report (“HUD Applicant Recipient Disclosure Report” on Grants.gov), including Social Security and Employee Identification Numbers. A disclosure of assistance from other government sources received in connection with the project.

(d) Form HUD-2991, Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located. The certification must be made by the unit of general local government, if it is required to have or has a complete Plan. Otherwise, the certification may be made by the state or by the unit of general local government, if the project will be located within the jurisdiction of the unit of general local government authorized to use an abbreviated strategy, and if it is willing to prepare such a Plan. All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted by the application deadline date. The Plan regulations are published in 24 CFR part 91.

(e) Form HUD-2994-A, You Are Our Client! Grant Applicant Survey. This is an optional form, which may be used to provide suggestions and comments to the Department regarding your application submission experience.

(f) Standard Form—LLL, Disclosure of Lobbying Activities, if applicable. A disclosure of activities conducted that may influence any federal transactions.

(g) Form HUD-96010, Program Outcome Logic Model. In addition to the Project Development Timeline to be submitted, the information provided in the Logic Model will be used in rating your application for rating factor 5, Achieving Results and Program Evaluation. (See Section V.A.5. below.)

(h) Form HUD-27300, America’s Affordable Communities Initiative/Removal of Regulatory Barriers (“HUD Communities Initiative Form” on Grants.gov) (and supporting documentation), if applicable.

(i) Form HUD-2990, Certification of Consistency with RC/EZ/EC-II Strategic Plan. A certification that the project is consistent with the RC/EZ/EC-II strategic plan, is located within the RC/

EZ/EC-II, and serves RC/EZ/EC-II residents. (This certification is not required if the project site(s) will not be located in a RC/EZ/EC-II).

(j) Form HUD-92041, Sponsor's Conflict-of-Interest Resolution. This is a Certified Board Resolution that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner, including a current listing of all duly qualified and sitting officers and directors by title and the beginning and ending dates of each person's term. The Owner should complete and sign this form for this demonstration although the word Sponsor is used in the title.

(k) Form HUD-92042, Sponsor's Resolution for Commitment to Project. A Certified Board Resolution acknowledging responsibilities of sponsorship, long-term support of the project(s), your willingness to help the Owner to develop, own, manage, and provide appropriate services in connection with the proposed project; and reflecting the will of your membership. Also, it shall indicate your willingness to fund the estimated start-up expenses and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved funding.

(l) Form HUD-96011, Facsimile Transmittal Form, is required only if you are using the facsimile method to fax third-party and other documents for your electronic application, in accordance with the instructions in the General Section.

(m) Form HUD-92910, Demonstration Program for Elderly Housing for Intergenerational Families. The form identifies the applicant and its known development team members and collects basic information with regard to the proposed project's characteristics. HUD staff will use this exhibit to obtain basic information regarding the proposed project. The information collected from the applicant relative to item 2 of this form is needed for the Department's Minority Business Enterprise goals.

Note: HUD will not accept entire applications by fax. If you submit the application entirely by fax, it will be disqualified.

C. Submission Date and Time. Your application must be received and validated electronically by Grants.gov no later than 11:59:59 p.m. eastern time on July 2, 2008, the application deadline date, unless a waiver of the electronic delivery process has been approved by HUD in accordance with the following

procedures. Applicants that are unable to submit their application electronically must seek a waiver of the electronic grant submission requirement. Waiver requests must be submitted no later than 15 days before the application deadline date. Waiver requests must be submitted by mail or by fax. For this program NOFA, e-mail requests will not be considered. Waiver requests submitted by mail or fax should be submitted on the applicant's letterhead and signed by an official with the legal authority to request a waiver from the Department. The request must be addressed to the Assistant Secretary for Housing at the following address: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9100, Washington, DC 20410-8000. Waiver requests submitted by fax must be sent to (202) 708-3104.

If a waiver is granted, you must submit the required number of copies of your application to Aretha Williams, Director, Grant Policy and Management Division, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-8000, and the application must be received no later than 5 p.m. eastern time on the application deadline date. The waiver approval notification will identify the required number of copies that must be submitted. If you do not submit the required number of copies, your application will not be reviewed.

D. Intergovernmental Review

1. State Review. Applicants for funding under this NOFA are subject to Executive Order 12372, Intergovernmental Review of Federal Programs. You must contact your state's SPOC to find out about and comply with the state's process under EO 12372. The names and addresses of the SPOCs are listed on the Office of Management and Budget's (OMB) home page at <http://www.whitehouse.gov/omb/grants/spoc.html>. If a review of your application is required by the state, the submission to the state needs to occur before the federal application deadline date, but in no event later than the application deadline date. It is recommended that you provide the state with sufficient time to review the application. Therefore, it is important that you consult with the SPOC for the state's review time frames and take that into account when submitting the application. If the SPOC requires a review of your application, you must include in your application a copy of the cover letter you sent to the SPOC.

2. HUD/RHS Agreement. HUD and the Rural Housing Service (RHS) have an agreement to coordinate the administration of the agencies' respective rental assistance programs. As a result, HUD is required to notify RHS of applications received for housing assistance. This notification gives RHS the opportunity to comment if it has concerns about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider RHS' comments in its review and application selection process.

E. Funding Restrictions

1. Funding available under this NOFA does not cover the costs of supportive services, except as provided in Section III.C.1.c. The services not covered under this section must be paid for through other sources. If funding has been secured by any third parties, see Section IV.B.2.c.(2)(c) above.

2. Ineligible Activities. Demonstration Program funds may not be used for:

- a. Nursing homes;
- b. Infirmaries;
- c. Medical facilities;
- d. Mobile homes;
- e. Community centers;
- f. Headquarters for organizations for the elderly;
- g. Nonhousekeeping accommodations (e.g., central dining, but without private kitchens and/or bathrooms in the residential units);
- h. Refinancing of sponsor-owned facilities without rehabilitation;
- i. Housing that you currently own or lease that is occupied by elderly persons; and
- j. Projects licensed or to be licensed as assisted-living facilities.

Note: You may propose to rehabilitate an existing currently owned or leased structure that does not already serve intergenerational families, except that the refinancing of any federally funded or assisted project, or any project insured or guaranteed by a federal agency, is not permissible under this NOFA. HUD does not consider it appropriate to utilize scarce program resources to refinance projects that have already received some form of assistance under a federal program. (For example, Section 202 or Section 202/8 direct loan projects cannot be refinanced with capital advances, demonstration program funds and project rental assistance.)

3. Development Cost Limits.
a. The following development cost limits, adjusted by locality, must be used to determine the amount to be reserved for projects for intergenerational families.

Note: The funding awarded for the project is to be considered the total amount of funds

that the Department will provide for the development of the project. There are no amendment funds available to cover increased costs. You are responsible for any costs over and above the funding amount provided by the Department, as well as any costs associated with any excess amenities and design features.

(1) The amount for the project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features and other costs you must pay for) may not exceed:

For nonelevator structures:

\$67,202 per family unit with two bedrooms;

\$86,020 per family unit with three bedrooms; and

\$95,830 per family unit with four bedrooms.

For elevator structures:

\$70,893 per family unit with two bedrooms;

\$91,712 per family unit with three bedrooms; and

\$100,672 per family unit with four bedrooms.

(2) These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards, the accessibility requirements of § 891.120(b), and the project design and cost standards of § 891.120 and § 891.210.

b. Increased development cost limits.

(1) HUD may increase the development cost limits set forth above, by up to 140 percent in any geographic area where the cost levels require such an increase, and may increase the development cost limits by up to 160 percent on a project-by-project basis. This increase may include covering additional costs to make dwelling units accessible through rehabilitation.

Note: In applying the applicable high-cost percentage, HUD Headquarters may use a percentage that is higher or lower than that which is assigned to the jurisdiction of the proposed project if it is needed to provide an amount that is comparable to what it typically costs to develop a project in that area.

(2) If HUD finds that high construction costs in Alaska, Guam, the Virgin Islands, or Hawaii make it infeasible to construct dwellings within the development cost limits provided in sections IV.E.3.a.(1) and IV.E.3.b.(1) above without the sacrifice of sound standards of construction, design, and livability, the amount of the funding may be increased to compensate for such costs. The increase may not exceed the limits established under this section

(including any high-cost area adjustment) by more than 50 percent.

4. **Commercial Facilities.** A commercial facility for the benefit of the residents may be located and operated in the project. However, the commercial facility cannot be funded with the use of demonstration program or PRAC funds. The maximum amount of space permitted for a commercial facility cannot exceed 10 percent of the total project floor space. An exception to this 10 percent limitation is if the project involves acquisition or rehabilitation and the additional space was incorporated in the existing structure at the time the proposal was submitted to HUD. Commercial facilities are considered public accommodations under Title III of the Americans with Disabilities Act of 1990 (ADA), and thus must comply with all the accessibility requirements of the ADA.

5. **Expiration of Demonstration Program Funds.** The Department of Housing and Urban Development Appropriations Act, 2006, requires HUD to obligate all Demonstration Program funds appropriated in FY2006 by September 30, 2009. Under 31 U. S. C. 1551, no funds can be disbursed from this account after September 30, 2014. The obligation of funds occurs for the demonstration program funds and project rental assistance upon fund reservation and acceptance. If all funds are not disbursed by HUD and expended by the project Owner by September 30, 2014, the funds, even though obligated, will expire and no further disbursements can be made from this account. Furthermore, all unexpended balances, including any remaining balance on PRAC contracts, will be cancelled as of October 1, 2014.

F. Other Submission Requirements

1. **Address for Submitting Applications.** All applications must be submitted to http://www.grants.gov/applicants/apply_for_grants.jsp and be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. To assist applicants in applying electronically, HUD published its "Notice of Opportunity to Register Early and Other Important Information for Electronic Application Submission via Grants.gov" on March 10, 2008 (73 FR 12751). The Early Registration Notice provides step-by-step instructions for applicants that register with Grants.gov and renewal instructions for those applicants that have previously registered. The early registration notice can be found at HUD's Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. The General Section

details the requirements for electronic submission, as well as the instructions for obtaining a waiver of the electronic submission requirement.

V. Application Review Information

A. Criteria

Policy Priorities. HUD encourages applicants to undertake specific activities that will assist the Department in implementing its policy priorities and that help the Department achieve its strategic goals for FY2007. Refer to the General Section for information regarding HUD's Strategic Goals and Policy Priorities. For the demonstration program, applicants who include work activities that specifically address the policy priorities of encouraging accessible design features by incorporating visitability standards and universal design, removing barriers to affordable housing, promoting energy efficiency in design and operations, and expanding training and employment opportunities for low- and very low-income persons and business concerns (Section 3 requirements) will receive additional points. A Notice pertaining to the removal of barriers to affordable housing was published in the **Federal Register** and may be downloaded from the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

Rating Factors. HUD will rate applications under this NOFA that successfully complete the threshold review using the Rating Factors set forth below and in accordance with the application submission requirements identified in Sections IV.B.2. above. The maximum number of points an application may receive under this NOFA is 102.

1. **Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (20 Points)**

This factor addresses your capacity to develop and operate a successful intergenerational housing program in a timely, cost-conscious, and effective manner. This also addresses your Plan to provide comprehensive on-site and off-site supportive services, including your community support, your experience providing similar services, and the experience of your collaborators. This factor also addresses your experience in providing housing and/or related services and your ties to the community at large, to minority and elderly communities, and to intergenerational housing communities in particular. Submit information responding to this factor in accordance with application submission

requirements in Exhibits 3(a), 3(b), and 3(h) above.

In rating this factor, HUD will consider:

a. (9 points). The scope, extent, and quality of your experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to your demonstrated development and management capacity, as well as your financial management capability.

b. (5 points). The scope, extent, and quality of your ties to the community at large, to minority and elderly communities, and to intergenerational communities in particular.

c. (4 points). The scope, extent, and quality of your Supportive Services Plan, including your experience in providing housing or related on-site and/or off-site services to intergenerational families.

d. (1 point). The scope, extent, and quality of the experience of your collaborating agencies, organizations, businesses, and other groups in serving intergenerational families.

e. (1 point). The scope, extent, and quality of your proposal to partner, fund, or subcontract with grassroots organizations. HUD will consider a "grassroots organization" if the organization is headquartered in the local community and has a social services budget of \$300,000 or less or has six or fewer full-time equivalent employees.

2. Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which the intergenerational dwelling units are needed by the target population. The application must include evidence of current housing needs among intergenerational families, including economic and demographic information on such families. Submit information responding to this factor in accordance with the application submission requirements in Exhibits 4(a) and 4(b) above.

In rating this factor, HUD will consider:

a. (10 points). The extent that your application demonstrates the housing needs of intergenerational families in the community in which the proposed project will be located and whether the community currently offers intergenerational housing and, if so, data and other information evidencing that the proposed project is also needed by intergenerational families in the community.

b. (3 points). The scope, extent, and quality of your assessment of the target population and a description of how they were involved in developing the application, participating with the project's planning committee, developing the project's operating philosophy, reviewing the application prior to submission to HUD, and your intent to involve them in the operation of the project.

c. (2 points). The extent that a connection has been established between the project and the community's Consolidated Plan, Analysis of Impediments to Fair Housing Choice (AI), or another planning document that analyzes fair housing issues and is prepared by a local planning or similar organization.

3. Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and effectiveness of your proposal in developing and operating intergenerational housing; the individualized case management planned; and the comprehensive, tailored supportive services to be offered on-site and/or off-site that are crucial to the success of the project. This factor further addresses whether the jurisdiction in which the proposed project will be located has undertaken successful efforts to remove regulatory barriers to affordable housing; your plans to incorporate energy efficiency in the design and operation of the proposed project; your plans to provide training, employment, and economic opportunities to low- and very low-income persons; and the extent to which you have evidenced general support for intergenerational housing by participating in your community's Consolidated Planning Process and involving the target population in the planning process. For your application to receive points for this factor, there must also be a relationship between the proposed activities, the project and community needs, and the purposes of the funding available under this NOFA. Submit information responding to this factor in accordance with application submission requirements in Exhibits 3(c), 3(f), 3(k), 4(c), 4(d), 5, and 6.

In rating this factor, HUD will consider:

a. (10 points). The extent to which the proposed design, including security, will accommodate all ages being served at reasonable cost. (Meets needs = 10 points; partially meets needs = 5 points; and does not meet needs = 0 points)

b. (5 points). The extent to which the staffing plan, written tenant selection procedures, residency requirements,

and other rules and procedures will be developed, enforced, and communicated to tenants and identifies the tenant's role in development and enforcement of these procedures. (Meets needs = 5 points; partially meets needs = 3 points; does not meet needs = 0 points)

c. (5 points). The extent to which the proposed comprehensive on-site and/or off-site supportive services meet the identified needs of all ages being served in the intergenerational housing. (Meets needs = 5 points; partially meets needs = 3 points; does not meet needs = 0 points)

d. (4 points). The extent to which you demonstrate that individualized case management will be provided. (Meets needs = 4 points; partially meets needs = 2 points; does not meet needs = 0 points)

e. (5 points). The suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority, elderly persons/intergenerational families and affirmatively furthering fair housing. In reviewing this criterion, HUD will assess whether the site meets the site and neighborhood standards at 24 CFR 891.125(b) and (c), by examining relevant data in your application or in the local HUD office. Where appropriate, HUD may visit the site.

(1) The site will be deemed acceptable if it increases housing choice and opportunity by expanding housing opportunities in nonminority neighborhoods (if located in such a neighborhood). The term "nonminority area" is defined as one in which the minority population is lower than 10 percent. If the site will be in a minority neighborhood, the site will be deemed acceptable if it contributes to the revitalization of and reinvestment in the minority neighborhood, including improvement of the level, quality, and affordability of services furnished to minority elderly. When considering sites for your project, you should refer to the Site and Neighborhood Standards provisions of the regulations governing the Section 202 Supportive Housing for the Elderly program (24 CFR 891.125(b) and (c)).

(2) For the purpose of this competition, the term "minority neighborhood (area of minority concentration)" is defined as one where any of the following statistical conditions exists:

(a) The neighborhood's percentage of persons of a particular racial or ethnic minority is at least 20 percentage points higher than the percentage of that particular racial or ethnic minority in the housing market area. The percentage

of persons of a particular racial or ethnic minority is at least 20 points higher than the percentage of that minority or a combination of minorities in the housing market area as a whole;

(b) The neighborhood's total percentage of minority persons is at least 20 percentage points higher than the total percentage of minorities for the housing market area;

(c) In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

f. (2 points). The extent to which the jurisdiction in which your project will be located has undertaken successful efforts to remove regulatory barriers to affordable housing and the steps you have taken to support these efforts.

Note: This is an optional requirement, but to receive up to 2 points for removal of regulatory barriers, applicants must include in their response the completed questionnaire found in form HUD-27300 and provide some form of documentation where requested, including point of contact and Web site references, or submit the required documentary evidence. (Refer to Section IV.B.2.b.(2)(c) above and the General Section for more information.)

g. (1 point). The extent to which you describe how you plan to incorporate energy efficiency activities in the design and operation of the housing.

h. (2 points). The extent to which you describe how you propose to provide opportunities to train and employ low- and very low-income persons in the project area; and how you plan to award contracts to business concerns that provide economic opportunities to low- and very low-income persons and people with disabilities in your community.

Note: This is an optional requirement, but to receive up to 2 points, the applicant must have adequately addressed the following in the application. Refer to the General Section for further information:

(1) (1 point)—Provide opportunities to train and employ low- and very low-income residents of the project area.

(2) (1 point)—Award substantial contracts to persons residing in the area.

i. (5 points). The scope, extent, and quality of your plan for carrying out the physical construction of the project, including the time frame.

j. (1 point). The extent to which the proposed design incorporates visitability standards and/or universal design in the construction or rehabilitation of the project. Refer to the General Section for further information.

k. (– 1 point). The site(s) is not permissively zoned for the intended use.

4. Rating Factor 4: Leveraging Resources (15 Points)

This factor addresses your ability to secure other community resources that can be combined with HUD funds to achieve the purpose of expanding the supply of intergenerational dwelling units. For your intergenerational housing project to succeed, you must generate other funding. Submit information responding to this factor in accordance with application submission requirements in Exhibits 3(e) and 5 above.

In rating this factor, HUD will consider:

a. (10 points). The extent to which collaborating agencies, organizations, businesses, and other groups have made commitments to provide supportive services and/or fund them.

b. (5 points). The extent to which firm commitments of \$100,000 or more in funding other than that available under this NOFA has already been secured for the project.

5. Rating Factor 5: Achieving Results and Program Evaluation (10 Points)

This factor reflects HUD's goal to embrace high standards of ethics, management, and accountability. This factor emphasizes HUD's commitment to ensure that promises you make in the application are kept; and to ensure that performance goals with outcomes are established and met. Outcomes may include the extent to which your project will implement practical solutions that will accommodate all ages being served, as well as the extent to which the project will be viable absent HUD funds and rely more on other funding sources. Submit information responding to this factor in accordance with application submission requirements in Exhibits 3(i), 3(j), 3(k), 3(l), 6, and 8(i) of Section IV.B. above. Applicants must complete form HUD-96010, Program Outcome Logic Model, in responding to this rating factor.

In rating this factor, HUD will consider:

a. (4 points). The extent to which your project's development time frame adequately reflects the length of time it will take to develop the project, your full understanding of the development process, and how residents of all ages will benefit from the project.

b. (2 points). The extent to which your project will implement practical solutions that will enable residents of the project to meet the terms and conditions of the lease. This element demonstrates assisting residents of all ages achieve an improved living environment, independent living, and educational opportunities.

c. (2 points). The extent to which the project will be viable as housing with the availability of supportive services for very low-income intergenerational families, absent HUD funds, while relying more on other funding sources for the term of the mortgage.

d. (1 point). The extent to which the project's operating philosophy will involve residents and consider the needs of residents of all ages.

e. (1 point). The extent to which your past performance evidences that the proposed project will result in the timely development of the project. Evidence of your past performance could include the development of previous construction projects, including, but not limited to, Section 202 and Section 811.

6. Bonus Points (2 Bonus Points)

The project is located in an RC/EZ/EC-II area.

B. Reviews and Selection Process

1. Review for Curable Deficiencies

You should ensure that your application is complete before submitting it to HUD. Upon receipt of the applications by HUD staff, the applications will be screened to determine if there are any curable deficiencies. A curable deficiency is a missing exhibit or portion of an exhibit that will not affect the rating of the application. Refer to the General Section for additional information regarding procedures for corrections to deficient applications.

With respect to the correction of deficient applications, HUD may not, after the application deadline date and consistent with HUD regulations in 24 CFR part 4, subpart B, consider any unsolicited information you may want to provide. HUD may contact you to clarify an item in the application or to correct curable deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact you to ensure proper completion of the application and will do so on a uniform basis for all applicants. In each such case, under this NOFA, HUD will notify you in writing by describing the clarification or curable deficiency. You must submit clarifications or responses to curable deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of HUD notification. (If the due date falls on a Saturday, Sunday, or federal holiday,

your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding. The following is a list of deficiencies that will be considered curable in applications under this NOFA.

Exhibit 1 Form HUD-92910, Application for Demonstration Program for Elderly Housing for Intergenerational Families.

Exhibit 2(a) Articles of Incorporation.*
Exhibit 2(b) Bylaws.*
Exhibit 2(c) IRS tax exemption ruling.*

Exhibit 4(d)(i) Evidence of site control.
Exhibit 4(d)(ii) Evidence site is free of limitations, restrictions or reverts.
Exhibit 4(d)(iv) Evidence of compliance with URA site notification requirement.
Exhibit 4(d)(vii) Phase I ESA.
Exhibit 4(d)(viii) Asbestos Statement or Survey.
Exhibit 4(d)(ix) Letter to the State/Tribal Historic Preservation Officer (SHPO/THPO) and a statement that the SHPO/THPO failed to respond OR the Letter from the SHPO/THPO.

Exhibit 7(b) Relocation.

Exhibit 8(a) Form SF-424, Application for Federal Assistance. You must include in your application a copy of the cover letter sent to the SPOC.*
Exhibit 8(b) Standard Form 424 Supplement, Survey on Ensuring Equal Opportunity for Applicants.
Exhibit 8(c) Form HUD-2880, Applicant/Recipient Disclosure/Update Report.
Exhibit 8(d) Form HUD-2991, Certification of Consistency with Consolidated Plan.
Exhibit 8(e) Form HUD-2994-A, You are Our Client Grant Applicant Survey (optional).
Exhibit 8(f) Standard Form LLL, Disclosure of Lobbying Activities, if applicable.
Exhibit 8(g) HUD-96010-I, Logic Model.
Exhibit 8(h) HUD-27300, Questionnaire for HUD's Initiative on Removal of Regulatory Barriers.
Exhibit 8(i) Form HUD-92041, Sponsor's Conflict of Interest Resolution (owner signs).
Exhibit 8(j) Form HUD-92042, Sponsor's Resolution for Commitment to Project.
Exhibit 8(k) HUD-96011, Facsimile Transmittal.
Exhibit 8(l) HUD-2990, Certification of Consistency with the RC/EZ/EC Strategic Plan.

HUD Headquarters will notify you, in writing, if your application is missing any of the above exhibits or portions of exhibits and will provide you with a specified deadline to submit the information required to cure the noted deficiencies. The exhibits identified by an asterisk (*) must be dated on or before the application deadline date. If an exhibit or portion of an exhibit listed

above as curable is not discovered as missing until technical processing, HUD will provide you with a deadline to cure the deficiency.

2. Threshold Review. Only those applications that meet all threshold requirements will be eligible to receive further review for an award of funds. Applications that do not meet the threshold requirements will be rejected. (See Section III.C.2. above and the General Section for threshold requirements.)

3. Review Panels. HUD may establish panels to review and rate all applications that have met the threshold requirements. These panels may include intergenerational housing experts or consultants not currently employed by HUD. These individuals may be included to provide certain expertise. Persons brought into HUD to review applications are subject to conflict-of-interest provisions. See the General Section for additional information.

4. Rating. HUD will review and rate your application in accordance with the Review and Selection Process in the General Section, except as described in "5. Appeal Process" found below. Your application will be either rated or technically rejected at the end of technical review. If your application meets all program eligibility requirements after completion of technical review, it will be rated according to the rating factors in Section V.A. above.

5. Appeal Process. HUD will not reject your application based on technical review without notifying you of that rejection with all the reasons for that rejection, and providing you with an opportunity to appeal. You will have 14 calendar days from the date of HUD's written notice to appeal a technical rejection to HUD Headquarters. In HUD's review of any appeal, it should be noted that in conformance with its regulations at 24 CFR part 4, subpart B, HUD will not consider any unsolicited information that you, the applicant, may want to provide. HUD Headquarters will make a determination on an appeal before finalizing selection recommendations.

6. Ranking and Selection Procedures. Applications submitted in response to this NOFA that meet all of the applicable threshold requirements of the General Section and this NOFA and have a total base score of 75 points or more (without the addition of the RC/EZ/EC-II bonus points) are eligible for selection. Any bonus points the application receives for RC/EZ/EC-II will be added to the total base score of 75 points or more. Not less than two and not more than four of these applications

will be selected based on rank order; however, HUD reserves the right to fund out of rank order based on national geographical diversity, the ability of the applicant to develop and operate intergenerational dwelling units, and ratio of funds requested to remaining fund amounts.

7. Tie. In the event of a tie, HUD Headquarters will make its selection based on the following:

- a. National geographical diversity.
- b. The ability of the applicant to develop and operate intergenerational dwelling units;
- c. The application that demonstrates the most need in the project location, based on verifiable statistical data contained in the application.
- d. Amount of funds requested.
- e. The date and time when the application was received.

VI. Award Administration Information

A. Award Notices

1. Agreement Letter. If you are selected to receive an intergenerational housing fund reservation, you will receive an Agreement Letter that stipulates the terms and conditions for the fund reservation award, as well as the submission requirements following the fund reservation award. The duration of the fund reservation award for the funds is 18 months from the date of issuance of the fund reservation. Immediately upon your acceptance of the Agreement Letter, you are expected to begin work towards the submission of a Firm Commitment Application, which is the next application submission stage. You are required to submit a Firm Commitment Application to HUD Headquarters within 180 days from the date of the Agreement Letter. Initial closing of the program funds and start of construction of the project are expected to be accomplished within the duration of the fund reservation award. Final closing of the program funding is expected to occur no later than 6 months after completion of project construction.

2. Non-selection Letters. If your application is approvable but unfunded due to insufficient funds or receives a rating that is below the minimum threshold score established for funding eligibility, you will get a letter to that effect.

3. Adjustments to Funding. HUD will not fund any portion of your application that is not eligible for funding under specific program statutory or regulatory requirements; that does not meet the requirements of this NOFA; or that may be duplicative of other funded programs or activities. Only the eligible portions

of your application (excluding duplicative portions) may be funded.

4. Applicant Debriefing. All requests for debriefing must be made in writing and submitted to HUD Headquarters. Refer to the General Section for further information regarding debriefings, except that the request for a debriefing must be made to: Aretha Williams, Director, Grant Policy and Management Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-8000.

B. Administrative and National Policy Requirements

1. Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses. Although the Section 202 program is not subject to the provisions of 24 CFR 85.36(e), as described in the corresponding paragraph in the General Section, you are required to comply with Executive Order 12432, Minority Business Enterprise Development, and Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise, as they relate to the encouragement of HUD grantees to utilize minority business enterprises.

2. Acquisition and Relocation. You must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR part 24 and 24 CFR 891.155(e)) (URA), which covers the acquisition of sites, with or without existing structures; and with 24 CFR 8.4(b)(5) of the Section 504 regulations, which prohibits discrimination based on disability in determining the site or location of a federally assisted facility. However, you are exempt from complying with the site acquisition requirements of the URA if: (1) You do not have the power of eminent domain, and (2) prior to entering into a contract of sale, option to purchase, or any other method of obtaining site control, you inform the seller of the land in writing: (a) that you do not have the power of eminent domain and, therefore, you will not acquire the property if negotiations fail to result in an amicable agreement, and (b) of the estimate of the fair market value of the property. An appraisal is not required to meet this requirement; however, your files must include an explanation (with reasonable evidence) of the basis for the estimate. Evidence of compliance with this advance notice

requirement must be included in Exhibit 4(d)(iv) of your application.

3. Flood Disaster Protection Act of 1973 and Coastal Barrier Resources Act. You must comply with the requirements under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) and the Coastal Barrier Resources Act (16 U.S.C. 3601).

4. Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made for this notice, in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m., except federal holidays, in the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

C. Reporting

1. The Program Outcome Logic Model (form HUD-96010) must be completed, indicating the results achieved against the proposed output goal(s) and proposed outcome(s) that you stated in your approved application and that were agreed upon by HUD. HUD is considering a new concept for the Logic Model—a Return on Investment (ROI) statement. HUD will be publishing a separate notice on the ROI concept.

These reporting requirements are to be submitted to HUD as follows:

Program Outcome Logic Model. You are required to report annually, beginning from the date of the Agreement Letter, on the results achieved against the output goal(s) and outcome(s) that you proposed in the Program Outcome Logic Model submitted in your application.

2. Racial and Ethnic Data. HUD requires that funded recipients collect racial and ethnic beneficiary data. HUD has adopted OMB's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, applicants should use form HUD-27061, Race and Ethnic Data Reporting Form, found on <http://www.HUDclips.org>.

The Regulatory Agreement requires the Owner of the Intergenerational Housing project to submit an annual financial statement for the project. This financial statement must be audited by an Independent Public Accountant who

is a Certified Public Accountant or by another person acceptable to HUD and filed electronically with HUD's Real Estate Assessment Center (REAC) through the Financial Assessment Subsystem for Multifamily Housing (MF-FASS). The submission of annual financial statements is required throughout the term of the mortgage.

VII. Agency Contacts

For Technical Assistance. For technical assistance in downloading an application package from http://www.grants.gov/applicants/apply_for_grants.jsp, contact the Grants.gov help desk at 800-518-GRANTS (800-518-4726), or send an e-mail to support@grants.gov. For programmatic information, you may telephone Aretha Williams at (202) 708-3000 or Claire Trivedi at (202) 402-6634 (these are not toll-free numbers) or access the Internet at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. Persons with hearing and speech impairments may access the above numbers via TTY by calling the Federal Information Relay Service at 800-877-8339 (this is a toll-free number).

VIII. Other Information

A. The Paperwork Reduction Act. The information collection requirements contained in this document have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0571. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 33.019 hours per annum, per respondent, for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, semiannual reports, and the final report. The information will be used for grantee selection and monitoring the administration of funds.

Dated: April 14, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8-9042 Filed 4-24-08; 8:45 am]

BILLING CODE 4210-67-P



Federal Register

**Friday,
April 25, 2008**

Part VIII

The President

**Proclamation 8243—Older Americans
Month, 2008**

**Proclamation 8244—National Volunteer
Week, 2008**

Proclamation 8245—Loyalty Day, 2008

Presidential Documents

Title 3—

Proclamation 8243 of April 22, 2008

The President

Older Americans Month, 2008

By the President of the United States of America

A Proclamation

During Older Americans Month, we recognize the many ways older citizens have enriched our Nation through their character, wisdom, and love.

Our country remains strong because of the foundation our elders have helped lay. This year's Older Americans Month theme, "Working Together for Strong, Healthy, and Supportive Communities," highlights the importance of building partnerships to ensure that older Americans are able to live with dignity and independence.

Every week thousands of older Americans give back to their communities by volunteering through groups like Senior Corps. From teaching young children how to read, to helping provide relief to those affected by natural disasters, seniors play an important and compassionate role in our Nation.

My Administration is dedicated to ensuring that our seniors are treated with the respect they have earned. They deserve to have choices and access to the best possible health care, so we have added new preventive care measures and prescription drug benefits as part of our effort to modernize Medicare and make medication more affordable. In this way and many others, our country honors our elders' legacy and recognizes their countless contributions to our Nation.

America's seniors provide an example for younger generations, and during Older Americans Month, we reflect on their efforts toward building a stronger and brighter future for all. Our country remains forever in their debt, as they have provided a guiding light for the rest of the Nation to follow.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2008 as Older Americans Month. I commend older Americans for the many contributions they have made and continue to make to our Nation. I also commend the Federal, State, local, and tribal organizations, service and health care providers, caregivers, and volunteers who dedicate their time and talents to our seniors. I encourage all citizens to honor their elders, care for those in need, and reaffirm our country's commitment to older Americans this month and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

A handwritten signature in black ink, appearing to be "GWB", written in a cursive style.

[FR Doc. 08-1192

Filed 4-24-08; 9:11 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 8244 of April 22, 2008

National Volunteer Week, 2008

By the President of the United States of America

A Proclamation

Through countless acts of kindness, volunteers across America are changing our Nation for the better. During National Volunteer Week, we recognize those who take the time to help their fellow citizens realize the full potential of America.

Through volunteer work, Americans can demonstrate the kindness and generosity that make our Nation great. Mentoring a child, teaching someone to read, visiting the elderly, feeding the hungry, and finding shelter for the homeless are all examples of how Americans can and do aid those in need. Americans are volunteering in record numbers. Each year, millions of Americans volunteer, and more of our fellow citizens are discovering that the pursuit of happiness leads to the path of service. The cumulative effort of the love and compassion from our Nation's volunteers will help secure a more hopeful future for all our citizens.

My Administration remains committed to building a culture of service, citizenship, and responsibility. The USA Freedom Corps strengthens civic engagement and volunteer service in America and helps people connect with volunteer opportunities. By visiting the USA Freedom Corps website at volunteer.gov, individuals can find information about ways they can help in their local areas and across the country.

The strength of America comes from its compassionate and loving citizens. National Volunteer Week is an opportunity to show appreciation for our Nation's volunteers. The time and energy they dedicate to helping those in need reflect the true spirit of America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 27 through May 3, 2008, as National Volunteer Week. I call upon all Americans to recognize and celebrate the important work that volunteers do every day throughout our country. I also encourage citizens to explore ways to help their neighbors in need and serve a cause greater than self.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

A handwritten signature in black ink, appearing to be "GWB", written in a cursive style.

[FR Doc. 08-1193

Filed 4-24-08; 9:11 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 8245 of April 22, 2008

Loyalty Day, 2008

By the President of the United States of America

A Proclamation

Americans believe that every man, woman, and child has unalienable rights, dignity, and matchless value. Advancing these ideals was the honorable vision of our Founders and the mission that helped shape this great country. On Loyalty Day, we celebrate the legacy of freedom and the shared ideals that bind us together.

Our Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen demonstrate their love of country by stepping forward when America needs them most. By putting our country's security before their own, the men and women of the Armed Forces have strengthened our Nation and brought hope to millions around the world. All Americans are grateful to the members of the military and their families for their service, sacrifice, and dedication, and we are proud of their accomplishments.

Through their good works, our Nation's volunteers bear witness to their steadfast love for America, as exemplified in their commitment to service and good citizenship. Loyalty to this country brings with it a commitment to aid our family, friends, and fellow citizens all across this broad and welcoming land. These volunteers demonstrate their gratitude for the blessings of freedom by helping build a more hopeful future for our children and grandchildren. All Americans can put their loyalty into practice by learning more about the history of our country, flying the American flag, and contributing to our communities.

Two hundred and thirty-two years after the founding of our country, we remain committed to advancing freedom and renewing the values that sustain our liberty. Through the spirit and determination of our people, our Nation will prosper and our liberty will be secure.

The Congress, by Public Law 85-529, as amended, has designated May 1 of each year as "Loyalty Day." This Loyalty Day, and throughout the year, I ask all Americans to join me in reaffirming our allegiance to our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 1, 2008, as Loyalty Day. I call upon all people of the United States to join in support of this national observance and to display the flag of the United States on Loyalty Day as a symbol of pride in our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

A handwritten signature in black ink, appearing to be "GWB", written in a cursive style.

Reader Aids

Federal Register

Vol. 73, No. 81

Friday, April 25, 2008

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

Laws **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000**

The United States Government Manual **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6064**

Public Laws Update Service (numbers, dates, etc.) **741-6043**

TTY for the deaf-and-hard-of-hearing **741-6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: <http://www.gpoaccess.gov/nara/index.html>

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: http://www.archives.gov/federal_register

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

17241-17880.....	1
17881-18148.....	2
18149-18432.....	3
18433-18700.....	4
18701-18942.....	7
18943-19138.....	8
19139-19388.....	9
19389-19742.....	10
19743-19958.....	11
19959-20148.....	14
20149-20524.....	15
20525-20778.....	16
20779-21016.....	17
21017-21214.....	18
21215-21518.....	21
21519-21806.....	22
21807-22048.....	23
22049-22270.....	24
22271-22784.....	25

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7746 (See 8228).....	18141
7747 (See 8228).....	18141
7987 (See 8228).....	18141
8097 (See 8228).....	18141
8097 (See 8240).....	21515
8114 (See 8240).....	21515
8214 (See 8228).....	18141
8228.....	18141
8229.....	18425
8230.....	18427
8231.....	18429
8232.....	18431
8233.....	19387
8234.....	19953
8235.....	19955
8236.....	20147
8237.....	20521
8238.....	21017
8239.....	21213
8240.....	21515
8241.....	21805
8242.....	22269
8243.....	22779
8244.....	22781
8245.....	22783

Executive Orders:

11651 (See Proclamation 8228).....	18141
12302 (See Proclamation 8240).....	21515
13389 (Amended by 13463).....	22047
13390 (Amended by 13463).....	22047
13463.....	22047

Administrative Orders:

Memorandums:	
Memorandum of March 28, 2008.....	19957
Memorandum of April 10, 2008.....	20523
Presidential Determinations:	
No. 2008-15 of March 19, 2008.....	17241
No. 2008-17 of March 28, 2008.....	17879
No. 2008-16 of March 24, 2008.....	18147
No. 2008-18 of April 10, 2008.....	22265

5 CFR

630.....	18943
731.....	20149
1201.....	21019, 21415
1210.....	21019
1215.....	21019

1601.....	22049
7401.....	18944

Proposed Rules:

351.....	20180
----------	-------

7 CFR

1.....	18433
246.....	21807
301.....	18701
457.....	17243
959.....	21023
983.....	18703
985.....	19743, 21215
1150.....	19959

Proposed Rules:

28.....	20842
301.....	17930
319.....	17930
920.....	20002
989.....	21551
1980.....	19443

8 CFR

212.....	18384
214.....	18944
235.....	18384
274a.....	18944

Proposed Rules:

103.....	21260
214.....	21260
215.....	22065
217.....	22065
231.....	22065
235.....	22065

9 CFR

77.....	19139
94.....	17881, 20366

Proposed Rules:

201.....	21286
----------	-------

10 CFR

26.....	21690
---------	-------

Proposed Rules:

20.....	19749
32.....	19749
50.....	19443
431.....	18858
820.....	19761

12 CFR

1.....	22216
2.....	22216
3.....	22216
4.....	22216
5.....	22216
7.....	22216
9.....	22216
10.....	22216
11.....	22216
12.....	22216
16.....	22216

19.....22216	748.....21076	26 CFR	1253.....18160
21.....22216	752.....21076	1.....18159, 18160, 18708,	Proposed Rules:
22.....22216	760.....21076	18709, 19350	242.....20884, 20887
23.....22216	772.....21076	54.....20794	1190.....21092
24.....22216	922.....20869	301.....18442, 19350, 21415	1191.....21092
26.....22216		602.....18709	1280.....18462
27.....22216	16 CFR	Proposed Rules:	38 CFR
28.....22216	Proposed Rules:	1.....18729, 19450, 19451,	17.....20530
31.....22216	303.....18727	19942, 20201, 20203, 20367,	75.....19747
32.....22216	305.....17263	21860, 21861, 22300	Proposed Rules:
34.....22216	17 CFR	20.....22300	3.....20566, 20571
37.....22216	200.....17810	26.....20870	5.....19021, 20136
40.....22216	230.....20367	31.....18729	17.....20579
208.....21690	232.....20367	54.....20203	20.....20571
218.....20779	239.....17810, 20367, 20512	301.....20870, 20877	53.....19785
225.....21690	240.....17810, 20782, 22017	27 CFR	39 CFR
268.....17885	247.....20779	9.....22273	111.....20532
325.....21690	249.....20782, 22017	28 CFR	Proposed Rules:
559.....21690	18 CFR	Proposed Rules:	111.....21297
560.....21690	35.....17246	28.....21083	40 CFR
563.....21690	39.....21814	29 CFR	49.....18161
567.....21690	158.....19389	4022.....20164	51.....21528
Proposed Rules:	260.....19389	4044.....20164	52.....17890, 17893, 17896,
792.....22289	Proposed Rules:	Proposed Rules:	18963, 19144, 20175, 20177,
951.....20552	40.....21859	1926.....21292	20549, 21418, 21538, 21540,
14 CFR	19 CFR	30 CFR	21546, 22057
23.....19746, 22271	12.....20782	75.....21182	60.....18162
39.....18433, 18706, 19961,	113.....20782	250.....20166, 20170	61.....18162
19963, 19967, 19968, 19971,	163.....20782	270.....20170	62.....18968
19973, 19975, 19977, 19979,	Proposed Rules:	281.....20170	63.....17252, 18169, 18970,
19982, 19983, 19986, 19989,	4.....22065	282.....20170	21825
19993, 20159, 20367, 20525,	122.....22065	756.....17247	79.....22277
21220, 21222, 21225, 21227,	20 CFR	946.....21819	81.....17897
21229, 21231, 21233, 21235,	655.....19944	Proposed Rules:	180.....17906, 17910, 17914,
21237, 21240, 21242, 21244,	Proposed Rules:	930.....21087	17918, 19147, 19150, 19154,
21519, 21521, 21523, 21526,	404.....20564	938.....17268	21043, 21834, 21839
21811	416.....20564	31 CFR	230.....19594
61.....17243	21 CFR	103.....19452, 21179, 22101	264.....18970
71.....17887, 17888, 18151,	189.....20785	800.....21861	266.....18970
18436, 18437, 18438, 18439,	210.....18440	32 CFR	271.....17924, 18172, 21843
18956, 18957, 19143, 19995,	211.....18440	Proposed Rules:	721.....21249
19997, 19998, 20161, 20162,	510.....18441	199.....17271	745.....21692, 21769
20163, 20526, 20527, 20780,	520.....18441	1900.....20882	Proposed Rules:
20781, 21813	522.....17890, 21041, 21042,	33 CFR	52.....17289, 17939, 18466,
73.....21246	21819	100.....21824	19034, 20002, 20234, 20236,
97.....18152, 19998, 20527,	526.....18441	117.....17249, 17250, 18960,	21885, 22110, 22307
20528	556.....21819	18961, 19746, 20172, 21043,	60.....21559
135.....20164	558.....18441, 18958, 19432	22277	62.....19035
250.....21026	589.....22720	165.....18961, 20173, 20797,	63.....17292, 17940, 18229,
Proposed Rules:	700.....20785	21247, 21880, 21883	18334, 21889
25.....21286, 21289	Proposed Rules:	325.....19594	79.....22318
39.....17258, 17260, 17935,	1300.....22294	332.....19594	81.....22307
17937, 18220, 18461, 18719,	1308.....19175	Proposed Rules:	141.....19320
18721, 18722, 18725, 19015,	22 CFR	100.....22303	147.....22111
19017, 19766, 19768, 19770,	41.....18384	117.....21090	271.....17944, 18229
19772, 19775, 21072, 21074,	53.....18384	150.....19780	761.....21299
21553, 21556, 21851, 21853,	304.....21528	165.....18222, 18225, 19780,	41 CFR
21855, 22088, 22090	309.....18154	20220, 20223, 21294, 22108	60-250.....18712
43.....20181	Proposed Rules:	168.....20232	102-38.....20799
61.....20181	121.....19778	334.....21296	42 CFR
71.....18222, 19019, 19174,	23 CFR	34 CFR	405.....20370
19777, 20843, 20844, 21857,	Proposed Rules:	200.....22020	410.....20370
21858	924.....22092	36 CFR	413.....20370
91.....20181	25 CFR	219.....21468	414.....20370
93.....20846	Proposed Rules:	242.....18710, 19433	422.....18176, 20804
141.....20181	26.....19179		423.....18176, 18918, 20486,
15 CFR	27.....19179		20804
748.....21035			488.....20370
774.....21035			494.....20370
Proposed Rules:			Proposed Rules:
736.....21076			5.....21300
740.....21076			
742.....21076			
744.....21076			

51c.....21300	54.....19437	Proposed Rules:	385.....19282
412.....22674	64.....21251, 21252, 21843	2.....17945	
431.....18676	73.....20840, 20841	9.....17945	
440.....18676	101.....18443	13.....17945	
441.....18676		17.....17945	
44 CFR	Proposed Rules:	32.....19035	50 CFR
62.....18182	73.....18252, 20005	36.....17945	17.....17782
64.....17928, 18188	301.....22120	42.....17945	26.....22254
65.....20807, 21049		43.....19035	100.....18710, 19433
67.....18189, 18197, 19161,	48 CFR	52.....19035	223.....18984
20810	Ch. 1.....21772, 21801	53.....17945, 19035	226.....19000
206.....20549	1.....21773, 21779, 21800	Ch. 2.....21301, 21892	229.....19171
Proposed Rules:	2.....21773, 21783	216.....21891	230.....22287
67.....18230, 18243, 18246,	4.....21773, 21779, 21789,	246.....21892	622.....18717
20890, 20894	21791	252.....21892	648.....18215, 18443, 19439,
	9.....21791	1633.....18729	20090, 22287
	11.....21783	2133.....18730	660.....21057
	12.....21773, 21789		665.....18450, 18717, 20001
45 CFR	13.....21789	49 CFR	679.....18219, 19172, 19442,
148.....22281	18.....21783	1.....20000	19748, 21850, 22062, 22063
615.....21549	19.....21779	172.....20752	Proposed Rules:
801.....18715	23.....21789	174.....20752	17.....20237, 20581, 20600
1160.....21054	33.....21779		100.....20884, 20887
Proposed Rules:	52.....21773, 21779, 21783,	Proposed Rules:	216.....19789
88.....20900	21789, 21791	171.....17818, 20006	224.....21578
1385.....19708	53.....21779, 21783	173.....17818, 20006	300.....18473, 20008
1386.....19708	201.....21844	174.....17818, 20006	600.....21893
1387.....19708	212.....21845	179.....17818, 20006	622.....18253, 19040
1388.....19708	225.....21845	209.....20774	635.....18473, 19795
	234.....21846	232.....21092	648.....18483
47 CFR	242.....21846	383.....19282	660.....20015, 20869
6.....21251	252.....21845, 21846	384.....19282	697.....18253

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 25, 2008**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Fisheries of the Northeastern United States:

Tilefish Fishery; Quota Harvested for Part-time Category; published 4-25-08

HEALTH AND HUMAN SERVICES DEPARTMENT**Inspector General Office, Health and Human Services Department**

Medicare and State Health Care Programs; Fraud and Abuse; Issuance of Advisory Opinions by OIG; published 3-26-08

HOMELAND SECURITY DEPARTMENT**Coast Guard**

Regulated Navigation Areas: Cape Fear River, Wilmington, North Carolina; published 3-14-08

INTERIOR DEPARTMENT**Minerals Management Service**

Reporting Amendments; published 3-26-08

MANAGEMENT AND BUDGET OFFICE**Federal Procurement Policy Office**

Cost Accounting Standards Board; Contract Clauses; published 3-26-08

RULES GOING INTO EFFECT APRIL 27, 2008**HOMELAND SECURITY DEPARTMENT****Coast Guard**

Special Local Regulation:

Opening Day on San Francisco Bay Bay, Pacific Inter-Club Yacht Association, San Francisco, CA; published 4-23-08

Special Local Regulation; Blessing of the Fleet, Corinthian Yacht Club, San Francisco Bay, CA; published 4-23-08

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Milk in the Appalachian, Florida, and Southeast Marketing Areas:

Tentative Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; comments due by 4-29-08; published 2-29-08 [FR 08-00881]

Partial Recommended Decision:

Milk in the Appalachian, Florida and Southeast Marketing Areas; comments due by 4-29-08; published 2-29-08 [FR E8-03846]

User Fees for 2008 Crop Cotton Classification Services to Growers; comments due by 5-2-08; published 4-17-08 [FR 08-01148]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Assessments of the Highly Pathogenic Avian Influenza Subtype H5N1 Status of Denmark and France; Availability; comments due by 4-28-08; published 3-27-08 [FR 08-06241]

AGRICULTURE DEPARTMENT**Federal Crop Insurance Corporation**

Common Crop Insurance Regulations: Grape and Table Grape Crop Insurance Provisions; comments due by 4-29-08; published 2-29-08 [FR E8-03850]

COMMERCE DEPARTMENT**National Oceanic and Atmospheric Administration**

Fisheries of the Exclusive Economic Zone Off Alaska: Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area; comments due by 4-28-08; published 2-27-08 [FR E8-03697]

COMMERCE DEPARTMENT Patent and Trademark Office

Changes in Rules for Filing Trademark Correspondence

by Express Mail, Certificate of Mailing or Transmission; comments due by 4-29-08; published 2-29-08 [FR E8-03929]

ENERGY DEPARTMENT**Federal Energy Regulatory Commission**

Mandatory Reliability Standard for Nuclear Plant Interface Coordination; comments due by 4-28-08; published 3-28-08 [FR E8-06320]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans; Wyoming:

Revisions to New Source Review Rules; comments due by 5-1-08; published 4-1-08 [FR E8-06642]

Approval and Promulgation of Air Quality Implementation Plans:

Rhode Island; Diesel Anti-Idling Regulation; comments due by 4-28-08; published 3-27-08 [FR E8-06183]

Rhode Island; Diesel Engine Anti-Idling Regulation; comments due by 4-28-08; published 3-27-08 [FR E8-06188]

Approval and Promulgation of Implementation Plans:

Missouri; comments due by 5-2-08; published 4-2-08 [FR E8-06666]

Approval and Promulgation of State Implementation Plans:

Utah; Interstate Transport of Pollution and Other Revisions; comments due by 4-28-08; published 3-28-08 [FR E8-06275]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

State Hazardous Waste Management Program:

Alabama; comments due by 5-2-08; published 4-2-08 [FR E8-06812]

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 4-28-08; published 3-27-08 [FR E8-06032]

Improving Public Safety Communications in the 800 MHz Band; comments due by 4-30-08; published 3-31-08 [FR E8-06494]

FEDERAL TRADE COMMISSION

Appliance Labeling Rule; comments due by 4-28-08; published 4-1-08 [FR E8-06566]

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 4-28-08; published 3-27-08 [FR E8-06276]

HEALTH AND HUMAN SERVICES DEPARTMENT

Designation of Medically Underserved Populations and Health Professional Shortage Areas; comments due by 4-29-08; published 2-29-08 [FR E8-03643]

HEALTH AND HUMAN SERVICES DEPARTMENT Refugee Resettlement Office

Limitation on Use of Funds and Eligibility for Funds Made Available to Monitor and Combat Trafficking in Persons; comments due by 4-28-08; published 2-26-08 [FR E8-03489]

HOMELAND SECURITY DEPARTMENT**Coast Guard**

Safety Zone:

Stars and Stripes Fourth of July Fireworks Event, Nansemond River, Suffolk, VA; comments due by 4-30-08; published 3-31-08 [FR E8-06474]

Safety Zones:

Thames River, New London, Connecticut; comments due by 4-30-08; published 3-31-08 [FR E8-06472]

HOMELAND SECURITY DEPARTMENT**Federal Emergency Management Agency**

Proposed Flood Elevation Determinations; comments due by 4-29-08; published 1-30-08 [FR E8-01650]

INTERIOR DEPARTMENT**Fish and Wildlife Service**

Endangered and Threatened Species:

Canada Lynx; Revised Critical Habitat for Contiguous United States Distinct Population Segment; comments due by 4-28-08; published 2-28-08 [FR 08-00779]

Injurious Wildlife Species;
Constrictor Snakes From
Python, Boa, and Eunectes
Genera; Information Review;
comments due by 4-30-08;
published 1-31-08 [FR E8-
01770]

INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office

Pennsylvania Regulatory
Program; comments due by
5-1-08; published 4-1-08
[FR E8-06715]

LABOR DEPARTMENT Employee Benefits Security Administration

Amendment of Regulation:
Definition of Plan Assets;
Participant Contributions;
comments due by 4-29-
08; published 2-29-08 [FR
E8-03596]

NATIONAL CREDIT UNION ADMINISTRATION

Mergers, Conversion From
Credit Union Charter, and
Account Insurance
Termination; Extension of
Comment Period; comments
due by 4-30-08; published
2-28-08 [FR E8-03831]

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations;
Proposed Rule Changes:
American Stock Exchange
LLC; comments due by 5-
2-08; published 4-11-08
[FR E8-07656]
Financial Industry
Regulatory Authority, Inc.;
comments due by 5-2-08;
published 4-11-08 [FR E8-
07655]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:
Air Tractor, Inc. AT-200, AT-
300, AT-400, AT-500, AT-
600, AT-800 Series
Airplanes; comments due
by 5-2-08; published 3-3-
08 [FR E8-04005]
Boeing Model 757 200 et.
al.; comments due by 5-2-

08; published 3-3-08 [FR
E8-03928]

Boeing Model 757
Airplanes; comments due
by 4-28-08; published 3-
13-08 [FR E8-05014]

Boeing Model 757
Airplanes, Model 767
Airplanes, and Model 777-
200 and 300 Series
Airplanes; comments due
by 4-28-08; published 3-
13-08 [FR E8-05011]

Boeing Model 767 200, 300,
and 400ER Series
Airplanes; comments due
by 5-2-08; published 3-18-
08 [FR E8-05373]

Bombardier Model CL 600
2B19 (Regional Jet Series
100 & 440) Airplanes;
comments due by 4-28-
08; published 3-27-08 [FR
E8-06299]

Bombardier Model DHC 8
400 Series Airplanes;
comments due by 4-28-
08; published 3-28-08 [FR
E8-06300]

Dornier Model 328 100 and
300 Airplanes; comments
due by 4-28-08; published
3-27-08 [FR E8-06296]

Empresa Brasileira de
Aeronautica S.A.
(EMBRAER) Model ERJ
170 and ERJ 190
Airplanes; comments due
by 4-28-08; published 3-
28-08 [FR E8-06304]

Sandel Avionics Inc. Model
ST3400 Terrain
Awareness Warning
System/Radio Magnetic
Indicator Units etc.;
comments due by 4-28-
08; published 3-13-08 [FR
E8-05001]

Short Brothers Model SD3-
60 Airplanes; comments
due by 5-1-08; published
4-1-08 [FR E8-06614]

Various Transport Category
Airplanes Equipped with
Auxiliary Fuel Tanks
Installed in Accordance
with Certain Supplemental
Type Certificates;
comments due by 4-28-

08; published 3-14-08 [FR
E8-05148]

Viking Air Limited;
comments due by 5-2-08;
published 4-2-08 [FR E8-
06831]

Viking Air Limited Models
DHC-6-1, DHC-6-100,
DHC-6-200, and DHC-6-
300 Airplanes; comments
due by 4-30-08; published
3-31-08 [FR E8-06469]

Viking Air Limited Models
DHC-6-1, DHC-6-100,
DHC 6 200, and DHC-6-
300 Airplanes; comments
due by 4-30-08; published
3-31-08 [FR E8-06468]

Establishment of Class E
Airspace:

Philippi, WV; comments due
by 5-2-08; published 3-18-
08 [FR E8-05170]

Proposed Revocation of Area
Navigation Jet Routes J-
889R and J-996R:

Alaska; comments due by
4-28-08; published 3-12-
08 [FR E8-04929]

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Charter Service; comments
due by 4-30-08; published
1-14-08 [FR 08-00086]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety: Administrative
Procedures, Address
Updates, and Technical
Amendments; comments
due by 4-28-08; published
3-28-08 [FR E8-05926]

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](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](http://www.gpoaccess.gov/plaws/index.html). Some laws may
not yet be available.

S. 845/P.L. 110-202

Safety of Seniors Act of 2007
(Apr. 23, 2008; 122 Stat. 697)

H.J. Res. 70/P.L. 110-203

Congratulating the Army
Reserve on its centennial,
which will be formally
celebrated on April 23, 2008,
and commemorating the
historic contributions of its
veterans and continuing
contributions of its soldiers to
the vital national security
interests and homeland
defense missions of the
United States. (Apr. 23, 2008;
122 Stat. 701)

Last List April 22, 2008

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail
notification service of newly
enacted public laws. To
subscribe, go to [http://
listserv.gsa.gov/archives/
publaws-l.html](http://listserv.gsa.gov/archives/publaws-l.html)

Note: This service is strictly
for E-mail notification of new
laws. The text of laws is not
available through this service.
PENS cannot respond to
specific inquiries sent to this
address.